

RESULTS OF THE PUBLIC CONSULTATION ON THE FSA'S CODE OF PRACTICE ON OPENNESS

Please note that this document is a **summary** & is not meant to be exhaustive.

Replies from England / UK-wide organisations

COMMENT	ORGANISATIONS	PROPOSED RESPONSE
<p>It is generally believed that respect for commercial confidentiality should be stated in stronger terms, under the provisions of Para 2.7 as this will otherwise impinge directly on the level of co-operation given by food companies in the food chain & other stakeholders.</p>	<p>Novartis UK Ltd Sea Fish Industry Authority Food & Drink Federation Meat & Livestock Commission British Meat Federation</p>	<p><i>Section 7 of the Food Standards Act requires us to provide information and advice with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about food.</i></p> <p><i>The drafting of paragraph 2.7 reflects the terms of Section 19 of the Food Standards Act 1999, which requires the Agency to consider and decide whether the public interest in disclosure outweighs other considerations or not.</i></p>

<p>Concerned that there may well be delays in making information available (as per Para 2.4). Also should be explicit guidance given on time scales with regards peer review.</p>	<p>Consumer Association Cooperative Wholesale Society Association of British Science Writers National Consumer Council</p>	<p><i>We will publish research findings as swiftly as possible, but the peer review process provides a very important quality check on research. In emergencies we may have to take decisions or give advice in advance of formal peer review, and in that case we will explain the reasons for our decisions or advice.</i></p>
<p>It is considered important that Para 2.4 should explicitly state that the Agency will NEVER withhold permission to publish or attempt to persuade researchers to modify their wording or interpretation of results.</p>	<p>Institute of Food Science & Technology</p>	<p><i>The over-riding consideration here is that under Para 2.7, information which is incomplete & potentially misleading will not normally be released.</i></p>

It is felt that the Para 2.7 exceptions to the release of information depend fundamentally on judgements of 'we'. The role of the Agency Board & the Advisory Bodies raises questions as to their skill in accurately assessing scientific advice as well as the culture change necessary from MAFF to the Agency if openness is to work as intended.

National Council of Women of GB

We know that the public will form their own views about how well we are living up to our ideals and to our core values of openness and accessibility. By meeting in public the Agency's Board has set an example for the whole organisation.

The exceptions listed in paragraph 2.7 reflect the statutory requirement, under Section 19 of the Food Standards Act 1999, for the Agency to consider and decide whether the public interest in disclosure outweighs other considerations or not.

The Food Standards Act requires Health Ministers, in making appointments to the Agency's Board, to "have regard to the desirability of securing a variety of skills and experience Including experience in matters related to food safety or other interests of consumers in relation to food.

Where relevant, decisions taken by the Agency about publication can be challenged via external mechanisms such as the future Information Commissioner appointed under the Freedom of Information Act 2000 & the Ombudsman.

<p>Section 6 regarding monitoring procedures does not appear to cover routes 'inward' to prevent letters of suggestion from the public / lay members being dismissed & all such letters should be acknowledged accordingly.</p>	<p>National Council of Women of GB</p>	<p><i>We will do our best to ensure that all letters are acknowledged and responded to. We have also set up a formal procedure to ensure that anyone who has a complaint is able to follow this up formally (see paragraph 6.2).</i></p>
<p>Para 2.2 would appear to conflict with the provisions of the Freedom of Information Act which permit concealment of the advice underlying ministerial decisions. Could even be considered to go beyond the remit of the Freedom of Information Act. Is this justifiable?</p>	<p>Association of British Science Writers Crop Protection Association</p>	<p><i>The Food Standards Act 1999 gives us the powers to publish information and advice, including advice to ministers.</i></p>
<p>The restriction of information under Para 2.7 Exceptions should be subject to external accountability. What is the mechanism to deal with this? Is it a matter for the Ombudsman?</p>	<p>Association of British Science Writers</p>	<p><i>External accountability is provided through mechanisms such as judicial review, the Ombudsman & in the future, the Information Commissioner as appointed under the Freedom of Information Act 2000.</i></p>
<p>Concern expressed as to who would be financially responsible & the remedy / recourse available if the Agency issued advice under the Openness remit, which damaged a product / business which later proves to be either incorrect or erroneous.</p>	<p>Crop Protection Association British Meat Federation</p>	<p><i>The Agency, like other government departments, will carefully consider the individual merits of all such cases, & cannot therefore give a general undertaking or commitment in relation to financial liability.</i></p>

<p>Not clear from Para 2.1 as to how the Agency will determine information / advice that it actively publishes & that which it will make available to specific requests. What does 'publish actively' encompass?</p>	<p>National Consumer Council Consumer Association</p>	<p><i>Section 7 of the Food Standards Act requires us to provide information and advice with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about food.</i></p> <p><i>'Publish actively' will include putting information on the Agency website and issuing information notes or press releases, as well as printed publications. Decisions on how to make information available will depend on the likely demand, relative costs and so on.</i></p>
<p>With reference to Para 2.3 Developing our ideas, there should be stakeholder consultation from 'blank sheet of paper' stage at times where appropriate & it should be clarified as to how the public would be consulted.</p>	<p>LACOTS National Consumer Council Consumer Association</p>	<p><i>Our experience in our first year has demonstrated the value of involving stakeholders early, as this leads to better decisions and more soundly based advice. Again, we expect to be judged on our performance.</i></p>
<p>Would like to see greater clarification as to what is meant by 'substantive advice' under Para 2.3(b).</p>	<p>National Consumer Council Consumer Association</p>	<p><i>This has been more fully explained in the 8 March 2001 Board paper (Ref: FSA/01/02/04) 'Publication of Information & Advice to the Public & Ministers'. This can be found on our website.</i></p>

<p>Considered that there should be clarification on Para 2.7 exceptions in respect of both public interest & confidentiality reasons. Requires clear definition. Exceptions appear overly broad. There maybe contradictions with Precautionary Approach as expressed under Risk document especially in respect of non release of incomplete information as scientific research on food scares is rarely, if ever, complete.</p>	<p>Consumer Association Manchester Business School</p>	<p><i>The Food Standards Act requires us to apply the public interest test on a case by case basis, so we are unable to give a general definition.</i></p> <p><i>The issue of whether to release of incomplete or potentially misleading information must in the end be a matter of judgement. When we need to make decisions on the basis of incomplete information we will explain what we know and what we do not know, and what we are doing to decrease the uncertainty.</i></p>
<p>Would like to see clarification of the roles of Advisory Committee members in relation to 'confidential' material as per Para 3.4. Do not wish the effectiveness of Committee members to be restricted by a general prohibition on discussing meeting papers with colleagues & advisors</p> <p>The Agency should set clear criteria as to when Advisory Committees (under Para 3.4) will meet in public, with reference to the "occasional open meetings" mentioned. Otherwise, could be contrary to openness remit. Agendas, papers & minutes of all meetings should be made public, regardless of whether the meeting is open / closed. Advisory Committees should also be challengeable.</p>	<p>National Consumer Council Consumer Association Crop Protection Association</p>	<p><i>We encourage our Advisory Committees to work as openly as possible. They do this, for example by making papers, minutes & reports of meetings publicly available, by holding open meetings, setting up websites & issuing newsletters.</i></p> <p><i>We do not believe it would be right to require our independent scientific advisory committees to follow detailed rules laid down by the Agency. We will however look at these issues again in our review of Advisory Committees & their functions which is planned to begin later this year.</i></p>
<p>Suggestion made that the term 'straightforward' in Para 1.1 should be substituted by the term 'plain language'.</p>	<p>LACOTS</p>	<p><i>Agreed & Para 1.1 has been amended accordingly.</i></p>

<p>With regards monitoring under Section 6, is there a plan to set performance targets & to produce an annual review? 20 days response time appears too lengthy. Initial acknowledgement letter in 10 days suggested. Further, felt that complaints procedure should be set out in writing to assure the public of consistency in approach.</p>	<p>LACOTS</p>	<p><i>The 20 day target is as laid down by Cabinet Office. If we put extra work into sending an early acknowledgement this would risk delaying the substantive response. However, we will look at this again when we review our arrangements in the light of the experience of our first year.</i></p> <p><i>The arrangements for making a complaint are set out in Section 6 of the Code. How we investigate a particular complaint does depend much on what sort of complaint it is.</i></p>
<p>Para 2.4 Research or surveys, would benefit from an explanation of 'peer review' & commitment that other dissemination mechanisms will be employed using language directed at a variety of target audiences.</p>	<p>Institute of Food Research</p>	<p><i>We agree that a wider range of dissemination mechanisms is needed; we have a target to improve the ways in which we communicate about our research and survey results so as to reach a wider audience.</i></p>
<p>It would be helpful if the contractor was also made aware of the non release of advice or information (as per Para 2.7 Exceptions, bullet point 5) during the project & reasons.</p>	<p>Institute of Food Research</p>	<p><i>We will respond to a contractor within 4 weeks (20 working days) of receipt of a draft paper to confirm whether a scientific paper may be submitted for publication. If we do not respond within that time, the contractor can assume that he/she has permission to publish. If permission is withheld, reasons will be provided.</i></p>

<p>Possible greater detail might have been provided about how the code will be implemented via internal procedures to ensure they are expedited into practice.</p>	<p>Manchester Business School</p>	<p><i>We are developing a wide range of approaches to putting these principles into practice, from open discussion fora to workshops on technical issues with stakeholders.</i></p>
<p>Disclaimer used in Para 5.2 sits uncomfortably with general tone of openness document & if it is strictly necessary, perhaps thought should be given to rephrasing it in a more gentle, stakeholder friendly fashion.</p>	<p>Manchester Business School</p>	<p><i>We think it is better to be straightforward and honest about this disclaimer.</i></p>
<p>Impact on an industry / business / product should be carefully considered prior to information release. It is suggested that adequate notice is given or affected organisation is consulted to allow dialogue & to prepare for information release to public, which may adversely impact on such products / businesses.</p>	<p>Crop Protection Association</p>	<p><i>We are required to take account of likely costs & benefits of the decisions being considered & to consult wherever possible (Section 22 & 23 of the Food Standards Act 1999). We aim to consult key stakeholders wherever possible. But it may not always be possible to do so, for example if urgent action is necessary to protect people's health.</i></p>

Various suggestions given regards publicising this document to the general public & other stakeholders using different formats for the widest possible audience:

- Agency & associated websites
- Multi media & CD ROM media in schools, consumer groups & contractor organisation
- Translation into Ethnic Languages as appropriate
- Daily newspapers by advertising or news reports
- Local Authority Offices
- General public leaflets in supermarkets, libraries & hospital waiting rooms
- Public meetings to educate the public & heighten awareness / exposure / profile of Agency & document

Also, clear lines of communication required for public input of information with respect to food risks

Novartis UK Ltd
Crop Protection Association
LACOTS
Food & Drink Federation
Manchester Business School
Cooperative Wholesale Society
Institute of Food Research
Shellfish Association of GB
Association of British Science Writers
British Meat Federation
Consumer Association
National Council of Women of GB

We are grateful for these suggestions which we will consider as we develop our communication strategies. As a public body, we will of course need to balance costs and benefits and to make often difficult decisions on priorities for our spending.

Replies from Scotland

COMMENT	ORGANISATIONS	PROPOSED RESPONSE
<p>Current practice of closed Board sessions prior to Board meetings appears to contradict provisions of Para 3.3 on openness. Current 'open government' system of listing confidential items on the agenda which are then subject to a 'minute' would make for a more transparent approach.</p>	<p>Scottish Centre for Infection & Environmental Health</p>	<p><i>We have considered this, but concluded that publishing "sanitised" agendas and notes of this sort would simply divert resources while adding nothing to openness. Like all organisations we do need some privacy to develop our internal management arrangements, decide our financial negotiating position (in our case, in relation to the public spending round, and deal with other internal management issues.</i></p>
<p>With reference to Para 2.5, the Agency need to establish a mechanism which allows for independent review of any refused requests to release information.</p>	<p>Grampian Health Board</p>	<p><i>External accountability is provided through mechanisms such as judicial review, the ombudsman & in the future, the Information Commissioner as appointed under the Freedom of Information Act 2000.</i></p>
<p>Greater explanation required with regards reasons for not releasing advice / information. Exceptions are not well defined under Para 2.7</p>	<p>Scottish Wholesale Association</p>	<p><i>Food Standards Act requires us to apply the public interest test on a case by case basis, so we are unable to give more specific explanations here.</i></p>

<p>A minimum time period for consultation exercises should be prescribed under Para 3.2</p>	<p>Scottish Wholesale Association</p>	<p><i>As far as we can, we will follow the Cabinet Office Guideline of a minimum 12 week period. When we cannot do this we will explain why – for example because of deadlines imposed by EU or other international processes or because of key stakeholders’ overriding need for an early decision (eg on charges for services).</i></p>
<p>On occasion, information is withheld from the public on the premise that its release would hinder the investigation & control of an outbreak / incident. Flexibility is thus needed to ensure that information disclosure declarations do not intrude on the protection of public health by Health Boards & Local Authorities.</p>	<p>Forth Valley Health Board</p>	<p><i>This concern is covered by the general requirement (in the Food Standards Act) for the Agency to consider and decide whether or not disclosure would be in the public interest.</i></p>
<p>Would appear to be important for the Agency to seek the author’s consent prior to release of information as otherwise it may limit or reduce the advice given from contributors who seek to protect their confidentiality, & therefore ultimately affect the accuracy of the Agency’s advice / analysis.</p>	<p>Forth Valley Health Board</p>	<p><i>Section 7 of the Food Standards Act requires us to provide information and advice with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about food. Where confidentiality is an issue we will apply the “public interest test” as explained above.</i></p>

<p>Various suggestions given regards publicising this document to the general public & other stakeholders using different formats for the widest possible audience:</p> <ul style="list-style-type: none"> • Agency & associated websites • Published in different languages • Large print • Tape & video format • Access to hard copies in Public Libraries • Newspaper public information advertisements 	<p>Glasgow City Council Kevin Hutchens</p> <p>Scottish Food Coordinating Committee</p>	<p><i>We have included the key messages of this document in the opening chapter of our strategic plan. We doubt whether the detail of the Code is of such wide interest, but we will of course publish the document on our website.</i></p>
--	--	---

Replies from Wales

COMMENT	ORGANISATIONS	PROPOSED RESPONSE
<p>Very concerned that certain sectors of food industry may wish to withhold information for commercial / confidential reasons, in relation to Agency announcements, in the absence of any stipulation by the agency to undertake prior consultation. Commercial confidentiality is not mentioned among the exceptions listed under Para 2.7</p>	<p>Society of Directors of Public Protection Wales Royal Welsh Agricultural Society</p>	<p><i>We are required to take account of likely costs & benefits of the decisions being considered & to consult wherever possible (Section 22 & 23 of the Food Standards Act 1999). We aim to consult key stakeholders wherever possible. But it may not always be possible to do so, for example if urgent action is necessary to protect people's health.</i></p>
<p>Various suggestions given regards publicising this document to the general public & other stakeholders:</p> <ul style="list-style-type: none"> • Agency & associated websites • Leaflet distribution via food companies & local authorities • All Agency publications / website / public meetings & other medium used should be bilingual in Wales 	<p>Powys County Council Farmers' Union of Wales</p>	<p><i>We have included the key messages of this document in the opening chapter of our strategic plan. We doubt whether the detail of the Code is of such wide interest, but we will of course publish the document on our website.</i></p>

Replies from Northern Ireland

COMMENT	ORGANISATIONS	PROPOSED RESPONSE
Reasons for information being withheld should be fully disclosed on such occasions.	General Consumer Council	<i>Para 2.5 sets out our undertaking to do so.</i>
Unsure as to how Agency intends to monitor its performance on openness (as per Section 6). Recommend that monitoring is proactive on a continuous sample basis of information requests as received from stakeholders.	General Consumer Council	<i>We carry out regular surveys of consumers views about the Agency, and publish the results. We also seek feedback from everyone who attends our open Board meetings. We monitor complaints and will publish the results of this monitoring.</i>
<p>Various suggestions made in respect of best way of publicising the Approach to Risk such as:</p> <ul style="list-style-type: none"> • Via Agency website • Hard copies of list of contents of website & where information can be obtained (if internet access unavailable) • Audio tape & large print for visually impaired • Text telephone access • Libraries • Food outlets • Consumer Advice Centres • Broadcast Media such as TV, Radio & Press • Translated into ethnic languages • Regional meetings to publicise document via broadcast & printed media 	<p>Northern Ireland Meat Exporters' Association</p> <p>Health Promotion Agency</p> <p>North & West Belfast Health & Social Services Trust</p> <p>Southern Health & Social Services Board</p>	<i>We have included the key messages of this document in the opening chapter of our strategic plan. We doubt whether the detail of the Code is of such wide interest, but we will of course publish the document on our website.</i>