

Chartered Institute of  
Environmental Health



Sefydliad Siartredig  
Iechyd yr Amgylchedd

Food Standards Agency:

## Regulating Our Future- Amendments to the Food Law Code of Practice (Wales)

Consultation response of the Chartered Institute of Environmental  
Health (CIEH)

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## This submission

In producing this submission, CIEH has drawn heavily on comments provided by its members in Wales. CIEH is extremely grateful for the assistance provided by all.

## General comments

- Whilst CIEH is supportive of key elements within the Regulating our Future (RoF) programme, we take the view that this consultation is premature and displays the hallmarks of a rushed piece of work. The reasons for us taking this position are set out in this consultation response, both in the general comments that follow and in the responses to the Agency's specific questions; however, the underpinning reason is the lack of detail, clarity and supportive evidence within the proposals.
- CIEH also takes the view that, given the potential impact of Brexit on UK food sustainability, the implementation of key elements of RoF at the time of Brexit is unwise and is diverting the focus of all with an interest in UK food safety and sustainability from ensuring that the UK continues to feed itself safely after Brexit.
- There is a significant lack of clarity within the proposals surrounding **food business registration**. Specifically, issues regarding ownership and management of the system, its contents, compatibility with local authority IT systems, the integration and maintenance of 'hard-copy paper' registrations, compliance with GDPR, business costs versus benefits, assuring the validity of data provided by business and the financial costs of the system, to both local authorities and the FSA, all continue to require clarification and are currently unresolved.
  - CIEH is aware that there are currently a small number of local authorities piloting a new online registration system. However, we are unsighted on any formal evaluation of these pilots. In the absence of such information, we are unable to support a product and processes that we have neither seen, nor had the opportunity to see an evaluation of.
- In respect of proposals associated with the **intervention rating scheme**, CIEH takes the view that the proposal to end the process of applying an additional score of 22 for vulnerable risk groups is a mistake and should not be taken forward. The law of negligence (including professional negligence) requires a higher standard of care to be applied to the vulnerable and the +22 score is a means of doing that. We believe that any failure to continue with that practice does a disservice to the vulnerable and exposes environmental health professionals to significant criticism. We cannot, therefore, support it.
  - CIEH is potentially supportive of the proposals to apply an additional score where a FBO fails to register that business; however, no guidance on a scoring has been provided in this respect and we believe that to be a mistake. We are, however, happy for this to be considered under 'confidence in management'.
  - CIEH questions why there are no proposed changes to the Food Standards Rating Scheme as this has been deemed to be less fit for purpose than the hygiene intervention scheme. We also believe that 'full compliance', should mean just that i.e. 0,0,0 and we also question the rationale for discontinuing the -10 additional score after 5 years.
- In respect of proposals concerning Primary Authority and National Inspection Strategies (NIS), CIEH is concerned that these proposals will, in effect, create a new primary authority scheme for food and, conceivably, could lead to two schemes running side by

side in respect of the same business. We take the view that this is confusing, overly bureaucratic and will apply additional costs to both business and local authorities.

- Food is outside the scope of Primary Authority in N Ireland and Scotland so NIS cannot apply in these countries. CIEH believes that the proposals will lead to inconsistencies in the way businesses that trade across the UK are regulated within the four countries.
- The impact of proposals in respect of NIS will be to reduce the number of food establishments requiring inspection by local authorities. Generally, local authorities use the number of planned inspections due in their areas to calculate the staff resources required. In the event of a food incident or other public health emergency, local authorities are able to divert officer resource from inspection of lower risk establishments to deal with incidents and emergencies. The system 'flexes'. Incidents and other such reactive work is unpredictable. No local authority can be expected to resource plan to deal with incidents and other peaks in reactive work which may or may not happen. Reducing the number of food establishments requiring planned inspections will undoubtedly lead to cuts in officer resource. There is a real risk that this will impact on the ability of local authorities to deal with incidents and other public health emergencies.
- The FSA has acknowledged that decreasing the frequency of food hygiene controls at individual outlets has consequences for FHRS but has not described or quantified these consequences. CIEH believes that this is a mistake.
- The CIEH is concerned that the proposals for NIS are being introduced without the benefit of a robust science and evidence base to quantify the benefits.
- According to figures provided within the consultation document, there are currently 1,653 primary authority partnerships of which only 31 have gone as far as putting inspection plans in place. Only 22 of these contain food elements. Therefore, the maximum number of businesses across England and Wales that could potentially implement a national inspection strategy at the current time is 22. FSA's own data therefore suggests there is little appetite for national inspection plans amongst businesses and regulators. CIEH, is therefore unable to support these proposals.

## Responses to consultation questions from CIEH

### **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?**

The CIEH, in common with local authorities, responsible businesses and consumers would support the introduction of food business licensing or a permitting scheme. It is our view that 'enhanced registration' is unlikely to deliver the transformational changes sought by the ROF programme and the following barriers could hinder the effective implementation and administration of the online registration service:

- Digital exclusion through lack of internet access and/or low levels of digital literacy is a key factor that will hinder the effective implementation and administration of the online registration service. There are still significant areas of the UK that are digitally excluded, with rural communities and small businesses disproportionately affected.
- IT systems in some local authorities may not be compatible with the national online registration system. Further, where IT systems are not compatible, local authorities may not have the budget or IT expertise necessary to implement changes. No attempt has been made in the consultation to quantify the likely scale of the problem or cost the solution.
- Where businesses are not able to use the online system, it is proposed in the consultation that 'competent authorities are encouraged to help those food business operators requiring support to complete registration online or, if necessary, make available and accept a paper version should this be required'. Whilst some local authorities may have sufficient resources to provide assistance with online registrations, this represents a new additional burden. There is a risk that the provision of this service may become an expectation on the part of businesses. The CIEH view is that the wording in the Code of Practice should be amended to 'competent authorities are encouraged to signpost food businesses to local sources of help and advice to complete online registrations'. This provides local authorities with the option of providing the service themselves (with the option of charging) without raising expectations.
- The requirement for local authorities to provide businesses with a food business registration number is a new additional burden. It is not clear in the consultation how registration numbers will be generated and without this information there is the risk that such numbers will be duplicated.
- The proposal in the consultation is for businesses to inform individual competent authorities of changes to their business. It is the view of the CIEH that businesses should be provided with the option of notifying these changes centrally in the same way that they will be expected to register centrally.
- Low business awareness of the new registration system and lack of incentives for them to notify changes are likely to impact on its effectiveness.

### **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?**

It would appear from the consultation document that one of the main drivers for changes to the current system of food business registration is to provide the FSA as the central competent authority with a comprehensive understanding of the industry. The CIEH acknowledges the

potential benefits and the importance of the FSA being better informed about the food industry.

Several claims are made in the consultation that, if realised, may assist in increasing the effectiveness and efficiency of the registration process. For example, it is claimed that the new online registration system will require businesses to provide more information. However, the nature of this additional information has not been included in the consultation. Further, Annex 5, the model registration form, remains unchanged in the revised Code of Practice. The impact assessment states that there will be savings in the time taken by food business operators to complete the new online registration form as opposed to following the current process. It is difficult to understand how there will be savings in time when businesses will be required to provide more information. This requires further explanation.

It is claimed that the new service will make it easier for businesses to access tailored information and guidance that will help them to get it right from the start. Whilst this is welcomed, this information and guidance is not currently available in draft to comment on.

In view of the above it is difficult to comment on the extent to which the proposed new process of registration is going to be more effective or efficient. Businesses are already able to register online so, from a business point of view, the only benefit is that, in future, they may be able to access tailored information and guidance centrally. This is welcomed and may represent an improvement particularly around consistency, however we acknowledge that many local authorities already provide a wealth of information for new businesses at a local level and on their websites.

The CIEH is aware that a new registration system is currently being piloted in a small number of local authorities. It is the CIEH view that any changes to the current registration system must be robustly piloted and the pilots independently evaluated. It is only then that we can assess whether the proposals represent an improvement in effectiveness and efficiency over the current system. In this respect, it is the CIEH view that this consultation is premature.

The consultation advises that the new online registration system will facilitate segmentation of businesses. The concept of a 'risk engine' is introduced whereby a set of business rules will generate a 'risk score', which segments businesses into categories. This categorisation will be used to determine the nature, frequency and intensity of official controls for all new business using the online service to register. It is not clear in the consultation how this will work for businesses that do not use the online system. Further, we are concerned at the proposal that some businesses, e.g. those only providing low risk food, on the basis of the unverified information they provide at registration, will no longer receive an initial inspection but will only be inspected as and when additional information, or a complaint, indicates that one is necessary. Whilst some food may be low risk it still needs to be stored in suitable premises and is just as attractive to pests as high risk food. Local knowledge might indicate good reason to inspect a new premises providing low risk food and the decision to inspect should be taken at a local level not decided by a 'risk engine' using a set of business rules.

The economic impact assessment on registration proposals states that 'consumers are given better choice and face reductions in the incidence of foodborne illness' as a non-monetised benefit. We are of the view that this requires further explanation and evidence to support this claim.

**Q3. What do you see as the benefits of national inspection strategies? Please feel free to answer this question in the context of local authorities, primary authorities, businesses, and/or consumers.**

We are not yet convinced of the benefits of NIS. The proposal is to introduce NIS for food safety. However, the consultation has failed to recognise that in many local authorities, food hygiene and food standards interventions are carried out at the same time and by the same officer.

The potential benefit to local authorities of reduced number of inspections is outweighed by the real risk that this will lead to cuts in staff resources. This has the potential to impact on the ability of local authorities to respond to incidents and emergencies.

The introduction of NIS will create inconsistencies in the way businesses are regulated across the UK. There are legislative barriers to NIS in N Ireland and Scotland and, in Wales, the mandatory food hygiene rating scheme requires independent inspections of individual food establishments by local authorities to generate the ratings. We are unable to support a scheme that will introduce these inconsistencies. We are of the view that the decision to preclude a food establishment from a local authorities planned inspection programme should be made at a local level, based on evidence pertaining to that establishment. This evidence may include 2nd or 3rd party compliance checks or businesses own data.

The CIEH questions why, when the FSA is keen to introduce changes to the registration system to deliver improved consistency, it is keen to introduce a NIS scheme that, in its current form, will introduce fundamental inconsistency.

The FSA has not included any information in the consultation to demonstrate that consumers' views of NIS have been sought.

**Q4. What challenges do you think that national inspection strategies for food safety partnerships may pose? Please feel free to answer this question in the context of local authorities, primary authorities, businesses, and/or consumers.**

- Consumers are unlikely to support the concept of local businesses not being inspected by the local authority in which they are located.
- Consumers unlikely to support the concept of food hygiene ratings being issued without the benefit of an independent, on-site inspection.
- Reluctance on the part of businesses to share all relevant information with Primary Authority
- Reliability of 2nd and 3rd party data.
- Competency of 2nd and 3rd party auditors
- Capacity of FSA to provide effective oversight
- Cost of development and oversight by the FSA may not be justified if, as we anticipate, there is a low uptake.

**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?**

The CIEH is of the view that to demonstrate full compliance food businesses should achieve component scores of 0, 0, 0 for hygiene, structure and confidence in management. Scores of 5 do not represent full compliance.

**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?**

Yes, our view is that food businesses should be recognised for sustaining compliance if they are assessed as fully compliant at the last two interventions and over a minimum period of 3 years.

**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?**

Local authorities are best placed to comment here as they will be able to model the impact of these options on their local businesses and inspection programmes. We would not support any proposal that removes a food businesses handling high risk food being from a planned inspection programme e.g. because the impact of a negative score will be to reduce the establishment from category D to category E rated which does not require inspection.

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

The CIEH does not, under any circumstances, support the removal of the additional 22 score applied to establishments involved in the production or service of food intended specifically for consumption by consumers likely to include a vulnerable risk group of more than 20 persons. Under 5's and over 65's, people who are sick or immuno-compromised are more susceptible to developing infection from consuming contaminated food and are likely to suffer more severe symptoms, and therefore, must be afforded an appropriate level of consumer protection.

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

The CIEH does not hold this information.

**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?**

In light of the information provided in the consultation we agree with the proposal to remove the additional score of 20 for significant risk and include the consideration of significant risk in the confidence in management assessment as it relates to the risk of contamination.

**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?**

Our view is that the additional score should not be applied for other reasons. A red flag against an establishment on the LA electronic database would be sufficient to highlight it.



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

The CIEH agrees that officers are likely to be already interpreting the risk assessment approach to apply this risk factor to businesses that do not apply a control process.

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

The CIEH is not in a position to provide 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 you consider most appropriate**

The CIEH doubts whether applying a minimum score for non-registration would encourage more businesses to register voluntarily. However if a minimum score is to be applied, it should be sufficient to provide a deterrent to those who may risk trading without the benefit of registration and incentivise businesses to register voluntarily. A minimum score of 5 is unlikely to have sufficient impact. A score of 10 has the potential to impact on food hygiene ratings i.e. business will be unable to achieve a 5 rating. The CIEH view is that a score of 10 for non-registration should be applied consistently by local authorities across the UK. This will ensure a level playing field for businesses.

**Q15: If an increased CIM score is applied for non-registration, what are the benefits?**

- Additional score may incentivise some food businesses to register voluntarily. However, businesses that fail to register and attract an additional CIM score may be subject to increased inspections, which is disproportionate to the risk posed to consumers.

**Q16: Are there any alternative measures that could be used to improve (i) proactive registration, and (ii) to improve initial FHRS ratings?**

- Raise awareness of requirement to register food establishments during the planning and licensing processes.
- Use of intermediaries to raise awareness of the registration requirement e.g. insurance companies, banks
- Fines for non-registration which increase each day a business fails to register.
- High profile publicity campaigns to advise businesses of registration requirements.
- Fixed penalty notices for failure to register.
- Introduction of a permit to trade or licensing scheme would ensure that food businesses do not commence trading without prior notification and food safety standards are met prior to opening. This is also likely to have a positive impact on food hygiene rating.

**Q17: Do you envisage any barriers to the implementation or any unintended consequences of a data standard on LA delivery of official controls?**

The proposal to include a new requirement in the Code that will specify how local authorities must store and transfer the data they hold, and the need to follow the Data Standard specified by the FSA is broadly supported. However, IT systems may not be compatible and data may be inconsistent. The FSA must appreciate that this proposal may involve local authorities incurring significant costs. There may also be data protection issues arising from local authorities sharing information about businesses with a 3rd party. Finally, LAs will need training and support to use any new system.

**Q18: Do you know of any publicly available data sets, other than LAEMS and FHRS, which could be added to the BSC to improve its scope?**

Approved establishments list published on the FSA website.

**Q19: Are there any other measurable indicators of LA performance besides LAEMS and FHRS that could be developed and used to contribute to the assessment of the effectiveness of LAs? These could be direct or indirect indicators and either quantitative and/or qualitative in nature.**

- The CIEH view is that it is for the FSA to identify potential datasets and commission research to explore the best indicators of local authority effectiveness. We urge the FSA not to use business compliance levels as indicators of local authority performance as local authorities with high business turnover will be disadvantaged.

**Q20: The FSA would welcome any documentary evidence that would substantiate the view expressed by some LAs that the proposed change will not allow the reallocation of resources.**

The CIEH does not hold this evidence.