

Review of the Food Law Code of Practice for the Food Standards Delivery Model (England) full consultation pack

To seek stakeholder views on the proposed changes to the Food Law Code of Practice (England) (the Code) to support the introduction of the new Food Standards Delivery Model.

This consultation will be of most interest to:

- Competent Authorities - Local Authorities (LAs)
- food businesses
- professional awarding bodies for environmental health and trading standards professionals
- Trade Unions and expert groups may also have an interest

Consultation subject/purpose:

To seek stakeholder views on the proposed changes to the Food Law Code of Practice (England) (the Code) to support the introduction of the new Food Standards Delivery Model.

Key proposals include:

- modernisation of the approach to food standards delivery specified within the Code, in particular the incorporation of a new food standards intervention rating scheme, and a decision matrix to determine the appropriate frequency of Official Controls based on the risk posed by a food business
- changes to the Code sections on the delivery of interventions and enforcement to support the principles of the new food standards delivery model

How to respond:

Please use the consultation response form to provide your comments. The consultation response form should then be emailed to CodeReviewResponses@food.gov.uk.

England

PDF

[View Consultation on proposed changes to the Food Law Code of Practice \(England\) response form as PDF\(Open in a new window\)](#) (73.65 KB)

WORD

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Details of consultation:

Introduction

In England, local authorities (LAs) are Competent Authorities responsible for verifying compliance with food law in the majority of food business establishments. The Food Standards Agency (FSA) is responsible for providing advice and guidance on the approach that LAs should take, and this is set out in the Food Law Code of Practice (the Code).

LAs have a duty to have regard to the provisions in the Code in relation to the delivery of official controls.

The Code requires regular review and revision to ensure that it reflects current priorities, policy, and legislative requirements so that LAs delivery of food control activities remain effective, consistent, and proportionate.

The purpose of this consultation is to provide stakeholders with an opportunity to comment on our current proposals for amending the Code for England – the proposals for change are outlined below. Similar changes are being proposed for the Code for LAs in Northern Ireland. The FSA in Wales will review the Food Law Code of Practice (Wales) at a later date and undertake a consultation prior to issuing advice to the Minister.

Background

The FSA has developed a new model for delivery of food standards official controls for LAs. The new model addresses the shortcomings in the current approach identified through a LA survey undertaken in 2018 which recognised that the existing framework is not fit for purpose. The survey found that:

- officers felt the Code was no longer fit for purpose and that it fails to support LAs in targeting resources at the areas of greatest risk within the food chain
- LAs were not complying with the requirements of the Code

The need for a fundamental review of the current model was accepted by the FSA Board in late 2018. Working in collaboration with LAs and other key stakeholders, we developed a new delivery model to provide an approach that better targets LA resources at food businesses presenting the greatest risk. The consultation on the changes to the Code follows on from a 15-month pilot of the proposed new model in England and Northern Ireland. The pilot ran from 1 January 2021 to 31 March 2022. It involved seven LAs (six from England, one from Northern Ireland) operating to the new model and four control LAs in England working to the current Code. LAs volunteered to be involved and the participants were selected based on specific criteria to provide a representative cohort on which to base our evaluation.

Prior to the pilot commencing, we trained pilot LAs on the new model (for example the new risk scheme). We provided support and engaged with LAs throughout the pilot to identify issues and understand how the new model operates.

The formal evaluation process for the pilot concludes that the new approach is effective. Critically, the evaluation data indicates that the new model is more effective at directing officers to food businesses that are non-compliant with food law. Following the outcome of the pilots in England and Northern Ireland the FSA in Wales will review the food standards model for Wales and hope to undertake a pilot of the proposed model prior to consulting separately. Findings from officer interviews as part of the process evaluation were consistent in identifying the following aspects as working well:

- ability to re-score a business after an activity such as revisit was welcomed.
- the new decision matrix and risk assessment scheme are easy to understand and implement
- the new decision matrix allows risk to be assessed and balanced across different types of premises - allows a more accurate assessment of risk

- a key benefit is that manufacturers were no longer considered high risk by default
- use of remote interventions at appropriate businesses
- integration of the new model into their existing working practices
- officers were recognising when problems may not be local and sharing more information with the FSA

A paper covering the pilot and evaluation was presented to ABC Programme Board at their meeting on 25 August, following which universal agreement was given to proceed to consultation on the new food standards delivery.

Main proposals

The main proposals involve fundamental changes to the food standards delivery model within the Code, and associated content, namely the introduction of a:

- new food standards intervention rating scheme that LA officers will use to evaluate the risk posed by a food business
- new decision matrix to determine the frequency at which food standards official controls should be delivered in line with the outcome of the risk assessment

Policy objectives

The proposed policy changes described above are intended to enable LAs to:

- reduce the number of harmful or non-compliant products on the market
- more effectively target available resources to the areas of greatest risk within the supply chain
- have greater flexibility to determine the appropriate official control method/s and technique/s to use depending on the risk posed by a business

Detailed proposals

Proposal 1: New Food Standards Intervention Rating Scheme

The new food standards intervention rating scheme has been developed with the input of key stakeholders and has been piloted for 15 months by seven LAs. The scheme seeks to provide a more accurate assessment of the potential risk posed by a business, taking into account both the inherent risk associated with the business and the level of current and, where appropriate, sustained compliance the business has demonstrated. As such, the new scheme is intended to ensure that LA food regulatory resources are targeted, as effectively as possible, towards the areas of greatest risk in the market.

The food standards intervention rating scheme involves the calculation of a risk profile for food establishments that is based on its 'inherent risk profile' and a 'compliance assessment'.

The inherent risk profile gives an indication of the risks associated with a food establishment and the compliance assessment assesses the FBO's performance. Both the inherent risk profile and compliance assessment are made up of subcategories which are individually scored to allow the accurate assessment of different risk elements which will be assigned according to the information available. These subcategories are:

Inherent risk profile:

- scale of supply and distribution
- ease of compliance
- complexity of supply chain

- responsibility for information
- potential for product harm

Compliance assessment:

- confidence in management (CIM)
- current compliance level
- management systems and procedures
- allergen information

When applying the risk scheme, LAs will assign the risk factor score that is most relevant to the business. Where businesses fall into more than one scoring category for a scoring factor, they must be allocated the lowest score (higher risk), in line with the precautionary principle. It is recognised that individual officer scoring will be based on the evidence they find, and a judgement will need to be made on what score to give the business using the descriptions under each of the risk scores.

Whilst individual scores would be attributed to each subcategory, these are then averaged and rounded (to the nearest whole number) to give the overall inherent risk and compliance assessment scores. Rules are applied to take into account of situations where significant non-compliance has been identified within the compliance assessment.

This rule and principle provides additional assurance within the model where significant non-compliance has been identified, namely an establishment with one serious non-compliance (score of 1 under the compliance assessment), will be given an overall compliance assessment score of 1 for the compliance assessment regardless of the other individual compliance risk factor scores

To complete a risk assessment, the LA will need to ensure that they have sufficient information about the food business (for example business type and supporting information) so they can consider the potential hazards associated with the establishment.

For the new approach to operate successfully, a common risk assessment framework has been established to ensure a consistent approach between LAs and further information on these risk factors are detailed in the consultation.

Proposal 2: Decision Matrix

To determine the frequency at which official controls should be carried out at a business, the average scores for the inherent risk profile and compliance risk assessment are plotted onto the decision matrix.

The decision matrix follows a graduated approach based on risk. The frequency of official control activities starts at one month (high intensity) and progresses to less intensive frequencies enabling LAs to target their resource on those establishments deemed to be highest risk. This supports the objective of the model and recognises that LAs will be focusing their resource on those establishments where they need to take prompt action to safeguard public health or consumer protection.

The decision matrix does not specify the particular official control activity that should take place. Instead, this approach gives LAs the flexibility to use any of the methods and techniques of official controls specified in Article 14 of Retained (EU) Regulation 2017/625, either individually or in combination, providing they are effective and appropriate in the circumstances.

The overarching principle when considering which method(s) or technique(s) to use is to ensure that the most effective Official Control Activity is chosen and that the officer is satisfied that the selected method(s) and/or technique(s) allows them to verify compliance with food law.

The decision matrix identifies where LAs should take prompt action to safeguard public health and consumer protection and recognises that they will be directing their resources to work with that business to ensure appropriate corrective action is taken until compliance is achieved. These are highlighted within the decision matrix as priority interventions to enable a more intensive approach to be taken, and to ensure LAs can quickly secure improvements at these establishments so the business moves into compliance, thereby protecting consumers.

Where a priority intervention is identified, the expectation is that the officer will return to the establishment and focus on non-compliances in those areas causing the greatest concern rather than undertaking a further full inspection unnecessarily. When undertaking a priority intervention, the officer should focus on those areas of concern and rescore the establishment on that basis (therefore a partial inspection/intervention may be sufficient), with the intention of working towards a more compliant establishment and a less intensive regulatory output. The reassessment of the establishment may only occur when the LA is satisfied that the serious non-compliance has been addressed. Once satisfied, the officer should re-risk rate the establishment to reflect any improvements made and revise its risk profile. Ideally, the resulting regulatory output will have improved (for example moved out of the priority intervention category). However, if sufficient improvements haven't been made, the establishment may remain as a priority intervention.

It should be noted that the frequencies provided in respect of priority interventions are minimum frequencies. If the officer believes that a priority intervention is required in advance of the frequency provided by the decision matrix due to the nature/extent of the risk posed by the establishment then this can be done providing the expectations are clearly communicated to the establishment. When determining the appropriate frequency, consideration should be given to the non-compliances found, available enforcement options (for example improvement notices), how quickly the non-compliances can be corrected and any relevant local procedures or protocols.

It is recognised that there will be circumstances where an FBO is unwilling or unable to take the necessary action required to achieve compliance. In such cases, LAs should consider taking formal enforcement action in line with their enforcement policy and the hierarchy of enforcement. Where a decision to pursue formal enforcement action is taken, it is acknowledged that the priority intervention has not achieved the desired effect. Further priority interventions at the prescribed frequency are at the discretion of the LA until the formal enforcement action has been concluded.

Impacts

Costs

Costs to local authorities

Familiarisation costs (changes to the Food Law Code of Practice)

Local Authority (LA) officers which deliver food standards official controls will have to familiarise themselves with the changes to the Food Code Law of Practice (FLCoP).

In line with [BEIS guidance](#) on the appraisal of new guidance, we have estimated the one-off familiarisation time by multiplying the average number of words a person can read per minute with the document's word count.

In England, there are 153 LAs and 352 full-time equivalent (FTE) staff engaged in delivering food standards. We assume that all officers responsible with food standards official controls will need to familiarise themselves with the revision to the Code.

We don't have any data on how many officers make up the 352 FTE figure (for example, part time officers); therefore, we will assume that one FTE represents one officer. We anticipate that 352 officers will be required to spend 1.7 hours each to read and familiarise themselves with the new changes.

Familiarisation costs are quantified by multiplying the wage cost of the relevant officers, with the time spent on familiarisation. The median hourly wage cost of a food standards officer is £22.30 (including a 22% uplift for overheads) ([footnote 1](#)). Multiplying this with the time spent on familiarisation and the number of food standards officers in England generates a total cost of familiarisation of £13,600.

The familiarisation costs are opportunity costs. LA officers will need to give up some of their time to familiarise themselves with the new FLCoP. Therefore, these costs don't constitute additional financial costs.

Familiarisation costs (using the new model on the MIS)

Changes introduced via the new food standards model will require changes to the Management Information Systems (MIS) used by LAs.

LA officers which deliver food standards official controls will have to familiarise themselves with the changes to their MIS.

It is assumed that all food standards officers in England will be affected by these amendments. We don't have evidence on how long the familiarisation with the updated MIS will take and if it will vary depending on the MIS provider.

LAs officers training costs

We anticipate that all food standards officers will undergo one day of remote training to understand the revised food standards delivery model. Therefore, we assume that all 352 officers will be required to spend approximately 8 hours attending the training. This training will be provided by the FSA remotely after the publication of the Code.

Training costs are quantified by multiplying the wage cost of the relevant officers with the time spent on training. Given that there are 352 officers in England that will be required to undergo 8 hours of training, and the median hourly wage cost of an officer is £22.30, this will result in a total training cost of £63,000.

The training costs are opportunity costs. LA officers will need to give up some of their time to undergo the required training. Therefore, these costs don't constitute additional financial costs.

MIS/ IT cost to upgrade to current MIS product

MIS software will need to be updated to build in the new model.

In some cases, the LA MIS will need to be upgraded to the latest MIS product so the necessary changes can be made (some LAs are understood to be using legacy MIS products). We anticipate that LAs in this position will need to make arrangements for their MIS to be upgraded.

Another option would be switching to a new MIS provider, which will automatically have the software upgraded and will allow the changes to be made. LAs in this position will need to make the arrangements to switch to a new MIS provider.

LAs are likely to require support from their IT colleagues or LA IT service provider to make any changes – this is an unknown cost.

MIS/IT cost of moving to the new model

LAs will need to switch to an updated version of their MIS software. This will require them to convert their existing risk data to the new model risk scheme and migrate to the updated MIS product. We anticipate this will require things like data cleansing, mapping between the two systems, project management etc.

LAs are likely to require support from their IT colleagues or LA IT service provider and MIS provider to make the move – this is an unknown cost.

New LA systems/ procedures costs

As the new food standards model introduces changes to how LAs manage and deliver their food standards interventions, we would expect that LAs will need to update their administration systems, procedures, and paperwork.

Feedback from pilot LAs suggested that this won't be a significant burden and will be part of business-as-usual procedures. However, we don't have evidence to indicate how many LAs will require extra time to deal with these tasks, and how long it might take.

Costs to industry

Costs of regulatory burden for non-compliant businesses

The new food standards model aims to change the frequency of food standards official controls based on a better understanding of the level of risk a food business poses. The level of risk posed considers the inherent risks associated with a food business and their level of compliance with food law. We assume that high-risk businesses will be inspected more frequently compared to low-risk businesses. An increased number of inspections will result in a time cost for non-compliant businesses to deal with the additional inspections. Contrariwise, compliant businesses will benefit from being inspected less often. Therefore, at industry level, we estimate that there will be a transfer of regulatory burdens from compliant to non-compliant businesses. The net impact on industry would be zero following the Green Book principles.

Benefits

Benefits to consumers

Improved consumer protection and public safety

The new model aims to reduce the number of harmful or non-compliant products that enter the market by addressing the issue at source or at the most appropriate point in the food supply chain. As businesses become more compliant, we expect the number of non-compliant products that reach consumers to decrease over time, therefore improving consumer safety.

We anticipate consumers to be more confident that the food they buy is safe to eat and that the information on food labels is accurate.

Benefits to local authorities

Increased effectiveness of LA resources

As mentioned, the new food standards model will better target LA resources at the highest risk premises. The frequency of food standards official controls will be based on a better understanding of the level of risk a food business poses.

It is assumed that this will create a benefit to LAs, as they will use the same level of resources in a more efficient way – by carrying out official controls at the highest risk businesses where they will identify more non-compliances.

The effectiveness of LA resources will also result from the ability to risk rate food businesses following a re-visit and recalculate the next inspection date. We expect that this will reduce the inspection frequency and LAs will be able to better use those resources elsewhere.

Time savings due to new methods of undertaking food standards official controls

The new food standards model introduces greater flexibility in the methods and techniques of official controls that LAs can use. For example, Targeted Remote Interventions (TRIs) are designed to monitor the activity of low-risk businesses remotely, without the need for a physical inspection to be carried out.

We anticipate that this new approach will help LAs officers to save time, as they won't need to travel to the business premise to undertake the official control.

Due to less travelling we also expect an environmental benefit due to a reduction in carbon dioxide emissions.

Improved compliance levels

The new food standards model is more targeted towards non-compliant food businesses. Therefore, we expect to see poorly performing individual businesses improving their levels of compliance over time because they will be subject to more frequent interventions and follow up action by LAs. Their incentive to improve and the speed at which they will receive a revisit will increase, as LA resources will be freed up from visiting compliant businesses. We estimate this will drive up levels of compliance across all food businesses.

Engagement and consultation process

Widespread engagement activities have taken place throughout the development of the new food standards delivery model, prior to the pilot commencing. At the start of the project, a Food Standards Working Group (FSWG) was formed, including representation from LAs (including the Chartered Trading Standards Institute (CTSI) lead food officer), industry and the public analyst service. The FSWG was instrumental in designing the new delivery model and working through potential challenges and barriers. The work of the FSWG was supplemented by two rounds of regional face to face engagement events, seeking input and feedback from the wider enforcement community on our proposal, which led to further refinement of the model prior to piloting. We have also provided periodic updates on our progress to other stakeholders such as Department for Environment, Food and Rural Affairs (Defra), Department of Health and Social Care (DHSC) and professional bodies such as Association of Chief Trading Standards Officers (ACTSO), CTSI and Chartered Institute of Environmental Health (CIEH) throughout the process, and have also provided updates through appropriate for such as the Food Standards & Information Focus Group and Food Standards Business Expert Group as appropriate.

The model was subject to a 15 month pilot, involving seven LAs working to the new delivery model and an additional four LAs operating as 'control' authorities working to the current framework. Both pilot and control authorities submitted

Relevant evaluation data on a monthly basis and were involved in a number of interviews as part of our qualitative process evaluation. The pilot was essential in identifying whether the new delivery model would achieve its aims when applied in a real life setting and enabled us to compare the current and proposed delivery models to ensure that the new model provides a more effective approach than the current Code framework, providing benefits to LAs, compliant

businesses and consumers as a result. The model has been further refined following evaluation and feedback from the Pilot, prior to consultation.

We are now undertaking a twelve-week written consultation, which we consider to be proportionate to the changes proposed and in consideration of the extent of informal consultation through our previous engagement approach. To support the consultation, we will be holding a number of regional face to face engagement events in October and November with local authorities, including a virtual 'mop-up' session for anyone unable to attend in person, and will also be engaging with other key stakeholders to discuss the proposed changes and answer any questions.

Information gathered from this consultation will be considered when preparing a finalised version of the revised Code for submission to the Secretary of State for approval. Information supplied by consultees will also inform any assessment of the impact these revisions will have.

At the end of the consultation period, the FSA will analyse the responses, make any relevant amendments to the Code, and within three months of the consultation ending we aim to publish a summary of responses received and provide a link to it on our website.

Questions asked in this consultation

So that we fully understand your responses, and adequately take account of them, please explain, and where possible evidence, any answers that contradict the assumptions we have made in this consultation. Please complete the consultation response form.

1. Does the layout/presentation of the proposed revisions to the Code facilitate consistent interpretation? If not, how could they be improved?
2. Do you agree that the proposed changes to the food standards intervention rating scheme provide LAs with the ability to deploy current resources more effectively by improving the way in which the levels of risk and compliance associated with a businesses are assessed? If not, why not? (Please specify any aspects of the new model which require further consideration, and why).
3. Do you agree that the proposed frequencies for official controls, specified in the decision matrix, within the new food standards intervention rating scheme are appropriate based on the levels of risk and compliance associated with the business? If not, please identify any concerns you have with the proposed frequencies.
4. Do you foresee any problems with the proposals under consultation? If yes, please outline what these problems are and what, if any, solutions we should consider?
5. Do you agree with our assessment of the impacts on LAs and our assumptions on familiarisation resulting from the proposed changes to the Code? If not, why not?
6. Do you foresee any other impacts from the implementation of the main proposals detailed beyond those we have identified? Where possible, please explain your views and provide quantifiable evidence (for example, costs associated with updating your administration systems, existing procedures, the benefits of greater flexibility to allocate staff to activities).

Other relevant documents

Not applicable.

Responses

Responses are required by midnight on 9th January 2023. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Please use the consultation response form [[insert hyperlink to form](#)] to provide your comments.

The consultation response form should then be emailed to CodeReviewResponses@food.gov.uk.

For information on how the FSA handles your personal data, please refer to the [Consultation privacy notice](#).

Further information

If you require a more accessible format of this document, please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with HM Government consultation principles

Thank you on behalf of the Food Standards Agency for participating in this public consultation.
Yours faithfully,

Michael Bluff, Regulatory Compliance Division

Annex A: Summary of changes to the Food Law Code of practice

| Reference | Record of changes to the Code | Revised Code | Current code |
|-----------|---|---------------|---------------|
| COP1 | Addition of Food Hygiene heading under Initial Inspections to differentiate from new Food Standards section to reflect new food standards delivery model. | Chapter 4.2.4 | Chapter 4.2.4 |
| COP2 | Addition of Food Standards heading with section on new food standards delivery model and flexibility to postpone initial inspections. | Chapter 4.2.4 | Chapter 4.2.4 |
| COP3 | Bullet added under Food Intervention rating scheme covering Food Hygiene. | Chapter 4.3.2 | Chapter 4.3.2 |
| COP4 | Bullet added under Food Intervention rating scheme covering Food Standards. | Chapter 4.3.2 | Chapter 4.3.2 |
| COP5 | Deletion of footnote reference no. 113 as does not reflect new food standards delivery model. | Chapter 4.3.1 | Chapter 4.3.1 |
| COP6 | Food Hygiene heading added to section under Revision of intervention ratings to differentiate from Food Standards | Chapter 4.3 | Chapter 4.3 |

| Reference | Record of changes to the Code | Revised Code | Current code |
|-----------|---|-----------------|------------------|
| COP7 | Food Standards heading added under Revision of Intervention ratings to differentiate from Food Hygiene. | Chapter 4.3.2 | Chapter 4.3.2 |
| COP8 | Detail added under Alternative Enforcement Strategies heading covering Food Hygiene and Food Standards to reflect new food standards delivery model. | Chapter 4.3.3 | Chapter 4.3.3 |
| COP9 | Sections deleted under Food Standards Intervention frequency covering category A through C. Replaced with 2 new paragraphs on 'Priority interventions' and 'all other establishments' to reflect new food standards delivery model. | Chapter 4.4.2.1 | Chapter 4.4.2 |
| COP10 | Two sections added under Requirements to Revisit (Food Standards) – Priority interventions and other interventions. | Chapter 6.5.2 | Chapter 6.5.2 |
| COP11 | Alternative Enforcement Strategy (AES). Detail amended to reflect new food standards delivery model. | Glossary | Glossary |
| COP12 | Broadly Compliant (Food Standards) – amended to reflect new food standards delivery model. | Glossary | Glossary |
| COP13 | Confidence in Management – amended with deletion of Food Standard Rating intervention scheme and inclusion of Compliance Assessment to reflect new food standards delivery model. | Glossary | Glossary |
| COP14 | Deletion of Food Standards Scoring system and addition of new food standards delivery model scoring system and Food Standards Risk Assessment. | Annex 1.2 | Annex 1.2 to 1.3 |
| COP15 | Table 1 Inherent Risk Profile added. | Annex 1.2 | Not included |

| Reference | Record of changes to the Code | Revised Code | Current code |
|-----------|---|--------------|--------------|
| COP16 | Table 2 Compliance Assessment - Guidance on the Scoring system added. | Annex 1.2 | Not included |
| COP17 | Decision Matrix added which determines the frequency of official controls according to the new Food Standards Delivery model. | Annex 1.2 | Not included |

1. Based on the average wage rate between Environmental Health Professionals (Code 2463) and Inspectors of standards and regulations (Code 3565), [ASHE \(2021\)](#), table 14.6a and uplifting by 22% to account for overheads in line with [RPC guidance note on implementation costs](#).