

PRINCIPLES UNDERPINNING APPLICATION BY THE FSA OF THE EU FOOD HYGIENE REGULATIONS

Introduction

1. The FSA's general approach to regulatory decision making has been set out in the FSA Regulatory Framework. Since 6 April 2008, the new statutory Regulators' Compliance Code came into force in England. While the Code only applies to the Agency's activities in England, the "better regulation" principles underpinning it are consistent with the Agency's approach to this subject across the UK. More information about the FSA's compliance with the Code is set out at <http://www.food.gov.uk/foodindustry/regulation/regframe>. We must have regard to the Code when determining general policies or principles about how we exercise our regulatory functions and when we set standards or give general advice.

Context

2. The EU food hygiene regulations, the associated national legislation and the guidance material which has been produced by the European Commission and by the FSA have applied since January 2006 throughout the food chain to a broad range of food businesses. As central competent authority for the legislation, the FSA is responsible for its application and for providing advice and guidance. In line with the principles of good regulation, the FSA needs to ensure that application of the legislation is proportionate, risk-based and outcome-focussed.

3. In order to ensure the FSA meets its obligations in practice, a cross-cutting food hygiene group of Agency officials considers the application of the legislation, the guidance to be provided to food businesses and enforcers and agrees the answers to questions raised with us about the interpretation and application of the legislation. In reaching its conclusions, the group applies a series of principles. These are set out in the annex to this paper.

ANNEX

KEY PRINCIPLE:

The primary aim for the application of the food hygiene legislation is the proportionate, risk-based control, by food businesses, of hazards to public health from food, secured by commensurate, proportionate, risk-based and flexible enforcement sanctions.

UNDERPINNING PRINCIPLE	WHAT DOES THIS MEAN?	WHAT WILL THE FSA DO?
<p>1. Consistency: The legislation should be applied consistently throughout the food chain where risks or activities are broadly the same.</p> <p>Each new decision reached should include consideration of its consistency with previous decisions. In general, all decisions should be mutually consistent.</p>	<ul style="list-style-type: none"> • The application of requirements to different types of food businesses should normally be consistent unless a different application can be derived from specific legislative requirements in a particular sector. • The application of differing requirements for various types of food businesses should normally only be derived from specific legislative requirements in a particular sector. • Each enforcement body should be applying the same standards to enforcement of the provisions of the legislation which apply in common in the food businesses for which they are responsible. • It is not acceptable to apply different requirements based on resource issues. • In some circumstances a new decision (e.g. prompted by Commission legislation or guidance) may require previous positions to be amended in order to preserve consistency. 	<ul style="list-style-type: none"> • We will consider if different standards are being applied by different enforcement bodies in respect of requirements applying in common to different types of food businesses. If this is the case, then we will consider how they can be harmonised. • If provisions in the legislation which apply in common to food businesses are to be applied in different ways, we will test whether this is appropriate, against these principles. We will record the reasons for this and will share this with food businesses and enforcers. • We will review existing decisions in the light of new decisions and in accordance with these principles. • We will record the decisions taken or reviewed in accordance with this principle and will share them with food businesses and enforcers.

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<p>2. Proportionality: We will ensure a consistent level of public health protection, through the application of risk-based hygiene requirements. However, aspects of the legislation which are of significance in relation to the way in which food is traded may be applied flexibly.</p>	<ul style="list-style-type: none"> • The legislation should be applied in a way that minimises the burden on food businesses and on enforcers, without compromising public health protection. • If a current interpretation of the legislative requirements imposes excessive burdens, we will consider if the same level of public health protection can be delivered in a less burdensome manner • An example of flexibility might be the application of trade-related requirements (i.e. identification marking) to food traded intra-Community, which may be different to food traded on a more restricted, national basis. 	<ul style="list-style-type: none"> • We will record the decisions taken in accordance with this principle and will share them with food businesses and enforcers.

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<p>2a. Particular circumstances of SMEs: Given that the vast majority of food businesses in the UK are small and medium enterprises (SMEs), we will (while seeking to ensure that any risks to public health are under control) consider the impact that regulatory interventions may have on SMEs, using reasonable endeavours to ensure that the burdens of intervention fall fairly and proportionately on them.</p>	<ul style="list-style-type: none"> • While the legislation describes outcomes in relation to public health protection which all food business operators should meet, the means by which they do so will vary, taking into account the risk which their businesses may represent, the means of controlling them and the market or intended use of their products. 	<ul style="list-style-type: none"> • We will consider carefully and specifically what the impact of our decisions and guidance might be in relation to SMEs. • We will look for ways to test with representatives of the sector our proposed decisions. • We will consider what flexibilities can be applied without compromising public health protection and advise on practical ways of complying with legislative requirements • We will record the decisions taken in accordance with this principle and will share them with food businesses and enforcers.
<p>3. Implementation: To secure our primary aim for the application of the legislation, we will make use of the flexibility provided for in the legislation and guidance.</p>	<ul style="list-style-type: none"> • Where the requirements of the legislation need to be interpreted, for example where high-level outcomes are described and the means by which they are to be achieved are not specified, we will consider what the best approach to implementation is, in light of the principles of good regulation and the Regulators' Compliance Code. 	<ul style="list-style-type: none"> • We will consider carefully what is contained within the recitals to the legislation and the guidance material when reaching decisions on how the flexibility within the legislation might be applied. • We will record the decisions taken in accordance with this principle and will share them with food businesses and enforcers.

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<p>4. Transparency: When resolving issues, regard will be had to the impact of uncertainty on businesses.</p>	<ul style="list-style-type: none"> • Issues should be resolved within a timescale that recognises that there may be an uncertainty cost to businesses if issues cannot be resolved quickly, or a satisfactory interim resolution agreed. 	<ul style="list-style-type: none"> • We will endeavour to reach decisions on issues needing resolution as quickly as possible. • If we identify that we cannot resolve matters quickly, we will try to identify an interim solution and will share this with food businesses and enforcers. • We will develop a means to update stakeholders on the issues we are considering, our progress with them and if there are external factors which might have an impact on our ability to resolve matters.

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<p>5. Commission guidance: Where the EU Commission has supplied guidance on the operation and application of the legislation, or has commented on the UK's application of the legislation, this will be followed.</p>	<ul style="list-style-type: none"> • Where the principles in the guidance are of general application, or can be applied generally, the aim will be to apply them consistently. • If the Commission has expressed a view about the application of the legislation in general, then this will be considered when reaching decisions on the application of the legislation and will be tested against the principles in this paper. • The Commission review of the legislation and associated guidance can be found at: http://ec.europa.eu/food/food/biosafety/hygienelegislation/guide_en.htm and may provide an opportunity to clarify or amplify the requirements of the legislation as it stands. It may also provide an opportunity for new and additional requirements to be introduced. • Where the issues under consideration have been commented upon by the Commission, in relation to the UK's application of the current food hygiene legislation, then this will be fully considered 	<ul style="list-style-type: none"> • If the principles in the guidance are to be applied in different ways, we will test whether this is appropriate, against these principles. We will record the reasons for this and will share this with food businesses and enforcers. • Our response to any proposals for legislation or guidance will be driven by the principles in this paper, balanced as necessary by broader policy objectives and our need to sustain a productive working relationship with the Commission. • We will share intelligence and be alert to the approach of the Commission inspectors during FVO missions and in follow-up contact with the Commission. • We will consider the main cross-cutting trends identified in mission report action plans and seek to ensure wherever possible that these requirements are acted on and adopted consistently. • However, where the requested action is not derived from the relevant Community law, or is not in accordance with the Commission's own better regulation objectives, we will challenge this.

