
To: Infrastructure, Land and Environment Policy Board

On: 29 August 2018

Report by: Director of Communities, Housing and Planning Services

Heading: Food Law Code of Practice (Scotland) Consultation

1. SUMMARY

- 1.1 The Food Law Code of Practice (Scotland) sets out the instructions, processes and criteria which all Local Authorities in Scotland must use when they carry out Official Food Controls (food law inspections) in their role as Food Authorities. The current version of the Code was published in April 2015 following the creation of Food Standards Scotland on 1 April 2015.
- 1.2 Food Standards Scotland (FSS) is now consulting with stakeholders on an updated code that reflects changes in legislation and best practice that have taken place since 2015. The Food Law Code of Practice (Scotland) is an extensive document – containing over 220 pages of detailed professional and technical guidance for Officers carrying out food law inspections.
- 1.3 The current consultation is the largest review of guidance carried out by Food Standards Scotland since they were established in 2015. The consultation opened on 29 June 2018 with responses required by 21 September 2018. The full consultation can be found at:
<https://consult.foodstandards.gov.scot/enforcement-delivery/food-law-code-of-practice-scotland-review-2018/>

- 1.4 The changes proposed to the Code of Practice deliver alignment with a number of strategies that have been previously reported to Board and are broadly to be welcomed:
- Food Standard Scotland's Regulatory Strategy (Reported to the Environment Policy Board on 15 March 2017).
 - The Scottish Government's approach to better regulation as set out in the Scottish Regulators' Strategic Code of Practice and Renfrewshire Council's Integrated Enforcement Policy. (Reported to the Leadership Board on 19 September 2017).
 - Food Standards Scotland's Strategy to 2021, in particular Outcome 4 - Responsible Food Businesses Flourish (Reported to the Environment Policy Board on 9 November 2016).
- 1.5 Some of the changes detailed in the Food Law Code of Practice (Scotland), in particular the technical changes in guidance, will have a significant impact on how food law inspections are conducted across all local authorities. Training will be provided for staff undertaking food law inspections following the final guidance being approved and issued by Food Standards Scotland.
- 1.6 The proposed updated Food Law Code of Practice (Scotland) also prepares for anticipated, planned and prospective changes that will take place during 2019 and beyond, including a new Food Law performance rating system that will replace the current Annex 5 of the Code.
- 1.7 Further phased updates to the Code will therefore be required in 2019 (phase 2) and 2020 (phase 3). These subsequent updates will deliver:
- Changes required to the Code arising from the implementation of the results of the Annex 5 Review Project (Phase 2).
 - A process to simplify future updates to, and re-publications of the Code, and to deliver a Code that is both portable and easily navigable for Food Authorities to use (Phase 3).
- 1.8 Other changes that might arise over the next few years (for example, changes relating to the UK leaving the EU, or developments arising from the work of Scottish Food Enforcement Liaison Committee (SFELC) Working Groups), will be included in the scope of the Phase 2 and Phase 3 Review Projects as appropriate. A separate consultation will be carried out for each phase of the Food Law Code of Practice (Scotland) Review.
- 1.9 The draft Renfrewshire Council response to the current consultation is attached as Appendix 1 to this paper for the consideration and approval of Elected Members.

2. RECOMMENDATIONS

It is recommended that the Infrastructure, Land and Environment Policy Board:

- 2.1 Notes the consultation on the Food Law Code of Practice (Scotland) and the proposed changes contained therein.
 - 2.2 Approves the Council's consultation response as detailed in Appendix 1 to this report.
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3. BACKGROUND

- 3.1 Scottish Ministers are empowered to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. In turn, Food Authorities are required to have regard to the Code when discharging their duties, and must follow and implement the provisions of the Code that apply to them. The Food Law Code of Practice (Scotland) is issued under Section 40 of the Food Safety Act, 1990, Regulation 24 of the Food Hygiene (Scotland) Regulations, 2006 and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations, 2009.
- 3.2 The key, overarching proposals are:
 - To update and publish a new version of the Food Law Code of Practice (Scotland) incorporating changes in legislation and practice since 2015.
 - To ensure alignment of the Code with Food Standards Scotland's Regulatory Strategy.
 - To ensure alignment of the Code with the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.
 - To ensure the Food Law Code of Practice (Scotland) reflects and enables the framework set out in Food Standards Scotland's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish.
 - To deliver an up to date Food Law Code of Practice (Scotland) in preparation for future planned and prospective changes including the new Food Law Performance Rating System that will replace the current Annex 5 of the Code.
- 3.3 The consultation is being conducted over a 12-week period reflecting the level and amount of detailed technical information to be considered. A range of

specific technical questions in relation to proposed changes/updates within the code are being asked, including Renfrewshire Council's view on:

- Sub-section 2: Statutory and General Obligations on Food Authorities
- Sub-Section 4: Qualifications and Competence
- Sub-Section 5: Conflicts of Interest
- Sub-Section 6: Food Business Establishment Records
- Sub-Section 8: Managing Incidents and Alerts
- Sub-Section 9: Food Crime and Food Fraud
- Sub-Section 12: Information to be supplied to FSS
- Sub-Section 14: Approach to Enforcement
- Sub-Section 19: Detention and Seizure
- Sub-Section 27: Interventions
- Sub-Section 34: Approved Establishments Subject to Approval under Regulation (EC) No 853/2004
- Sub-Section 37: Matters Relating to Fresh Meat
- Annex 7: Model Forms of Notice
- Annex 8: Model Application Form for the Registration of a Food Business Establishment

3.4 Officers within Renfrewshire Council have a very good working relationship with Food Standards Scotland and the service was represented on the pilot working group to review and undertake changes in relation to the scoring of food premises under Annex 5 of the Code of Practice.

3.5 Overall the proposed changes to the guidance are welcomed in the consultation response that is attached at Appendix 1.

Implications of the Report

1. **Financial** – None
2. **HR & Organisational Development** – None
3. **Community Planning** –

Renfrewshire is safe – By implementing the Food Law Code of Practice (Scotland), this will ensure that food that is prepared and consumed in Renfrewshire is safe.

4. **Legal** - None

5. **Property/Assets** - None
 6. **Information Technology** - None
 7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website
 8. **Health & Safety** – None
 9. **Procurement** – None
 10. **Risk** – None
 11. **Privacy Impact** – None
 12. **Cosla Policy Position** – None
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List of Background Papers

- (a) Background Paper 1 – Food Law Code of Practice (Scotland)

The foregoing background papers will be retained within Communities, Housing and Planning Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is the Communities and Regulatory Manager.

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The consultation aims to seek stakeholders' views on the proposed changes to the Food Law Code of Practice. The changes reflect updates to legislation and practice since 2015, and encompass:

- Local Authorities' and FSS' Better Regulation obligations under the Scottish Regulators' Strategic Code of Practice.
- The duty on Local Authorities and FSS under the Regulatory Reform (Scotland) Act 2014 to contribute to sustainable economic growth.
- New obligations on Local Authorities and FSS with regard to the Scottish National Database.
- Updates to data protection obligations in line with the General Data Protection Regulation.
- The introduction of the Scottish Food Crime Incidents Unit, and updates to the Incident Management process.
- The inclusion of new detention and seizure processes and notices for Food Information and Novel Foods.
- The inclusion of Service Planning with respect to the Intervention programme process.

Views on sub-section 2 of the Code: Statutory and General Obligations on Food Authorities.

This sub-section has been updated to reflect:

1. Food Authorities' statutory duties and powers regarding Food Information and Standards (see paragraphs 11 and 12).
2. Food Authorities' duties under the Regulatory Reform (Scotland) Act 2014, and the need to have regard to the principles of Better Regulation as outlined in the Scottish Regulators' Strategic Code of Practice (see paragraph 16).
3. The removal from the Code of Primary Production Activities that are now included within the Feed Delivery Manual (see paragraph 21).

Renfrewshire Council welcomes the changes to the code and in particular; the inclusion and clarification of the statutory duties and powers in relation to Food Information and Standards. Renfrewshire Council welcomes that the code highlights that Food Authorities must have regard to the principles of Better Regulation. This clearly aligns with Renfrewshire Council principles as part of the Integrated Enforcement Policy.

Views on sub-section 4 of the Code: Qualifications and Competence.

This sub-section has been updated to reflect:

1. Updates to the role and responsibilities of Lead Officer, particularly the responsibility to provide a weekly transfer of Food Law enforcement activity to the Scottish National Database (SND).
2. Updates to Qualifications and Awarding Bodies for Food Hygiene (4.9), and Food Standards (4.10).
3. Updates to reflect the powers regarding Food Information and Novel Foods (4.11).

Renfrewshire Council welcomes the updates and the clarity around the roles and powers. Renfrewshire Council currently provides a weekly transfer of Food Law enforcement activity to the Scottish National Database.

Views on sub-section 5 of the Code: Conflicts of Interest.

This sub-section has been updated to clarify Food Authorities' duty to document any potential conflicts of interest that may arise in an enforcement situation.

Renfrewshire Council would comment that the statement “Officers should not provide their own services e.g. training, in their own time within their Food Authority area, unless they have written permission from the relevant senior official in their Local Authority” should possibly read:

“Officers should not provide consultancy, training or other services in their own time within the Local Authority area in which they are employed. Where such work is undertaken outwith the Local Authority, written permission from the senior official in their Local Authority must be sought. Any decision to allow such work must take any conflicts of interest into consideration.

Renfrewshire Council would suggest that due to officers who work within Environmental Health/food enforcement having access to sensitive/commercially sensitive information potentially regarding businesses outwith their own Local Authority, it could be difficult to secure assurance that no conflict exists.

Views on sub-section 6 of the Code: Food Business Establishment Records.

This sub-section has been updated to reflect:

- Updates to data protection legislation.
- Requirements for the Scottish National Database (SND)
- Clarifications to the instructions for registration of different categories of moveable establishments.

Renfrewshire Council welcomes the updates and clarification on Registration of Food Businesses.

Views on sub-section 8 of the Code: Managing Incidents and Alerts.

- Sub-sections 8 and 10 of the current (2015) Code deal with Incidents and Food Alerts respectively. These sub-sections have been re-written and are now combined into one new sub-section 8 – Managing Incidents and Alerts.
- Note that Food Fraud and Food Crime is now detailed within a new sub-section 9.
- Annexes 3 and 4 of the Code have also been updated. Respectively these are the Schematic Representation for Food Incidents Reporting, and the Food Incident Report Form.

Renfrewshire Council welcomes the updates and particularly supports the use of links to forms and emails. It would be advantageous if links to consolidated legislation and guidance could also be similarly formatted. The 6th bullet point at 8.1.9 should read “Scotland” and not “England”.

Views on sub-section 9 of the Code: Food Crime and Food Fraud.

Sub-section 9 of the Code now contains information on Food Crime and Food Fraud and includes:

- Definitions.
- The FSS organisational structure that supports the investigation of Food Fraud and Food Crime.
- Arrangements for Food Crime reporting, and intelligence gathering.

(Please note that sub-section 9 of the 2015 Code is re-numbered sub-section 10 in the 2018 Code.)

Renfrewshire Council welcomes the updates. A link to the memorandum of understanding should be included within the document.

A clear organisational structure and responsibilities for Food Fraud and Food Crime is also welcomed.

Views on sub-section 12 of the Code: Information to be supplied to FSS

This sub-section has been updated to reflect:

- The new requirement to share information with FSS using the Scottish National Database.
- New data protection legislation.
- A change to paragraph 12.3 - Concerns about Industry Practice - as this is relevant to all Food Business Establishments, not just Approved Establishments.

- An update to sub-section 12.4 regarding live bivalve mollusc purification centres.

Renfrewshire Council welcomes the updates and is uploading data to the Scottish National Database.

Views on sub-section 14 of the Code: Approach to Enforcement

This sub-section has been updated to reflect:

- The National Food and Feed Compliance Spectrum (contained within the FSS Regulatory Strategy).
- The requirement for Food Authorities to ensure that enforcement action is consistent with the principles of Better Regulation set out within the Scottish Regulators' Strategic Code of Practice.
- Clarification of the need to indicate timescales for the rectification of each contravention in correspondence with Food Business Establishments (see paragraph 14).

Renfrewshire Council welcomes the updates but would suggest that:

It would be useful to have links to the documents in sub-section 6, other guidance and consolidated legislation.

Renfrewshire Council agrees that all correspondence should identify clearly, each contravention and the measures to be taken to secure compliance.

This section clearly aligns with Renfrewshire Council policies and the Integrated Enforcement Policy as agreed at previous Boards.

Views on sub-section 19 of the Code: Detention and Seizure.

This sub-section has been updated to include:

- Detention and seizure powers under Section 15B of the Food Safety Act 1990 (as amended) for breaches of Food Information Law.
- Detention and seizure powers under Section 9 of the Food Safety Act 1990 (as amended) further amended by the Novel Foods (Scotland) Regulations 2017.

Renfrewshire Council welcomes the updates and strengthening of this part of the Code of Practice.

Views on sub-section 27 of the Code: Interventions.

This sub-section has been updated as follows:

- Inclusion of information about Food Authorities' duties to produce an Annual Service Plan.

- Removal of reference to Annex 10 - Primary Production. This Annex has been removed from the Code.
- Removal of information about, and reference to, Annex 5A. This Annex has been removed from the Code.

Renfrewshire Council welcomes the updates.

Views on sub-section 34 of the Code: Approved Establishments Subject to Approval under Regulation (EC) No 853/2004.

The following updates have been applied to this section:

- Reference to the new Approved Establishments Scottish National Protocol.
- Clarification of the authorisation information in sub-section 34.2 on collection centres and tanneries that supply raw material for the production of gelatine or collagen intended for human consumption.
- Paragraph on live bivalve mollusc purification centres has been removed.
- Clarification that approval numbers must be unique and should not be re-used (see sub-section 34.12).

Renfrewshire Council welcomes the updates.

Views on sub-section 37 of the Code: Matters Relating to Fresh Meat.

This sub-section has been updated to include the enforcement responsibilities set out in the Country of Origin of Certain Meats (Scotland) Regulations 2016 (see 37.1, para 2).

Renfrewshire Council welcomes the updates. It would be useful to have links to consolidated legislation and guidance, where referenced in the code.

Views on Annex 7 of the Code: Model Forms of Notice.

Annex 7 has been updated to include:

- Privacy Notices on all model forms, in line with data protection regulations.
- Detention and seizure powers under Section 15B of the Food Safety Act 1990 (as amended), for breaches of Food Information Law.
- Detention and seizure powers under Section 9 of the Food Safety Act 1990 (as amended) further amended by the Novel Foods (Scotland) Regulations 2017.

The use of standardised and model forms is welcomed and ensures consistency across authorities. The use of model forms is used within Renfrewshire Council.

Views on Annex 8: Model Application Form for the Registration of a Food Business Establishment.

Annex 8 has been updated in line with new data protection legislation.

Renfrewshire Council welcomes the updates

Views on other sub-sections of the Code.

The preceding pages of this consultation detail the larger changes that are being proposed for this update to the Code.