

CONSULTATION ON THE REVISION OF THE FOOD LAW CODE OF PRACTICE (WALES), ASSOCIATED PRACTICE GUIDANCE AND REGULATORY IMPACT ASSESSMENT - SUMMARY OF RESPONSES

Background

1. The consultation on the Food Law Code of Practice (Wales) took place from 13 November 2007 to 05 February 2008. The consultation was issued to 22 local authorities in Wales and other stakeholders with an interest in enforcement issues.
2. We are grateful for these responses and have taken the comments made into account in finalising the Code of Practice and the supporting Regulatory Impact Assessment (RIA). We are currently finalising the Practice Guidance and will also take the comments made on that into account as part of that process. The full consultation package is available on the Agency's website at:

<http://www.food.gov.uk/consultations/consultwales/2007/copwalesreview2007>

Summary of responses

3. A list of stakeholders that responded to the consultation is appended.
4. The table below summarises the responses to the consultation in terms of the specific questions posed and other issues raised under the following headings:

Section A	Comments on the draft revised Food Law Code of Practice (Wales)
Section B	Comments on the draft revised Practice Guidance (Wales)
Section C	Comments on the Regulatory Impact Assessment
Section D	Comments on the monitoring system

Summary of consultation responses

Question/issue raised in consultation	Summary of responses	FSA evaluation/response
Section A - Comments on the Food Law Code of Practice (Wales)		

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<p>1. Will the use of the proposed interventions be an effective tool to drive up business compliance with food law?</p>	<p>The views of respondents varied.</p> <p>Many local authority stakeholders agreed that the proposed interventions will be effective in driving up business compliance, and for targeting of resources as long as they are used in a sensible and proportionate manner.</p> <p>Other local authorities considered that the proposed interventions mirrored the work already being undertaken by the regulatory authorities and would not, therefore, lead to any substantial change in compliance levels. These respondents believed that other enforcement strategies ('scores on the doors' - SOTD - was given as an example) are more effective in driving up compliance levels.</p> <p>Some respondents also expressed concern that a consequence of the interventions policy was a possible increase in the inconsistency in approach between different local authorities.</p> <p>Several respondents prefer full inspections as the only way to determine compliance. They are concerned that some businesses may become complacent as only a small part of the business is examined.</p>	<p>On the basis of the evidence that activities other than inspections are effective in driving up levels of compliance by businesses with food law, we propose to proceed with the introduction of an interventions approach in the revised Code.</p> <p>The concerns expressed by some stakeholders have been noted and we will be keeping the Code under review. We will be monitoring business compliance levels and the progress of local authorities in using interventions to ensure that the approach is effective.</p> <p>For those authorities already using a range of interventions, the introduction of this policy will give formal recognition of the activities that they undertake outside formal inspections.</p> <p>We recognise that for many authorities, other initiatives (such as Safer Food Better Business) may also be key to improving standards.</p> <p>We acknowledge that through the increased reliance on an officer's professional judgement, there is potential for inconsistency. This emphasises the need for authorities to have robust management controls in place.</p>

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	<p>Several LAs do not consider sampling an appropriate official control intervention</p>	<p>Sampling on its own will not form an intervention but should be combined with verification and information gathering. This will be clarified in the new Code.</p>

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<p>2. Is there sufficient information and examples relating to each monitoring category to clarify how the interventions should be reported, and have we successfully differentiated between the types of interventions?</p>	<p>The majority of local authority respondents requested clarity in the wording, the need for examples of monitoring activities and guidance in types of interventions. Some requests were made for regional or national projects.</p> <p>Similarly, the majority view was there is not sufficient clarity about how different interventions should be reported.</p> <p>Concern was expressed by a significant number of respondents regarding the status of sampling visits on the basis that sampling alone will not provide enough information to determine the level of compliance at a food establishment.</p> <p>There was an absence of reference to ‘monitoring’ in the Code.</p> <p>Some LA suggest the qualification level stated in the sampling visits contradicts the draft Code.</p>	<p>We have published some additional information providing examples of the different intervention types and advice on how intervention types should be reported. This is available at:</p> <p>http://www.food.gov.uk/multimedia/spreadsheets/laemsfhfsinterventions.xls</p> <p>We commissioned a programme of training courses on the use and planning of interventions for local authority lead officers for food hygiene issues.</p> <p>We have considered the comments on sampling and the revised Code aims to address the concerns expressed. See point 1 also.</p> <p>Monitoring has not been mentioned because not all official controls have been included as interventions. This will be addressed in the revised Code</p> <p>This will be addressed in the revised Code</p>

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<p>3. Should premises which are given a risk rating score of A or B be subject to inspection only, or should these premises be subject to the introduction of interventions?</p>	<p>The majority of respondents considered that high-risk establishments should always be subject to regular inspections, but other types of interventions may be used in addition.</p> <p>One LA thought that C risk premises should also be included in this bracket at least until a full review of the Code takes place. The thought is that it is difficult to consider which interventions to carry out in C premises due to broad scope of band.</p>	<p>We have considered this issue carefully and reflected on the views expressed.</p> <p>Category A and B establishments represent a higher risk than other establishments. On this basis, the revised Code will require that the planned interventions for these establishments should be an inspection, partial inspection or audit. This does not preclude local authorities from undertaking additional interventions of other types.</p> <p>Training will be provided on the use of Interventions. The approach is to allow for the application of interventions as the enforcement officer considers appropriate.</p>

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<p>4. The Agency has proposed that enforcement officers will now have the flexibility to change the risk rating of premises following an official control. What are your views on this proposal?</p>	<p>The majority of local authorities believed that there is a current lack of guidance on how this should be undertaken, and this policy will lead to a great deal of inconsistency.</p> <p>Several LAs believed that many of the official control interventions will not provide sufficient information to re-score an establishment. In addition, it was believed that this policy will have further resource implications with the introduction of SOTD schemes.</p> <p>A minority, however, welcomed this proposal as it would re-instate the opportunity for officers to exercise their professional judgement. These respondents believed that this would also be helpful in dealing with re-inspections under SOTD.</p> <p>There was also a concern that confidence in the LA figures on the numbers of businesses deemed to be 'broadly compliant' category would be undermined</p>	<p>We have reflected on the range of views expressed. Under the revised Code, the interventions-rating of an establishment may only be changed following an inspection, partial inspection or audit.</p> <p>The impact on this policy in terms of resources in connection with SOTD will be assessed in more detail as part of the consultation on a UK-wide scheme.</p> <p>Under the revised Code, the interventions-rating of an establishment may only be changed following an inspection, partial inspection or audit.</p>

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<p>5. The Agency invites your views on any anticipated difficulties in ensuring that the intervention policy is applied consistently between different officers in food establishments?</p>	<p>Local authorities had significant concerns in this respect.</p> <p>Detailed criteria and guidance for interventions was requested by several Las.</p> <p>It was highlighted that the FSA and local authorities should continue to work together to implement and improve mechanisms that are already in place to address consistency issues (e.g. communication systems to share approaches to enforcement, regional forums, role of professional bodies, training, etc.).</p> <p>In addition, it was suggested that it is important to put in place a mechanism that would allow businesses to raise particular grievances.</p>	<p>We acknowledge the importance of consistency in approach and are committed to continuing to work with local authorities to build on and supplement the mechanisms that are already in place, and which aim to address this key issue.</p> <p>Under the Code, authorities are required to maintain robust management controls to ensure individual officers are making reasoned and evidence-based decisions using their professional judgement, and ensuring consistency between officers.</p> <p>Letters will be issued on specific issues from FSA and LACORS, regarding professional training for food officers carrying out this work</p> <p>Work will also be carried out regionally and with individual LAs on consistency and achieving risk management scores???</p> <p>The Agency also carries out its own monitoring and auditing of local authorities to ensure these controls are adequate, including 'reality checks' in food businesses to ensure that professional judgments are sound.</p>

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<p>6. In measuring 'broad compliance' the new performance system requires establishments to achieve a minimum of ten on all three criteria - structure, food safety management systems, and confidence in management - to prevent food establishments with significant non-compliances being judged broadly compliant. Are you supportive of this change?</p>	<p>The majority of local authorities support this approach and would also like further guidance on what this would look like in practice.</p> <p>The need to align this with other policy issues currently in development, such as SOTD, was highlighted.</p> <p>In addition, some local authorities believed that the Agency has set the bar too low which may lead to resources being directed away from high-risk establishments in attempts to move other businesses to this level.</p>	<p>We propose to provide guidance through the Industry Guides as to what specific establishments will look like if achieving standards commensurate with broadly compliant.</p> <p>We will be mindful of the need to align the option chosen for a national SOTD scheme with the definition of 'broadly compliant'.</p> <p>We agree that local authorities should be targeting resources at high-risk establishments, and that they should comply with the intervention frequencies set out at Annex 5 of the Code.</p>
<p>7. Should establishments requiring approval under Regulation (EC) No 853/2004 be subject to the proposed inspection frequency as laid down within section 4.3.4 of the existing Code of Practice?</p>	<p>There was strong support for this proposal, though one respondent took a contrary view.</p>	<p>We propose to proceed to amend the Code so that approved establishments will be assessed in accordance with the interventions-rating scheme set out in Annex 5 of the Code.</p>
<p>8. Will the movement of premises requiring approval under Regulation (EC) No 853/2004 back within the risk-rating system free up resources by removing prescriptive inspection frequencies without endangering public health?</p>	<p>The majority of respondents believed this would be the case but that the level of resources that would be freed up was minimal.</p> <p>One respondent did not consider that any resource would be freed up.</p>	<p>We propose to proceed to amend the Code such that approved establishments will be assessed in accordance with the interventions-rating scheme set out in Annex 5 of the Code.</p>

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<p>9. Is the application form for approval set out in Annex 11 of the practice Guidance sufficiently flexible for use in relation to small businesses in a proportionate way?</p>	<p>Almost half of the local authorities that responded considered the form suitable in providing valuable information.</p> <p>The remaining respondents suggested that it was not entirely appropriate for smaller food businesses.</p>	<p>We have noted the range of views and the concerns expressed by some authorities. However, we remain committed to reducing the administrative burden on businesses overall and we believe that the inclusion of a simplified form in the revised Code will contribute to this without compromising public health.</p>

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<p>10. The Agency is considering the need to provide additional guidance on the requirements for approval and the scope of exemptions, particularly in relation to small-scale establishments. We would welcome views on issues relating to approval where additional guidance would be helpful.</p>	<p>Local authorities supported the need for guidance in these areas. Support for additional guidance on which establishments are exempt was particularly strong.</p> <p>Guidance also requested on cold stores, calculating the two tonne exemption, small quantities to the final consumer, egg packing/shell eggs as a trigger for approval and composite product exemptions.</p>	<p>The Agency is currently undertaking a detailed review of the support and guidance that it provides to local authorities and businesses in this area and the responses received on this point will be considered as part of that review.</p>
<p>11. We would welcome the views of business and local authorities on the proposed changes to the registration form. Will the proposed changes to the registration form reduce the administration burden placed upon new businesses, (estimated currently at 25 minutes per registration form) without endangering public health?</p>	<p>The views of local authorities were split evenly.</p> <p>Just over half of those that commented disputed that the reduction in information on the form will have any realistic effect in reducing burdens. It was believed that the time to fill out the form is grossly overestimated at 25 minutes.</p> <p>The other LA comments considered the new form to be less burdensome and highlighted that further information on businesses is currently gathered during inspections anyway. The changes to the form will not present any danger to public health in their opinion.</p> <p>No comments were received from industry stakeholders.</p> <p>The view was that whilst there may be advantages in reducing the information required, there were also benefits in including some elements that had been removed; such as seasonality of business, home addresss, status of company etc.</p> <p>It was estimated that the revised form would take around five minutes to complete.</p>	<p>We have noted the range of views and the concerns expressed by some authorities. However, we remain committed to reducing the administrative burden on businesses overall, and we believe that the inclusion of a simplified form in the revised Code will contribute to this without compromising public health.</p> <p>As the administrative burden is currently calculated it refers to all businesses and therefore even small amendments are significant in reducing the admin burden to industry overall</p> <p>Existing form my take 5 minutes if FBO very familiar with form</p> <p>Comments noted.</p> <p>These are not food related matters and would increase the burden on business</p>

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<p>12. Is the level of information required from businesses when completing the registration form appropriate? If not please provide the supporting evidence/justification.</p>	<p>Almost half of the local authorities that responded considered the removal of information requested as a backwards step, and that the current version of the form provides valuable information.</p> <p>Of the others, most believed that the level of information required by the simplified form is satisfactory as other information is obtained during the follow-up visit.</p> <p>The remaining respondents suggested that the simplified form be retained but should also include a requirement to indicate the types of food premises, opening times, seasonality, limited company details, all food business operators associated with the business etc.</p> <p>No industry representative comments were received.</p>	<p>We have noted the range of views and the concerns expressed by some authorities. However, we remain committed to reducing the administrative burden on businesses overall and we believe that the inclusion of a simplified form in the revised Code will contribute to this without compromising public health.</p> <p>These are not food related matters and would increase the burden on business</p>
<p>13. Do the proposals contained in this consultation impose any new burdens, or remove existing burdens, on business or local authorities other than those identified in the RIA?</p>	<p>Most local authority respondents believed that the proposals, if implemented, will push the burden away from businesses towards local authorities.</p> <p>Concerns were raised about increased initial costs for IT changes that will be needed, staff training that will have to be provided, and also for the review of internal policies, procedures and stationery etc.</p> <p>Justification of the intervention taken is thought to be essential by most respondents</p> <p>Concern was raised that some small businesses may feel compelled to employ a consultant if they do not have an inspection.</p>	<p>We believe that the introduction of the new IT system will reduce the administration burden in the longer term.</p> <p>Concerns are noted</p>

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<p>14. Do you feel as a Food Authority enforcing food law, confident in how to apply the suite of interventions, and can you see circumstances where different interventions will be appropriate?</p>	<p>Views of local authorities were split.</p> <p>Around 30% believed that they understood the concept of intervention and welcome the flexibility to apply different interventions where they believe that these would be appropriate and effective.</p> <p>Approximately half of those authorities that responded did not feel confident in being able to apply the suite of interventions or identifying which would be suitable at this time.</p> <p>The remainder believed that it would be based upon the further guidance and examples, and training that would need to be provided.</p>	<p>Published research has shown that interventions other than inspection are also effective in improving business compliance. On that basis, we believe that it is important to provide flexibility in the Code for authorities to use this wider range of interventions, and to receive recognition for this.</p> <p>We have already organised a programme of training on interventions for local authorities and are considering whether we need to extend this programme and/or provide guidance.</p>
<p>15. Alternative Enforcement Strategies (AES) are not an intervention, rather a method of monitoring compliance at low risk premises. What are your views on the proposal and please state the value and use you would make of AES?</p>	<p>The majority of respondents considered that, given resources, AES are valuable for collection of information that can be used as a basis to assess future action in relation to low-risk food businesses such as childminders.</p> <p>Further guidance on the effective use of AESs was requested. In addition, it was requested that the Agency give consideration to the possibility of extending AES to category D premises.</p> <p>Concern expressed by a respondent that there is a lack of definition in the scope of monitoring in Article 2</p>	<p>AES are designed to manage and improve compliance in the lowest risk category premises (category E). Further research on the use of AES was completed at the end of March 2008, and further guidance will be produced on how they can be used effectively.</p> <p>Further guidance will be produced on how they can be used effectively</p>

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<p>16. Interventions give local authorities the discretion to direct resources at food establishments that present most risk to public health. Will this policy assist in protecting resources at a local level?</p>	<p>The majority of local authorities that responded recognised that there is a risk that the changes may be seen as a relaxation of the inspection regime without the commitment that any released resources need to be redirected to interventions to help drive up compliance in poor premises.</p> <p>Concern that the planning, delivery and monitoring of interventions may be more burdensome than the inspection programme</p> <p>A minority believed that this policy will have no effect on protecting resources.</p>	<p>We believe that the new national performance indicator should assist in protecting resources at a local level.</p> <p>The Agency and LACORS has recently published <i>Food matters at your Council: Councillors Handbook</i> that is aimed at raising awareness about food protection issues amongst elected members. This is available at:</p> <p>http://www.lacors.gov.uk/lacors/upload/17351.pdf</p>
<p>17. Changes in the Code have been introduced to complement the Local Authority Enforcement Monitoring System (LAEMS). The next inspection or other type of intervention must be entered as a “bring forward” action at the conclusion of each intervention. What is your view on its practical application?</p>	<p>This was considered difficult to answer as this was dependent on the success of the implementation of the new IT systems.</p> <p>There was agreement among respondents that the system needs to take into account the fact that many food businesses will have changed circumstances by the next intervention, making the previously selected intervention inappropriate, or generally need to change strategy on the spot. It was highlighted that, consequently, any system will require flexibility.</p> <p>Clarity on definitions such as ‘broadly complaint’ and ‘bring forward action’ was requested by several LAs</p>	<p>We believe that LAEMS and the revised Code will provide the flexibility needed.</p> <p>Authorities will be required to record the date of the next due intervention on their database. LAEMS does not require them to record the next type of intervention due. Authorities are, therefore, able to decide on the most appropriate type of intervention - with regard to the Code - based on intelligence about the establishment, which may be received in the time since the most recent intervention.</p> <p>Notwithstanding this, it may assist authorities with resource planning if they do record the next type of intervention planned.</p> <p>Comments noted and will be addressed in the revised Code</p>

