

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

Closing Date 27th September 2018

Derry City and Strabane District Council welcomes the opportunity to comment on the revised 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?

Derry City and Strabane District Council agree with FSA that there is a need to create a better and consistent way in order to register new food businesses in Northern Ireland.

Business users should be able to provide the necessary information, including who they are, what the business does and its location, for them to officially register a food business with the appropriate council and enable inspection prioritisation.

As the FSA is aware two Councils in Northern Ireland, Mid and East Antrim Borough Council and Derry City and Strabane District Council, have agreed to pilot the online registration process on behalf of Northern Ireland Councils. This pilot has not yet commenced and it is therefore difficult to determine the problems, benefits and outcomes associated with online registration at this early stage. The timing of this pilot limits the Council in providing a comprehensive and informed response to FSA.

Derry City and Strabane District Council agrees that modernisation using electronic means of registration should be an option for businesses, however the Council believes this should not be the only option nor should businesses be compelled to use the online registration option.

Councils in Northern Ireland have experienced problems with registration of food businesses and the main barriers perceived include:

- English not the first language – quite often EHOs are faced with situations where the Food Business Operator (FBO) cannot read or write in English and the EHO has to explain the registration form or indeed, on occasion, fill in the form on behalf of the FBO and ask them to sign it. With online registration, additional questions will have to be asked leading to possibly more confusion and lack of understanding on behalf of the FBO.

- Illiteracy issues – some FBOs cannot read and interpret basic information and instructions on written hard copy forms. This will be further complicated by the use of information technology where the FBO will require not just an understanding of English but have basic information technology skills. Council is concerned that those without the necessary computer skills will struggle with the reformed online process.
- Interactive online process - it is understood that the FBO will use the online process to provide information about his or her business and update information about the business. Council is concerned about the length of time it will take a business to register using the online process. Hard copy forms are seen as quick and relatively easy way of registering the business and quite often the EHO can obtain a completed form at the time of an intervention at the premises.
- Incorrect or incomplete information provided – It is understood that Councils will have an opportunity to validate some of the information before accepting the registration. Rejecting the registration form online may lead to delayed registration for the business, resulting in the Council having to follow up on the registration either in person or by telephone. This may incur additional officer time.

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?

As FSA is aware two Councils in Northern Ireland have agreed to pilot online registration for the FSA. That pilot has not yet commenced so Council is not in a position to make an evidence based comment on the effectiveness and efficiency of the registration process.

However, the Northern Ireland Food Managers Group (NIFMG), which has representation from all 11 Councils, has formed some initial views regarding the online process. Derry City and Strabane District Council would support these views, which are as follows:

- NIFMG would like a periodic review of the online registration process with the FSA to discuss emerging issues or suggested improvements. The group has early concerns about future problems with the receipt, processing and accuracy of data but until the pilot is complete the group is unable to provide a detailed response to FSA.

- It is envisaged that online registration will have a significant impact on the timing of Registration. The process of completing the registration forms online by the FBO may take longer than completion of a hard copy form, which is done often at the time of an intervention. This may result in delays of the first intervention being carried out on the establishment or require an additional visit to the establishment.
- NIFMG believe that communicating to businesses that the online registration exists will be problematic and any suggestion of a media campaign at a one point in time approach will not address how future food business operator become aware of the registration process. A method of advising potential Food Business Operators of the requirement of online registration would need to be developed and have on going resources to ensure its success. The group believes that licensing of food businesses should be further considered and that a registration fee may assist with ensuring that businesses do register.
- NIFMG is aware of a similar online process that has been developed for the registration of tobacco retailers in Northern Ireland as part tobacco control legislation. An online process was developed and it was envisaged that businesses could log onto a site and provide the necessary information about their business. The concept was designed and aimed at reducing the manual inputting of data. Experience of this process is that it has had the opposite effect. The majority of tobacco retailers opted for the completion of a manual form, avoiding the information technology route of registration. NIFMG is not aware of any studies done to discover why businesses preferred the manual route.

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?

Derry City and Strabane District Council agree with the proposal of the descriptor of 'Full Compliance' being scored as 555 or 000 or a combination of these. Council agrees that businesses meeting this level of compliance 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?

Derry City and Strabane District Council agree in principle with the proposal, however is unsure how this approach will merge with the application of Alternative Enforcement Strategies already provided for in the Code.

Derry City and Strabane District Council would seek to clarify what FSA mean by “interventions”. It is assumed that the meaning relates to two interventions during which the establishment would be risk assessed. Council would agree with this proposal but would not agree to two interventions in any other scenario e.g. a food hygiene revisit.

Derry City and Strabane District Council would like the Code to reflect upon instances where a Council was unable to perform an intervention in a timely manner, in order for the business to meet the three year period. Some degree of flexibility is needed, where the business has been unable to receive its second intervention within three years and it should not be penalised for this. Further consideration should be given to establishments in the risk category D. Under the current Code of Practice these establishments will receive a primary intervention every two years after which they receive a risk rating. Council would assume that the implementation of a three year minimum period would not impact on these establishments being able to demonstrate fully compliant status.

The wording contained within the table 5.6.1 Part 3 Section C of the Code, refers to:

“Establishments that have demonstrated full compliance at the last 2 interventions and have maintained this for 3 years”.

The wording in the question refers to a *“minimum period of 3 years”*. Council seeks clarity from the FSA on the exact wording that will be used. The sustained compliance recognition raises some concerns about maintaining the integrity of the statutory Food Hygiene Rating Scheme. Council is concerned about the general public’s perception that EHOs visit food establishments more often than what is required as a minimum in the code of practice. The integrity of the Food Hygiene Rating Scheme is important to the success of the scheme. The Food Hygiene Rating System has become increasingly recognised and understood by consumers throughout Northern Ireland. The information provided by the scheme is seen as current and displays a current reflection of the hygiene standards within the establishment. Council would not wish to see the scheme undermined nor discredited by any changes to the Code.

**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?**

The NIFMG has considered these options and Derry City and Strabane District Council would endorse the comments as follows:

- NIFMG believes that a score of minus 5 should be applied. The group has reviewed the revised proposed document and notes that section 5.6.1 part 3c does not make any provision for a minus 5 score. This may be an error with the document.
- The FSA has provided some figures within the content of the consultation. It was initially unclear what these figures related to, but after consultation with FSANI, it is understood the figures relate to England, Wales and Northern Ireland combined. NIFMG is disappointed that the FSA was unable to provide figures solely for Northern Ireland but can understand some of the restraints in examining statistical information based on a specific data set.
- In order to form an opinion from a Northern Ireland perspective, NIFMG has provided FSA data based on two Councils in Northern Ireland. Based on this data provided in the appendices, NIFMG would recommend that a recognition score of minus 5 be applied. This will provide the recognition to businesses but will also reduce the impact of any changes to the number of interventions. NIFMG is mindful of protecting the integrity of the Food Hygiene Rating Scheme and maintaining compliance within food businesses.
- It is envisaged that minus scoring will have an impact on the number of interventions carried out on food establishments. NIFMG believe that the enforcement function carried out in Northern Ireland is robust and that Councils are able to maintain the current levels of inspection programme. Any changes to the scoring of premises may have a negative impact of future resource allocations to the food safety service and in turn may impact negatively upon the hygiene standards in food establishments and consumer confidence. NIFMG would like FSA to be mindful of the current standards in Northern Ireland, reflected by the Food Hygiene Rating Scheme scores and LAEMS returns. The group would also point out that Northern Ireland is in a different position to the rest of the UK when delivering upon its statutory obligations under the current code of practice as the required level of inspection frequencies are being maintained. Any future changes to the Code

should not serve to undermine the future performance of Northern Ireland Councils in the delivery of its statutory food safety obligations.

- Consideration should be given to EU approved establishments to avoid applying minus scoring to these types of establishments. NIFMG recommends that the changes to the Code do not impact upon the number of interventions carried out on approved establishments and if necessary that separate scoring criteria be applied or a capping 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?

Derry City and Strabane District Council has identified the positives and negatives below:

Positives

- Reduction of burden on the administrative food businesses and Environmental Health.
- Recognition for those business who sustain levels of compliance.

Negatives

- In the case of Care establishments, less frequent interventions carried out on businesses who look after the most vulnerable in the community.
- General public confidence maybe affected by the knowledge that the enforcing authority is not visiting establishments as frequently.
- In Northern Ireland the mandatory Food Hygiene Rating Scheme has gained great recognition from the public and is a tool designed to provide consumer confidence and choice. Information on the date of the last intervention is displayed with the score on the FSA ratings website. The perception of the general public is that businesses are frequently visited by Councils to ensure compliance and scores are updated regularly and that these accurately reflect standards within the business. The introduction of minus scores along with previously implemented changes to the Code, have and will further reduce the number of interventions carried out on businesses. This may serve to undermine consumer confidence in the Food Hygiene Rating scheme.

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.

Derry City and Strabane District Council would highlight reports on several high profile outbreaks of Listeria that have occurred in Northern Ireland Care establishments within the last 10 years.

<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. The full 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?

Derry City and Strabane District Council would recommend the score is retained.

FSA has indicated that the use of the score has been incorrect, but Council has no evidence to suggest that this is the case in the borough.

Without this additional scoring factor it would be difficult for premises to be categorised as "A" risk category. The retention of the additional score is therefore seen as important for higher risk premises.

The correct application of the score can be achieved through additional training for officers and clearer wording around its application in the Code. The Council would suggest future considerations for the score could include its inclusion in a premises score, where allergen compliance was found to be an issue.

Q 11 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.

Derry City and Strabane District Council has 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.

Non-registration is not widely enforced due to the costs and time associated with the complex legal processes for what could be perceived as a minor offence.

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?

The introduction of a minimum score is likely to have an impact on the establishment's Food Hygiene Rating Scheme score. This could have a negative impact on new start-up businesses. The reasons for non-registration would need to be explored. Often new food businesses are not aware of the legal responsibilities placed upon them.

Any changes to scoring for registration would require amendment to the food hygiene rating scheme brand standard guidance.

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?

Derry City and Strabane District Council would consider the possible benefits to include:

- Increase in registrations – this is an unknown and is not quantifiable without some research or trials.
- Increased applications for Food Hygiene Rating Scheme revisits – possible additional revenue stream for the Council depending on volume of applications.

However, the application of a score for a non-risk-based breach of food law may result in a lower food hygiene rating scheme score in a scheme that was designed to provide the public with information about “hygiene standards”, not an administrative oversight. NIFMG would welcome discussions and considerations of other ways of dealing with such offences such as by way of a fixed penalty notice, thereby removing the complex and costly processes of taking the case to court.

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.

Derry City and Strabane District Council would support the following options developed by the NIFMG: -

- Licensing food businesses - the introduction of a licensing type scheme could give more creditability to the need to register. It may also assist with the problems associated with businesses/food business operators re-registering to avoid poor food hygiene ratings.
- As mentioned in question 15 the introduction of a fixed penalty notice to quickly deal with potential offences.
- The introduction of a payment linked to registration would provide more “value” and recognition to what is being offered than would be normally attributed if it was free.
- A prolonged information strategy would need to be developed to ensure that future food businesses 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 obtained.

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.

Without knowing the full detail of the proposed data standard it is not possible to provide informed opinion. However, consideration must be given to General Data Protection Regulation (GDPR) and information sharing agreements between FSA and District Councils.

Derry City and Strabane District Council would welcome further engagement from FSA on what information they will require from District Councils in the future and what this data will be used for.

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?

Nine of the eleven Councils in Northern Ireland all members of APSE (Association for Public Service Excellence) which is a not for profit local government body. APSE aims to promote excellence in public services using bespoke indicators to benchmark the service delivered by local councils. It provides a mix of cost, quality and performance data.

Details can be accessed at: -

<http://apse.org.uk/apse/index.cfm/members-area/regions/northern-ireland/performance-networks-in-northern-ireland/>

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.

No

General Comments

Derry City and Strabane District Council would seek the following: -

- Clarification on whether any of the proposed changes to scores allocated to establishments will be done retrospectively or on a “going forward” basis.
- Clarification on the issue of whether or not the FSA engaging with software providers about changes to the Code. In particular, any changes to the scoring of food establishments and introduction of minus scores.
- Any changes to the Code be reviewed in conjunction with application of scores under Food Standards.

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