



Review of the Food Law Code of Practice, Food Law Practice Guidance, and Implementation of the Competency Framework - Wales

Consultation Response

March 2021

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Introduction

This consultation on proposals to amend the Food Law Code of Practice (the Code) and Food Law Practice Guidance (the Practice Guidance), in Wales, and the FSA's new Competency Framework is of significant importance to CIEH and our professionals working to provide assurance around food safety and standards across the UK. Of particular significance is the proposal to remove the qualification requirements for those delivering official controls at Border Control Posts (BCPs) without also including a requirement that such individuals will require supervision by suitably qualified and experienced officers. Also of concern is the proposal to introduce an overly burdensome Competency Framework which local authorities will be required to implement when they are already under significant pressure. This will divert officer resource away from delivering official controls to the detriment of consumers and businesses in Wales. Whilst the FSA states that the introduction of the proposed Competency Framework, which attempts to describe the competencies required for specific activities rather than take a role-based or profession-based approach will provide additional flexibility, the potential longer term impact of this has not been recognised. The consultation fails to recognise the significant interdependencies that exist between the delivery of official food controls and other public health protection functions e.g. control of infectious diseases, and the value of holistic officers i.e. environmental health officers who are competent to deliver a range of food control activities and are able to work across disciplines. These officers provide local authorities with flexibility and are able to provide food businesses with advice and guidance on a range of issues including COVID restrictions, health and safety at work, noise and odour control, waste disposal and smoking restrictions. This reduces the burden of multi-inspectorates on businesses and provides taxpayers in Wales with the best value for money.

CIEH and the Environmental Health Registration Board (EHRB), along with the Royal Environmental Health Institute of Scotland (REHIS) and the Scottish Food Safety Officers Registration Board, have been key to the establishment, development and ongoing awarding of the professional qualifications required to carry out food official controls in the UK and are the awarding bodies for the Environmental Health qualification. In the 1990s, in response to claims from businesses of inconsistencies in the application of food regulation, the Government identified a need for those carrying out food enforcement to hold a qualification which demonstrated skills and knowledge to an agreed consistent level and one which was independently awarded. Specialist food qualifications were developed. Qualification as an environmental health practitioner through EHRB and the food safety officer qualifications, provide a clear, evidenced qualification which demonstrate the skills and knowledge officers hold. This is essential when providing advice and guidance to business and when taking enforcement action which may result in legal proceedings.

The skills involved in decision making to ensure an appropriate course of action and communicating these actions cannot be underestimated. The system of formal qualification, requiring assessment of academic knowledge and practical application of that knowledge

ensures officers are competent. The FSA's Competency Framework marks the start of a departure from this consistent, independently assessed approach.

When officers conduct interventions at food businesses they should be able to identify any significant risks, adopting a holistic approach but with a limited number of competencies there is an increased chance they will miss significant issues. The proposals have the potential to reduce consumer protection and impact on the excellent reputation of the UK at a time when our reputation as an independent trading nation will be more important than ever.

The absence of a robust impact assessment or cost benefit analysis is a significant cause for concern. The proposals have been developed with no evidence of a detailed assessment of workforce needs across the public sector.

In 2018 a committee, Safe, Sustainable, Authentic Food Wales (SSAFW) was established to provide a forum for the FSA and local government to work together with key partners to inform food law policy and practice in the context of wider public policy and service delivery considerations in Wales. This committee was set up in response to the stated expectation of the Cabinet Secretary for Health and Social Care that FSA Wales and local authorities work together to co-produce approaches. CIEH is a member of SSAFW and can confirm that the committee has not been involved in development of the proposals or provided with the opportunity to co-produce solutions.

The Well-being of Future Generations (Wales) Act 2015 requires public bodies in Wales to implement the five ways of working in its decision making which includes the requirement to work with others.

CIEH does not support the consultation proposals as they have not been supported by a suitable impact assessment, will place additional burdens on already stretched local authorities and are unlikely to provide a solution to the workforce needs of the new Border Control Posts to be established in Wales.

To ensure the interdependencies between food regulation and other public health protection functions are recognised, we are calling for a high level, multi-agency working group to be set up, which includes the FSA, to carry out a fundamental review of the environmental health workforce in Wales, with the aim of building a sustainable, resilient environmental health workforce, for now and the future.

CIEH is committed to working with the FSA, local authorities and other key stakeholders to achieve shared outcomes.

General comments

We are pleased that the FSA in Wales has acknowledged the significant pressures on local authorities and other stakeholders at the current time and, unlike in England and Northern Ireland, has afforded a reasonable amount of time for consideration of the proposals in the consultation.

The key question arising from any consultation is whether the changes proposed will secure the desired outcomes. Overall, the feedback we received from our members and the wider environmental health community is that the proposals are likely to present more challenges for the current food control system than they are likely to solve and that this may be a missed opportunity. More innovative and sustainable solutions to solving current workforce challenges should be considered. The use of unqualified and less qualified officers without a requirement for adequate supervision by suitably qualified, experienced officers, and the potential for inconsistencies in the assessment of competence by local authorities, Border Control Posts and others implementing the Competency Framework, all have the potential to impact on public health, consumer confidence and businesses.

The need for appropriate mentoring and supervision of officers who are not qualified, particularly at Border Control Posts, has not been acknowledged in the Code of Practice, Practice Guidance or the Competency Framework. This will be essential in developing the workforce for the future.

Austerity has impacted on the local authority environmental health workforce in Wales. If there was a plentiful supply of suitably trained and competent officers, there is evidence that some local authorities may not have the budget to recruit the additional officers they need. There is no data provided in the consultation to quantify the gap between the existing workforce and the workforce that is required now and in the future.

The cost of regulation was identified as part of the FSA's Regulating our Future programme some five years ago together with the need to explore a more sustainable funding model for food regulation. Funding must be a consideration in any proposals relating to workforce and any proposals relating to workforce should be accompanied by a risk assessment which clearly identifies interdependencies and potential unintended consequences.

Questions asked in this consultation.

1. Does the layout/presentation and clarified text of the proposed Code and the Practice Guidance make the documents easier to use, improve readability, and facilitate consistent interpretation? If not, how could they be improved?

We have no significant comments to make on the layout /presentation of the proposed Code and the Practice Guidance. They are lengthy documents. Our main concern is that authorised officers who are required to read and understand the documents, with current pressures, are not afforded sufficient time for familiarisation.

2. Do you agree that the proposed suitable qualification requirements provide LAs and PHAs with the ability to deploy current resources more efficiently by, allowing a wider cohort of professionals to undertake food control activities, which the Code restricts? If not, why not? (Please specify any additional flexibility you would wish to see, and why).

While the proposed suitable qualification requirements will allow a wider cohort of professionals to undertake food control activities which the Code currently restricts, it will not necessarily provide local authorities or Port Health Authorities with the ability to deploy current resources more efficiently. There is no evidence to support the suggestion that local authorities are not using their current resources efficiently. The proposals mean that existing local authority and Port Health officers who are qualified and experienced will be required to spend more time developing, mentoring, supervising and assessing the competency of these officers.

There is no data provided in the consultation on the likely or desired impact of the proposals on the workforce and no attempt has been made to quantify the number of additional officers that may be required in LAs or PHAs/ BCPs. An estimate of the number of new graduates that may be available to work in LAs and PHAs in Wales would be useful. The number is likely to be limited and for this reason there is a call from our members to enable local authorities to 'grow their own' by employing staff at lower level than graduate and developing them along a professional pathway.

In respect of the degree and MSc in environmental health, it is noted that there is no requirement for courses be accredited. Accreditation by a professional body e.g. CIEH ensures consistency in course content and provides assurances around the quality of provision. There is no indication how the FSA will gain this assurance.

It should be noted that these graduates will not have attained a professional qualification and, except for graduates from the University of Ulster who complete their third year on a work placement, may not have any experience of applying their knowledge in a work setting. Further, these graduates will not have been subject to an independent assessment of their competency. Concerns have been expressed by our members and wider stakeholders that

this undermines the professional status of the environmental health role and is not consistent with the CIEH position that those delivering official controls should be subject to an independent assessment of their competence.

We launched our Competency Development Portfolio (CDP) in June 2020, which includes a professional interview and provides a framework for new graduates to demonstrate their competency. It is aligned to the competencies in the current Code of Practice. Individuals completing the Higher Certificate in Food Control and the CIEH new Advanced Professional Certificate (APC) in Food will be required to complete the CDP so there is a clear anomaly in including the environmental health degree/MSc in the list of suitable qualifications without the CDP or a requirement for these individuals to be working towards the CDP. In respect of environmental health practitioners, we therefore suggest that a more equitable and consistent approach in the Code would be to require individuals to be registered with EHRB (or its replacement) or possess a degree/MSc in Environmental health with the CDP. The CDP provides a structured approach to officer development and independent verification of competency. Recent CIEH engagement with employers in the public and private sectors confirmed their support for independent verification of officer competencies by a professional body.

In respect of BCPs, particularly where unqualified staff may now be employed, there are no proposals in the consultation to differentiate the tasks that can be undertaken by qualified and experienced officers from those that can be delivered by unqualified staff. This undermines the professional qualification of environmental health practitioners and in the longer term is likely to impact on pay and reward. A shift in the workforce to more unqualified officers has the potential for more inconsistent regulation and to impact public health.

A suggested solution is to adopt the approach set aside for Official Veterinarians whereby, professionally qualified and competent officers make significant decisions on the acceptance or rejection of imported food. Staff with lower level qualifications or no qualifications should work under the supervision of these officers. This will enable additional officers to be brought into the system without impacting negatively on food safety or public health. It will also provide the safeguards local authorities require when their enforcement decisions are called into question in the face of legal challenge. The importance of sound judgements by professional officers, following due processes, cannot be underestimated. Officers must be able to demonstrate their credibility in a Court of law and successful challenge on a consignment could have serious cost implications for PHAs/BCPs.

This principle should also apply to local authorities, with significant enforcement decisions only being taken by suitably qualified, and experienced professional officers. We have concerns at the proposal that officers who do not have a relevant qualification, that demonstrates they possess the underlying knowledge, make significant decisions which have the potential for substantial impact on businesses and, if the decision is subsequently found to be wrong, the consequential costs to local authorities.

3. Does the Competency Framework include: a. all the relevant activities for the delivery of front-line official food and feed controls, other official activities and other activities related to these, whether carried out by LAs, PHAs and FSA delivery partners? b. all the relevant activities for those working in the private sector who undertake assurance activities that are formally recognised to inform targeting/frequency of official controls? c. the relevant competencies (knowledge and skills) for each activity and subactivity? If not, what changes would you wish to see, and why?

The consultation on the Competency Framework is premature as it is still under development. Sub-activity B1.5: Assessing business compliance with legislation remotely states 'details to be added after they have been developed'. Further, work to consider the process for assessing competency under the Framework and authorising individuals as competent has not been completed. As the effective implementation of the Competency Framework will be dependent on a robust process for assessing officer competency, the Competency Framework and the process for assessing competency should be considered together.

Whilst it is acknowledged that the Competency Framework is intended for all those who undertake food and feed safety and standards assurance activities, the focus of this consultation is on those involved in delivering food official controls and related activities in local authorities. The FSA states in the consultation that 'we will further develop and implement the Framework in due course in respect of official controls and other activities undertaken by the FSA, FSA delivery partners and by local authorities and port health authorities for feed controls' and 'we will also further develop the Framework to cover formally recognised private assurance activities'.

There is no indication of timescales for further development or roll out of the Competency Framework or assurance that further developments will be the subject of consultation. There is also no rationale for including feed control activities in the Competency Framework but postponing implementation to 'a later date'

One of stated aims of the Competency Framework is to improve consistency by setting a standard applicable to all individuals undertaking the activities. It is difficult to assess whether the aim is likely to be realised when there is further development work required. Another stated aim is to facilitate the transfer and movement of individuals across the public and private sectors and from Scotland and other countries to the rest of the UK. The transfer of individuals across the public and private sectors already takes place and there is mutual recognition of qualifications for delivering official controls across the UK.

Notwithstanding the above, lead officers have raised concerns that implementation of the proposed new Competency Framework will be significantly more burdensome for local authorities than is currently the case, taking officers away from delivering official controls. There is a significant omission in Section E, Specialist activities, E1 Operational management, in that the sub-activities do not include 'undertaking competency assessments of officers'.

As there are elements of the Framework that have yet to be developed, it is not possible to state that all relevant activities are included. There are some that appear quite “narrow” which will be expanded in (c) below. However, it is considered to be a complex document as presented, so the addition of other activities and sub-activities would only serve to increase its complexity and increase the time it takes to carry out the competency assessments.

In respect of b) individuals working in the private sector, it is not clear who will be responsible for assessing their competency or whether any qualification requirements will apply. We are concerned that the potential for inconsistent assessment of competency and diminution of qualification requirements will impact on the veracity of food assurance activities in the future.

In response to c) there is a disproportionate focus in the Competency Framework on food hygiene with little detail provided relating to food standards.

4. Do you agree that by defining competency by activity rather than taking a role or profession-based approach this provides LAs, PHAs and FSA delivery partners with greater flexibility in the utilisation of resources? If not, why not?

No. Local authorities have advised that professionally qualified holistic officers provide them with the most flexibility whether it be environmental health officers or trading standards officers able to work across several disciplines. They have also advised that they provide greater value in terms of public protection. Their flexibility, being deployed to new and different activities during the current pandemic evidences this.

There are also many excellent officers with a food qualification such as the Higher Certificate in Food Control who currently deliver the full range of food official controls. These officers reduce burdens on businesses as they have the ability to provide wide ranging advice and consider a range of requirements during the same intervention. It is not as cost effective for local authorities to employ officers with a narrower focus or in the interest of businesses.

The issue is more complex than the consultation suggests. It is one of funding for local authorities, limited availability and access to standalone food qualifications such as the Higher Certificate in Food Control, and a shortage of suitably qualified officers. There is a real risk that the proposals will weaken the health protection system across the UK, and at such a critical time, reducing qualification requirements is probably ill advised.

An unintended consequence of the proposals is that at BCPs there will be pressures to employ unqualified staff. This is not in the interest of consumers or businesses. It may also impact on pay and reward meaning qualified officers may seek employment elsewhere.

Notwithstanding the above, we acknowledge that workforce capacity is an issue which needs to be addressed and there is the potential to increase capacity using unqualified staff, but they must be suitably supervised by those who are both qualified and experienced. There

should also be a career pathway for these unqualified staff so they are able to obtain professional qualifications over time. This will provide for a more sustainable workforce in the longer term. CIEH has launched a campaign #ChooseEnvironmentalHealth to encourage more individuals into the profession.

5. Do you agree that setting a standard that will apply to all individuals undertaking food and feed control activities, including assurance activities that are formally recognised, will improve the quality and consistency of delivery across the public and private sector? If not, why not?

There is no information or data in the consultation documents relating to the current quality and consistency of delivery across the public and private sector. The case for change has therefore not been made. The absence of this information means that if the proposals are implemented, it will not be possible to assess the impact of the changes.

Our members in the public and private sectors acknowledge the value of private assurance activities and, overall, are of the view that they should inform not replace independent assessments of compliance by local authorities.

A single standard should apply through the qualifications route, not the proposed method of competency assessment by LAs or individual bodies. The proposal will almost certainly lead to inconsistencies which is contrary to the intentions.

The FSA states in the consultation that the Competency Framework will apply to all individuals engaged in food and feed law related activities whether carried out by LAs, PHAs FSA, FSA delivery partners or those working in the private sector undertaking assurance activities. However, it would appear that the document is incomplete as it is later states that the FSA 'will further develop the Competency Framework to cover private sector assurance activities, official controls undertaken by the FSA, FSA delivery partners, and for feed controls delivered by LAs and PHAs'. It is not possible to agree that the standard will improve quality and consistency of delivery across the public and private sector when it is not complete. Further, whilst the FSA recognises the need for a consistent approach to the assessment of competency, work commissioned to research how other regulators (both nationally and internationally) and other organisations assess and authorise competency has not yet been completed. The Competency Framework needs to be considered together with the process for ensuring consistency in its application before a view can be taken as to whether it will deliver improvements. Implementation of the Competency Framework should therefore be held in abeyance until all work has been completed. Stakeholders will then be better informed to respond to this question.

6. Do you foresee any problems with the provision to allow the FSA to be more responsive in issuing instructions, whereby LAs and PHAs may legitimately depart from the Code, in limited circumstances? If yes, what, if any safeguards or conflicts should we consider?

Yes. Whilst CIEH understands the need for departure from the Code, such departures have the potential to impact not just on LAs and PHAs, but they also have the potential to impact on businesses and consumers. Such departures should therefore be subject to independent scrutiny by the appropriate Minister. This ensures the accountability of the FSA. Requests for Ministerial approval for departure from the statutory Code should be accompanied by a robust analysis of the risks, costs and benefits to LAs/PHAs, businesses and consumers.

Local authorities are themselves legal entities accountable to democratically elected members. In accordance with the Framework Agreement, in some local authorities elected members formally approve annual food service delivery plans which set out the work plan for the year ahead together with the resources required to deliver the plans. Departure from the Code has the potential to impact on the delivery of annual service plans. The FSA does not employ or fund local authorities and it is therefore questionable whether it is appropriate for them to 'instruct' a departure from a statutory Code, which has previously been subject to Ministerial approval, or a Service Plan developed in accordance with the Code, which may have been approved by democratically elected members without this independent Ministerial scrutiny.

7. Do you agree that the key aspects of the OCR that have applied since the 14th December 2019 have been reflected, within the proposed Code and the Practice Guidance?

Yes

8. Do you agree with our assessment of the impacts on LAs and PHAs, FSA approved assurance schemes, private sector assurance bodies, FSA delivery partners, and consumers, resulting from the proposed changes to the Code, the Practice Guidance, and implementation of the Competency Framework?

No.

There is no regulatory impact or cost benefit analysis included in the consultation which is a significant omission. Further there is no information provided to support the claim that the proposals will not exceed £5m net direct cost to business.

Local authorities

No costs have been provided. Further, no attempt has been made to quantify the likely impact on the local authority food control workforce of enabling a wider cohort of local authority professionals to undertake official food controls and other official activities, which the current Code restricts. This is a significant omission.

In respect of local authorities and Port Health Authorities, it has been estimated that one Environmental Health Officer and One Trading Standards Officer per local authority and one manager at each Port Health Authority will need to familiarise themselves with the revisions to the Code, the Practice Guidance and the Competency Framework. We would expect **all** authorised officers to familiarise themselves with revisions to the Code, the Practice Guidance and the Competency Framework. Indeed, one of the common competencies in the new Competency Framework is for officers to have *knowledge and understanding of relevant legislation, codes of practice, guidance, policies and procedures*.

The consultation document states that officers will need three hours to read and familiarise themselves with the changes and two hours to prepare and disseminate the information to staff. In view of the volume of material associated with the consultation, this is likely to be a significant underestimate. The consultation document itself consists 46 pages, the Competency Framework 100 pages, the Code of Practice 88 pages and the Practice Guidance 244 pages.

On the basis that officers' competencies currently need to be re-assessed on an on-going basis, it has been stated in the consultation document that no additional burden is introduced in implementing the new Competency Framework. Feedback from our members, and in particular lead officers, is that the new competency assessments are likely to take substantially longer and that this is a significant additional burden on already stretched local authority resources. Further, the proposal in the consultation which will enable local authorities to authorise a wider range of officers i.e. those who do not possess professional qualifications is almost certainly going to increase the time it takes to undertake the assessment of competence.

Any benefits to local authorities will only be realised if there is sufficient funding available at a local level to employ the additional officers required. No information has been included in the consultation setting out the relative contribution of lack of funding versus lack of suitably qualified officers to the current shortfalls in the workforce. Further, the shortfall in local authority and workforce capacity has not been quantified in the consultation documents. This will make it difficult to assess the impact of the proposed changes if they are implemented.

Funding for local authority food controls is a key consideration. Work to explore a more sustainable funding model for local authority food controls is therefore more urgent than ever.

FSA approved assurance schemes, private sector assurance bodies and FSA delivery partners

Although the FSA states that the Competency Framework when fully implemented will also apply to those working in the private sector who undertake assurance activities that are formally recognised and those official control activities undertaken by FSA delivery partners, no costs or timescales have been provided. Further, no indication has been provided about who will be responsible for assessing competency in the private sector, how the competency assessments will be conducted and the safeguards that will be required to ensure independence.

Consumers

It is claimed in the consultation that 'changes to the baseline knowledge skills and experience requirements and introduction of the Competency Framework will improve the quality and consistency of food control activities meaning consumers will benefit from enhanced consumer protection through more efficient allocation of resources, maximising the effectiveness of consumer protection provided by these controls'. There is no supporting information provided in the consultation documents about current quality and consistency of food control activities in the local authority sector. Our engagement with members and other stakeholders identified concerns that the changes could have the effect of reducing quality and consistency. For example, in respect of individuals with a degree in environmental health, the removal of the requirement for a professional qualification, with independent verification of officer competencies and its replacement with the assessment of competency by employers has the potential to reduce consistency. Also extending the duties of officers who do not hold a relevant qualification e.g. allowing officers with an Ordinary Certificate in Food Premises Inspection to make judgements about food, including seizing and detaining food has the potential to compromise consumer protection.

Do you have any additional evidence to better understand the identified impacts? In particular, please indicate:

a. if you agree with our assumptions on familiarisation and dissemination time?

Assumptions on familiarisation and dissemination time have been significantly underestimated at three hours and two hours respectively having regard to the volume of material associated with this consultation. Further, all authorised officers will need to familiarise themselves with the amended Code of Practice and Practice Guidance not just one per local authority for food hygiene and one for food standards.

b. how long it currently takes to assess the competency of a newly appointed member of staff and the ongoing assessment of a member of staff already in post?

This will vary depending on qualifications and experience of individuals.

c. whether you foresee any changes in the assessment time, from the implementation of the Competency Framework?

Our members have advised that the change in assessment time is likely to be significant.

d. how many new members of staff do you appoint every year?

Local authorities and Port Health Authorities are best placed to comment.

e. whether you foresee changes to the number of new staff that need to be appointed every year?

Additional staff will be required to work at new BCPs proposed for Wales.

9. Do you foresee any other impacts from the implementation of the main proposals detailed in paragraph 13 beyond what we have identified? Where possible, please explain your views and provide quantifiable evidence (for example, costs associated with updating existing templates, the benefits of greater flexibility to allocate staff to activities).

Yes.

That the consultation will not achieve the desired outcomes. A number of assumptions have been made:

- That there are environmental health graduates currently employed in local authorities who do not have EHRB who will be deployed to food work. This may not be the case. There is no information in the consultation document which indicates that any work has been done to explore this.
- That there is a significant pool of new environmental health graduates in Wales who want to work in LAs/BCPs. Increasingly graduates are seeking employment in other sectors.
- That LAs/BCPs have the capacity to develop, mentor and supervise new officers as well as assess their competency.

Changes to those who can provide assurance on food could have the potential to impact on international trade for which consultation on the impacts on international trade may be required.

There is a matter which we would like to explore with the FSA in connection with the Official Veterinarian role which is 'protected' under the Code for Product of Animal Origin Imports which is now incompatible with the rest of the Code. Given that there is a shortage of UK Official Veterinary Surgeons (note: NOT Official Veterinarians as there is no qualification listed in the OCR), this matter should be considered in parallel as future recruitment from abroad will pose other challenges to BCPs. For the purpose of imported food controls, we would like to explore the development of a conversion course which will allow Port Health Officers to

train to deliver the same official controls as vets. Our members have advised, and we agree that many Port Health Officers will be competent to deliver these official controls.