

Appendix 1

Consultation on the Food Law Code of Practice (Northern Ireland)

Closing Date 27th September 2018

Belfast City Council welcomes the opportunity to provide the comments below on the proposed revisions to the Food Law Code of Practice for Northern Ireland.

Q1 The FSA would like to obtain your views on any perceived barriers that could hinder the effective implementation and administration of the online registration service?

Belfast City Council fully support the increasing use of technology to access and deliver services and recognise the potential benefits to users of a central online registration system.

It is the Council's opinion that one of the main barriers to the current registration system is it is not valued by many business operators and is often seen as an administrative technicality with no adverse consequences from failing to proactively comply. To be effective it is essential that the new system incentivises registration and/or enforcement. For example a registration fee increased for late registration or fixed penalties for non-compliance could have such an effect.

As FSA is aware two Councils in Northern Ireland (Mid and East Antrim BC and Antrim and Newtownabbey BC) have agreed to pilot the online registration process on behalf of Northern Ireland Councils. This pilot has not yet commenced and therefore it is difficult to determine the problems, benefits and outcomes associated with online registration at this early stage. The lack of detail at this stage as to how the system will work prevents the Council from making an informed response to FSA at this time. It is obviously critical that feedback from participating Councils is used to ensure the system is user friendly and fit for purpose before its introduction and the project time line must be sufficient to ensure this work is complete. The FSA should continue to engage and seek the views of lead food officers and food businesses as the system is developed.

The FSA will be aware that Food Business Operators' in some Council areas, including Belfast City Council, can currently register their food business online however our experience is it is currently not widely used. This may partly be due to the fact that businesses are not actively encouraged to register online, however, additionally there are likely to be barriers to online provision including those who may not have the necessary computer skills or may have disabilities, language or literacy issues that are barriers to online access. It is our opinion that the system should ensure these minorities are accommodated for and in particular that paper registration and other alternative options should be available.

Our officers' report that helping an FBO complete a registration form at the time of inspection/visit is often the most efficient method for both officer and FBO to gather the correct information and comply with the legal requirement to register. This would suggest

that it is important that officers are provided with suitable mobile technology to allow them to help Food Business Operators to complete and update food premises registrations on site during routine visits. This would require additional investment in new mobile enabled devices.

The time taken to fill in an online registration form and validate the information is likely to be a significant barrier to users, it is essential that the level of detail collected and the intuitiveness of the interface minimise the impact.

Inaccurate data is a significant issue with the current system with EHOs having to follow up and correct information. The Council is concerned that a greater data set in the proposed registration form could increase inaccuracies and the need for follow up. Consideration needs to be given to validation and ensuring the accuracy of registration data including ownership, at the point of collection.

It is important that the system facilitates the FBO in reviewing the registration details and updating on an ongoing basis for example by way of an individual user ID and log in. Such a system could potentially automatically acknowledge registration by way of email and provide the information detailed in 3.2.7.7 of the draft code more efficiently than individual council systems.

Another challenge will be the integration of Councils back office systems with the FSA database to allow the transfer of data between. It is Councils understanding the FSA are in contact with software providers with a view to having the correct systems in place by March 2019. At this stage there is no clarity as to what preparations software providers have agreed and what additional work is required by Councils. It was our experience with the introduction of the FHRS that our own computer department had to divert significant resources to build the appropriate data extractions and manipulation software to enable the transfer of information to the FSA portal. It is essential considering the proposed implementation date that at the earliest opportunity that Councils are made aware of the necessary changes to their systems and that they are suitably reimbursed for any additional work required.

It is noted from paragraph 16 of the consultation document that the proposed system not only intends to be used to register new businesses, but also will provide real-time access to registration details of all food businesses. We would anticipate to achieve this the new system will at some stage require registration information for existing premises to be extracted from Council systems. It will be necessary to cleanse existing data prior to migration and this may involve a significant resource depending on the detail of the information required. Councils should be reimbursed for any additional expense incurred.

Q2 The FSA would like your opinion on whether you consider that enhancing registration through the online service will have the desired effect of increasing the effectiveness and efficiency of the registration process?

In theory enhanced registration has the potential to increase the effectiveness and efficacy of the registration process, however, there is so little detail available on the specification of the system it is not possible to predict at this time if the proposed system is likely to achieve this objective.

A similar online process developed for the registration of tobacco retailers in Northern Ireland as part tobacco control legislation proved problematic with many businesses opting for paper forms and officers experiencing significant issues with data quality and duplication.

The information from the *pilot exercise* will be essential in assessing effectiveness and efficiency of the proposed on line registration system

In order to increase effectiveness and efficiency it is considered essential that the system must:

1. Effectively incentivise compliance with registration and/or dis-incentivise non compliance.
2. Provide a high quality, intuitive and user friendly interface that is quick to complete
3. Reduce the incentive for some FBOs to reregister under new owner to avoid poor compliance history or improve FHR
4. Effectively validate FBO details/ key data and have mandatory fields.
5. Provide an effective mechanism for the business to review and update registration details online periodically. Automatic email reminders might help ensure this happens.
6. Be supported by a sustained communication strategy to raise and maintain awareness of requirements
7. Have a seamless two way interface with councils back office systems,

Q3 No question in the consultation

Q4 No question in the consultation

Q5 The FSA would like stakeholders to consider the proposed description of full compliance and give their opinion as to whether food businesses that achieve this level of compliance should be considered as fully compliant?

Belfast City Council agrees that business that achieve, 0,0,0 or 5,5,5 (that are rated 5 rated) or combination of these should be considered as fully compliant

Q6 Do you think food businesses should be recognised for sustained compliance if they are assessed to be fully compliant at the last 2 interventions and over a minimum period of 3 years?

Belfast city Council accepts FSA data demonstrating that sustained compliance in the short term is a reliable indicator of future compliance and therefore agrees in principle to the recognition of sustained compliance to reduce the inspection burden. No evidence has been presented as to how “full” compliance is likely to be maintained in the longer term and in particular in the absence of periodic inspection by the local authority.

The council would expect that the last 2 interventions considered should be inspections, partial inspections or audits where sufficient evidence has been gathered to complete an assessment in accordance with the requirements of the Code of Practice (5.3.1.1 as proposed)

Whilst the Council supports the principle of compliance recognition to reduce the frequency and/or nature of regulatory interventions, it does not support recognition resulting in the removal of establishments handling open high risk food completely from the inspection programme. It is anticipated in the longer term conditions will change in many establishments and removing them from the inspection programme would not only affect the integrity of the Food Hygiene Rating Scheme as risk assessments would not be updated, it would also significantly reduce the opportunities for officers to detect changes in operations that could increase risk to consumer and may merit intervention. The Council therefore does not support the current proposals as it is anticipated they will reduce many premises handling high risk food to category “E” allowing their removal from the inspection programme.

The proposals within the Code to limit the total score reduction to -40 and to limit reducing an establishment’s intervention rating by more than 2 risk categories will not safeguard against this.

With this in mind consideration could be given to achieving a similar “global” reduction in inspection burden whilst ensuring all premises handling high risk foods, and particularly those serving vulnerable groups, are inspected at some minimum frequency, it is recognised that this may require a more innovative approach.

Q7 What scale of recognition do you think food businesses should receive to their total risk rating score if they are assessed as fully compliant? Should it be -5, -10 or -20?

An analysis of the impact of the proposed reductions on Belfast City Councils premises profile of 3133 establishments would demonstrate very little impact to those premises currently rated “A” “B” or “C”, it is estimated that even a reduction of -20 would result in a maximum of only 38 establishments potentially changing from a “C” to “D” at their next inspection. This is reassuring when considering we would wish to prioritise these premises.

The greatest impact is anticipated in the movement from category “D” to category “E” which could see up to 646 premises for a -20 reduction moving from “D” to “E”,. Considering the

majority of these premises handle open high risk food we are concerned the current proposals may move such high numbers of premises out of the intervention program in favour of AES and the impact this may have on consumer safety and on the integrity of the FHRS. As stipulated in response to Q7 the limits to reductions proposed will not safeguard against this. Therefore the Council does not support the current proposals as drafted preferring the development of a more innovative approach to achieve the same global reduction in the overall regulatory burden whilst maintaining a minimum level of inspection in all premises handling open high risk food which could mitigate these concerns. In the absence of revised proposals the councils preference is a reduction of -5 with additional safeguards to prevent establishments handling open high risk food falling to category "E".

Consideration should be given to approved establishments to avoid applying minus scoring to these type of establishments. The changes to the code should not impact upon the number of interventions carried out on approved establishments and if necessary that separate scoring criteria be applied or a scoring cap process be introduced.

Q8 The FSA would invite views on whether the respondent agrees with treating fully compliant businesses differently in these circumstances, and the likely positives and negatives of the effects of this proposal?

(removal of vulnerable groups score)

The Council believes that premises serving vulnerable groups should be subject to a periodical inspection and risk assessment and therefore do not support the removal of the additional score.

Within Belfast we currently have 333 premises with a vulnerable risk score, 278 of these demonstrate sustained compliance and it is estimated that the introduction of these proposals would result in the majority of these moving from a "C" to a "D" and therefore Councils may no longer be a requirement to inspect and risk assess provided other interventions are applied.

The Council is concerned regarding the impact of this as there are many well documented incidents of outbreaks of food related illness affecting care establishments with vulnerable consumers including in Northern Ireland. Such outbreaks can have very serious consequences including associated morbidity. Additionally such outbreaks often have wider implications for public confidence in such institutions and the regulatory regime.

Consideration should also be given to how care establishments value the contribution made by local environmental health departments in assessing and supporting the development of their food safety management systems and the benefits to the institutions and consumers before considering removal of vulnerable risk score.

If the score is removed the Council believes it is important to ensure, as is proposed, that negative scoring for sustained compliance in these premises is capped so that the risk category reduction is limited to category D.

Positives

- Reduction of burden on the food businesses and Environmental Health Department.
- Recognition for those business who are in sustained compliance.

Negatives

- The proposals would mean that the majority of premises serving vulnerable groups would no longer require periodic inspection and risk assessment, even if such premises are fully compliant such activities can improve practices and reduce risks,
- The integrity of the FHRS and consumer confidence could be reduced if these premises are no longer routinely inspected,
- Care establishments may value the input of EH officers through routine inspections and may not wish a reduction in input
- The impact of a failure and therefore the degree of risk in such premises can be much greater in terms of the impact of illness on patients and on the reputation of the institution and the regulatory regime. This increased risk may justify an additional weighting.

Q9 The FSA would welcome any documented evidence that would substantiate the view that there has been any decline in compliance levels within health care establishments.

BCC has no documentary evidence demonstrating a decline in compliance with the minimum legal standards, however several high profile outbreaks of listeria have occurred in Northern Ireland Health Trusts' care establishments within the last 10 years, including hospitals within Belfast Trust area. This is mainly due to the vulnerable nature of the patients/residents in such establishments.

<http://www.publichealth.hscni.net/sites/default/files/ListeriaReport.pdf>

http://www.publichealth.hscni.net/sites/default/files/Gastro%20report%202012%20revised%2024122013_0.pdf

Published reports from The Regulation and Quality Improvement Authority (RQIA) have shown a decrease in care standards within some nursing homes in Northern Ireland. This decrease has been attributed to management of these establishments and has resulted in actions being taken by regulators to introduce measures to address the decline in standards. Details of the reports can be found at <https://www.rqia.org.uk/inspections/view-inspections-as/map/>

Q10 Given the issues that exist with the application of this scoring factor, what are your views on retaining this in the food hygiene risk assessment scheme?

(Significant risk score)

We note the FSA concerns that 24% of establishments across the UK have significance of risk score awarded. This is not the case in the Belfast City Council area where currently only 1 premises out of 3133 or 0.0003% has a significant risk score of 20 applied. Officers have found it useful on occasion to apply the score to move a premises from a B to an A when concerned about level of risk in an individual premises. This is in addition to a numerically high score for a low confidence in management. It is recognised that the additional score is not always applied appropriately and that this is something that could be addressed. In fact in the case of premises referred to with the additional score, it was applied due to concerns over allergen controls which is not our understanding of its intended use.

*The Council would like to see the retention of the additional score to be used in **exceptional** circumstances to move forward next inspection. We would like consideration to be given to greater flexibility of its use beyond micro biological risks for example for significant allergen risk, food fraud, or chemical contamination.*

If it is decided to remove the additional score, consideration could be given to increasing the maximum scores available under confidence in management and the descriptors to ensure in exceptional circumstances an exceptional score can be awarded to bring forward the inspection frequency.

Q11 If the additional score is applied for reasons other than a risk factor, what are the perceived benefits and what alternative measures could be used to capture this instead?

See question 10 answer.

Q12 The FSA believes that officers will already be interpreting the risk assessment approach to apply this risk factor to food businesses that lack a necessary process and this revision of the text will not result in any substantial change in inspection frequencies for business. The FSA would welcome any evidence to the contrary.

(method of processing)

BCC have no evidence to the contrary

Q13 The FSA would welcome any documentary evidence to support the use of a minimum score for the non-registration of a food business.

Belfast City Council has no such documentary evidence.

Q14 The FSA would welcome your views as to whether you think the use of a minimum score for non-registration would have enough impact, and if so, which score would you consider most appropriate?

In order to have the desired impact to encourage registration the score would have to affect the business in a significant way, ie in the reduction of at least one rating.

The Council recognises that non-registration offence is not widely enforced due to the costs and time associated with the complex legal processes for what could be perceived by the Courts as a minor offence.

The Council believes that it is important to introduce new measures to incentivise registration and/or penalise non compliance. However it has concerns regarding linking non compliance with registration to the Food Hygiene Rating Scheme as this could ultimately mislead consumers as to the hygiene conditions of the establishment and have a disproportionate impact on the reputation of the business. Officers experience is that the majority of businesses in breach of registration requirements are due to simple administrative oversight rather than a deliberate disregard for the law. If a new premises that has not registered receives a full inspection and is in full compliance with the hygiene requirements it may not be appropriate to reduce confidence in management over what may be considered a technicality not affecting risk to consumers. Similarly, if an existing registered business is inspected and it is determined that a significant change has occurred but the registration details have not been updated reducing the Food Hygiene Rating may not be considered appropriate.

Any minimum score applied should not increase the intervention risk category or thereby the inspection burden of the local authority.

Such a proposal would also have implications for re-rating inspections under the FHRS.

Fixed penalties or financial incentives may be a more effective way of encouraging registration.

Q15 If the additional score is applied to the CIM score for non-registration, what are the perceived benefits and what alternative measures could be used to increase proactive registration and to improve initial FHRS ratings?

BCC would consider the possible benefits to include:

- Increase in registrations – this is an unknown or quantifiable without some research or trials.
- Increased applications for food hygiene rating revisits – possible additional revenue stream for the Council depending on volume of applications.

However, for the reasons discussed in response to Q14 the Council does not support such a measure.

Q16 The FSA would welcome views on the most suitable measures that could be introduced to achieve the desired effect of driving up proactive registrations.

Alternative measures that could be considered include:

- Licensing food businesses - the introduction of a licensing type scheme may be more effective in the longer term to ensuring effective regulation.
- The use of fixed penalty notices, however, some officers or authorities may be reluctant to use such sanctions for administrative breaches and consistency of enforcement may be difficult to achieve,
- Charging for registration would help cover the administrative (and other) costs to local authorities, it would also give value to the registration process and increase the likelihood of enforcement for non-registration/non payment. A reduced charge could be applied if registration is completed 28 days before commencing trade, Charging may also reduce the likelihood of FBOs reregistering under different names to avoid poor FHRs and compliance histories
- An ongoing information strategy would need to be developed to ensure that new and existing food business are aware of the responsibilities around registration
- Data sharing – HMRC, landlords, letting agents, solicitors to place a requirement to provide information about new food businesses or changes to food business operators.
- Include recognition of registration as part of public liability insurance – seek confirmation before insurance can be attained.

Q17 The FSA would welcome your views on any likely barriers to its implementation or any unintended consequences this data standard may have for a DC's delivery of its official control programme.

It is not possible to predict the implications of a data standard without clarification as to what that standard shall be. The Council would expect the Food Standards Agency to fully consult and seek agreement from Councils as to the requirements of any such standard and seek reassurances that the provision of any such data to the FSA is justified and lawful and does not affect the Councils compliance with its obligations under the General Data Protection Regulations, the Data Protection Act or any other legal requirements.

Q18 Are there any other publicly available data sets, apart from LAEMS and FHRs, that could be readily accessed and usefully added to the BSC to improve its scope and potential?

Belfast City Council is not aware of any alternative data sets but would support the development of a balanced scorecard giving better more rounded indication of the performance of Councils in terms of improving outcomes. Such indicators should enable benchmarking and encourage service improvements

Q19 Are there any other measurable (or at least assessable) indicators of DC performance besides LAEMS and FHRS that could be developed and used to contribute to the assessment of the effectiveness of DCs? These could be direct or indirect indicators and either quantitative and/or qualitative in nature.

Belfast City Council is not aware of an additional indicators that are available at this time.

General Comments

- Section 3.2.7.7 of the draft code introduces a new requirement for Councils to acknowledge receipt of registration and allocation of a food premises registration number together with a reminder to businesses operators of the ongoing need to notify any changes to registration details. The FSA should consider if the new online system can be developed to do this more efficiently and reliably than individual councils.