

Summary of UK responses to the consultation on the:

## **Commission Proposal to Amend Regulation (EC) 852/2004**

This full, twelve-week consultation was issued on 9 May 2007 and closed on 1 August 2007. It was issued on a UK basis, although stakeholders, if they wished, were also given the opportunity to reply solely to a Food Standards Agency contact in Scotland, Wales or Northern Ireland. This summary includes comments from stakeholders in all four UK countries.

The Commission proposal was issued in March 2007. In April, the Agency consulted stakeholders via its web site for their initial views on the proposal – this gave Agency officials the opportunity to reflect on stakeholder reactions to the proposal prior to beginning the process of negotiations on the proposal at European level.

**This document has grouped views on the consultation's issues into four areas: (1) a general summary of responses; (2) specific concerns raised by stakeholders (often by several stakeholders) to which the Agency has provided responses; (3) specific comments by stakeholder referring to the draft Regulatory Impact Assessment (RIA) and comments by stakeholders on the Options, Costs and Benefits in the RIA (paragraphs 27 - 71.)**

The Agency strongly recommends that readers refer to the original consultation documents, which can be found at <http://www.food.gov.uk/consultations/ukwideconsults/2007/EC852consultation>.

Full copies of the consultation responses can be obtained from the Food Standards Agency Library at Aviation House, 125 Kingsway, London WC2B 6NH.

## **Acronyms / glossary:**

BC = Borough Council

Cooksafe = the Agency's programme in Scotland for helping small catering and retail businesses to comply with the food hygiene legislation.

DARD = Department of Agriculture Northern Ireland

FRCVS = Fellow Royal College of Veterinary Surgeons

FLG = Food Liaison Group (normally on behalf of several, geographically related local authorities)

FSG = Food Study Group

FVO = Food and Veterinary Office. An EU Commission service, based in Dublin, that helps to ensure that Community legislation on food safety, animal health, plant health and animal welfare is properly implemented and enforced.

HPA = Health Protection Agency

LACORS = Local Authority Co-ordinators of Regulatory Services (which represents local authorities on regulatory issues.)

MHS = Meat Hygiene Service (linked to the Agency and enforces legislation in approved fresh meat premises.)

NIFLG = Northern Ireland Food Liaison Group

NIMEA = Northern Ireland Meat Exporters Association

NHS = National Health Service

*Sfbb* = Safer food, better Business (the Agency's programme in England for helping small catering and retail businesses to comply with the laws introduced since 1 January 2006.)

## 1. Short summary of the responses

The majority of respondents did not support the Commission proposal. This included the vast majority of local authorities and most industry respondents to varying degrees. In response to a specific question posed by the Agency, no organisation was aware of being consulted by the Commission prior to this proposal being issued. Concerns were raised that food hygiene legislation was being used inappropriately for the delivery of economic policy.

The fundamental objection raised by respondents was that the proposal was based on numbers of employees and on turnover and not on risk. The consensus of opinion was that risk must be the main issue in considering what food safety procedures businesses undertook. It was noted that some small food businesses (i.e. those that might be exempted from HACCP based procedures were the proposal to be adopted) do undertake high risk activities and have been responsible for food poisoning cases.

Many local authorities and a number of industry respondents were content that the present legislation already contains sufficient flexibility in order that small businesses can operate procedures without undue burden. Some respondents queried whether an inflexible approach in other Member States may be behind the Commission's proposal

A number of local authorities noted their support for the Agency's *Safer food, better business* programme. In many cases a lot of work has been put in to implement *Sfbb* both by local authorities and by businesses. It had proved popular with businesses and benefits were beginning to be noticed.

A number of respondents believed that the proposal was ill-timed as the Commission review of the hygiene legislation was still underway. There was also concern about the proposal applying only to businesses with fewer than ten employees, which some local authorities thought would be difficult to establish and therefore enforce.

There were comments that use of the word 'predominantly' in terms of 'predominantly sells to the final consumer' is not properly defined and could lead to problems of interpretation.

There was a strong sense from many respondents, including some local authorities, that small businesses undertaking low-risk activities could be exempted from HACCP-based procedures. One small business did not accept that as a low-risk operation, record-keeping contributed positively to food safety.

Respondents representing food business sectors generally supported the proposal. The overriding concern was that HACCP-based procedures were not appropriate and burdensome for small businesses and did not improve food safety in the businesses concerned. One meat sector representative asserted that HACCP was used inappropriately as an ‘enforcement tool’.

**2. Some of the specific comments / issues raised by stakeholders in their responses**

**Agency view**

Why has this proposal been introduced at this time and who would have pushed for its introduction?

The Commission issued the proposal as part of its *Strategic Review of Better Regulation in the European Union*, which includes a proposal to reduce the administrative burdens on business by 25% by 2012. Following a stakeholder consultation, ten ‘fast track action’ proposals were identified with this aim in mind, including this one. The Agency sets out its best understanding of the origins of the proposal in its consultation documents, particularly the RIA.

Respondents raised concerns about how other Member States are making use of the flexibility in the legislation. One respondent noted that in Poland for example, it was aware that colleges are promoting need for a full HACCP system in all cases – could other countries be made aware of how to implement the legislation in a flexible way (e.g. with systems such as *Sfbb*)? Alternatively, could the legislation be amended to include a more explicit requirement for Member States to use risk-based, non-prescriptive, educative enforcement.

The Commission, through the FVO, is responsible for auditing how Member States have applied the legislation. The FVO have not considered this particular aspect of the legislation. The Commission review of the hygiene legislation also affords an opportunity to review the experience of Member States with the current legal requirement.

Regulation (EC) 852/2004 lays down requirements on food business operators rather than enforcers. It may be more appropriate to encourage the development of detailed arrangements for implementation provided for in Article 5.5 of Regulation (EC) 852/2004.

Were the proposal to be adopted, how should enforcers establish the precise number of employees of a business?

If the record-keeping element of the HACCP-based procedures is either burdensome or worthwhile for food businesses with continually low-risk operations and whether it contributes to food safety.

The benefits of documentation are rarely perceived by small and / or micro-businesses.

The Meat Hygiene service 'use' HACCP as an enforcement tool for the meat industry and not as a way of producing food safely.

The proposal as it currently drafted does not provide any indication as to how this would be undertaken. Were the Proposal to be adopted in its current form, the UK would seek guidance from the Commission on this issue

The Agency believes that the flexibility inherent in the legislation should mean that small businesses are not disproportionately affected as far as record-keeping is concerned. The UK argued for this flexibility during negotiations on the legislation. For example, the *Sfbb* diary takes only a few minutes to complete; most businesses questioned have not felt this to be a significant burden.

Furthermore, enforcers consider that the provision of some written records makes the audit process easier and provides enforcers with greater assurance of the efficacy of the business's food safety procedures. This, in turn, leads to lower rates of inspection.

The Agency used the flexibility in the Regulation to devise the *Sfbb* system to be proportionate for small businesses. Research shows that most businesses using *Sfbb* think it takes about the right amount of time and does not represent an undue burden.

As a legal requirement of Regulation (EC) 852/2004, failure to put in place HACCP-based procedures is a non-compliance which could result in penalties. A great deal of effort has been directed into the provision of guidance to meat plant operators and to MHS officials and tools such as the Food Safety Management Diary to encourage the implementation of HACCP principles in a flexible way, in line with Commission guidance.

3. Initial RIA:	
▪ general comments	
<p><b>Fletcher, Dr John (FRCVS):</b></p> <ul style="list-style-type: none"> <li>▪ feels that the RIA is strongly against the proposal and not objective;</li> <li>▪ (re paragraph 7) notes that stakeholder representation is largely on behalf of consumers and bigger businesses;</li> <li>▪ (re paragraph 30a ) notes that risk is related to throughput and that size of concern is reflected in the throughput.</li> </ul> <p><b>LACORS</b> states:</p> <ul style="list-style-type: none"> <li>▪ (re paragraph 79) understands regional differences in terms of different compliance models, but would encourage co-ordination between government bodies for consistency where possible; and,</li> <li>▪ (re paragraph 80) position on sanctions is set out in its response to the Macrory review consultation:  <a href="http://www.lacors.gov.uk/lacors/upload/10687.doc">www.lacors.gov.uk/lacors/upload/10687.doc</a>.</li> </ul> <p><b>Reigate &amp; Banstead BC:</b></p> <ul style="list-style-type: none"> <li>▪ (re paragraph 20) Sfbb encourages businesses to operate safer management systems, is beneficial for staff training and underpins better regulation principles. It makes it easier for enforcers to audit a business;</li> <li>▪ (re paragraph 80) understand that there will be amendments soon because of the Macrory principles. Sanctions previously available</li> </ul>	<p>The UK has encouraged the Commission to remove administrative burdens but to maintain appropriate and proportionate safeguards for public health. The Agency does not support the proposal in its current form.</p>

<p>were not fully effective in dealing with hazard analysis; and,</p> <ul style="list-style-type: none"> <li>▪ (re paragraph 82). If Sfb is used less, other 'in-house' forms of record-keeping may be less effective and might require more effort by the business.</li> </ul> <p><b>Undeb Amaethwyr Cymru / Farmers' Union of Wales:</b></p> <ul style="list-style-type: none"> <li>▪ (re paragraph 80) does not see why sanctions should be amended.</li> </ul>	
<p>▪ <b>specific comments on the Options and costs and benefits (paragraphs 27 – 71)</b></p>	
<p><b>Association of Independent Meat Suppliers:</b></p> <ul style="list-style-type: none"> <li>▪ supports Option A;</li> <li>▪ does not believe that exempting small businesses will be a competitive disadvantage to bigger businesses, who have the resources to undertake HACCP plans. On the contrary, this will result in a fairer situation;</li> </ul> <p><b>Dundee Council:</b></p> <ul style="list-style-type: none"> <li>▪ favours Option A, but foresees problems using employee numbers as an indicator of risk. It is not clear from the options presented in Appendix E by the FSA the extent to which flexibility is being applied by UK Enforcement Officers. In responding to the Commission's proposal, the FSA should accept that a review of the current approach and its deployment in the small business sector should be carried out;</li> </ul>	<p>The Agency remains concerned that businesses very similar in size (i.e. one of nine employees as opposed to one of eleven employees) could be subject to different requirements in relation to food safety management procedures.</p>

**East Ayrshire Council** supports Option B.

**Fletcher, Dr John (FRCVS):**

- (re paragraph 33) states that HACCP procedures occupy one person from a business of four persons for two days per month. He considers that the removal of HACCP procedures would save excess of £125.60 per annum;
- (re paragraph 37) believes that savings to business would benefit consumers both from lower costs and from wider choice.
- (re paragraph 41) disputes the figures in footnote 13. Does not feel that the respective claims of 17.5% and 43% reductions in food poisoning from the implementation of HACCP principles (although without documentation) are justified as they do not take account of other issues.
- (re paragraph 50) disputes the figures in footnote 14. Does not think the Agency's claim is justified by evidence;
- (re paragraph 53) does not accept that written documents can be verified by enforcers. Feels that more visits by enforcers 'might be a good thing';
- (re paragraph 72) would be happy to support the SFIT.
- (re ANNEX E) does not believe that there is evidence to support the view that HACCP has reduced cases of food poisoning and that this just 'an assertion of a recommendation from the Pennington Group report'.
- (re paragraph 72) does not believe the HPA's data shows a significant decline in food poisoning nor that the figure takes account of the decline in the numbers of butchers' shops.

The UK has encouraged the European Commission to remove administrative burdens, but to maintain proportionate and appropriate measures to protect food safety.

The Agency believes that HACCP contributes to a lower incidence of food poisoning. The Agency fully accepts that other factors, such as the provision of educational material or the targeting of particular organisms (e.g. the work by the Agency to reduce *Campylobacter* in poultry) will also have an impact.

Further, EU Commission Decision EC/471/2001 specified that all red meat slaughterhouses should operate systems based on HACCP and undertake microbiological testing. This came into force for large throughput premises from June 2002 and for the rest one year later. Statistical analyses from information provided from 92 slaughterhouses show a decline in indicator organisms on all carcasses between 2002 and 2006.<sup>1</sup>

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<sup>1</sup> *Compulsory HACCP and its effect on carcass and environmental surface bacterial indicator numbers in UK red meat slaughterhouses*. Hutchinson M L, Thomas D J I, Small A H, Buncie S and Howell M. 2007. *J. food Prot.* 70(7): 1633-1639.

**Food and Drink Federation** believes that the proposal could mean manufacturers' confidence in smaller enterprises being undermined. This could contribute to a rise in the admin burden resulting from small enterprises which otherwise benefit from HACCP-based good practice schemes for suppliers. These schemes make it easier for businesses to sell to major public institutions.

**Glasgow City Council;**

- favours Option B;
- however, if there is scope for a re-negotiation of Option C - based upon redraft of the exemption criteria to include "risk" - such an option could be considered further.

**Hereford & Worcester FLG:**

- (re paragraph 28, 29 and 30) does not support Option A at all. Option B preferred. Option C – could lead to extra costs for enforcers as current systems just becoming embedded which help enforcers ensure that businesses are managing risks; and,
- (re paragraph 36) do not agree that Option A will lead to savings for enforcers. The likelihood of less possible use of *Sfbb* will require enforcers to find other ways of ascertaining the required information about the business.

**LACORS:**

- (re paragraphs 27 – 30 and 36) favours Option B for the reasons outlined in the 'general issues' section above. Agrees with the Agency's assessment of groups affected; and,

- (re paragraph 54) says co-ordinated sampling of ready-to-eat foods by LACORS and the HPA have shown that small businesses with a simple documented HACCP system in place is less likely to have unsatisfactory microbiological samples.

**NHS Fife** supports Option B, stating that HACCP appears to have reduced foodborne disease outbreaks.

**NIFLG** supports the LACORS response to the specific comments on costs and benefits in the RIA.

**NIMEA:** (re paragraph 30) supports option B.

**North Cornwall DC:**

- (re paragraph 30) supports Option B
- notes improvements in food safety in small businesses as a result of Sfbb.

**Reigate & Banstead BC:**

- (re paragraph 30, Option C) note their support for Option B, noting that the current legislation already offers sufficient flexibility;
- (re paragraph 36, Option A, iii) consider that in the long-term, Option A would lead to costs associated with dealing with poorer standards of hygiene in businesses. As Sfbb might be used less, this could lead to complexities for enforcers in trying to promote safer systems and would be burdensome;
- (re paragraph 54, Option A, iii) As Sfbb might be used less, would expect a rise in enforcement activity as a result; and,
- (re paragraph 70, Option C, iii) As Sfbb might be used less, this could lengthen the inspection process as officers would not have records to

refer to and would need to take longer over establishing information about the business. The post-inspection write up might also be more difficult as the enforcer would not be referring to a specific method.

**Renfrewshire Council** believes that option B is adopted for discussion.

**SEAFISH** supports Option C. Suggests that local authority risk scores could be used as the basis for exemptions.

**UCLAN** strongly supports Option B.

**Undeb Amaethwyr Cymru / Farmers' Union of Wales:**

- (re paragraph 30) states in regard to the 4 suggested options as part of Option C that it supports a and b;
- does not support c as it feels that homogenised food safety rules should be in place across Member States;
- does not support scenario d as records can help businesses demonstrate food safety and may lead to environmental health inspectors adopting alternative procedures for inspections;
- (re paragraph 80) does not see why sanctions should be amended.