

Title of Report:	RESPONSE TO FSA CONSULTATION: REVIEW OF THE FOOD LAW CODE OF PRACTICE, FOOD LAW PRACTICE GUIDANCE, AND IMPLEMENTATION OF THE COMPETENCY FRAMEWORK
Committee Report Submitted To:	ENVIRONMENTAL SERVICES COMMITTEE
Date of Meeting:	12TH JANUARY 2021
For Decision or For Information	FOR DECISION

Linkage to Council Strategy (2019-23)	
Strategic Theme	Innovation & Transformation
Outcome	Delivery of statutory services to protect Citizens and Visitors
Lead Officer	Head of Health & Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	YES/NO
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

1.0 Purpose of Report

- 1.1 The purpose of this report is to provide members with a response for consideration to the Food Safety Agency's Consultation of the Food Law Code of Practice, Food Law Practice Guidance and implementation of the Competency Framework for Northern Ireland.

2.0 Background

- 2.1 The Food Standards Agency Northern Ireland issued the above consultation on the 13th November 2020 with a response date of 13th December 2020. Despite representation regarding the short consultation period, an extension to the submission date was refused.
- 2.2 The consultation has been prepared in coordination with England. The changes to the England Code, and the Practice Guidance are subject to a separate but similar consultation.
- 2.3 The Code sets out instructions and criteria to which Councils in Northern Ireland must have regard for when discharging their duties in relation to the delivery of official food control activities. The FSA is required to consult on amendments to the Code prior to implementation. The Code requires regular review and revision to ensure that it reflects current priorities, policy, and legislative requirements so that DC delivery of food control activities remain effective, consistent, and proportionate.
- 2.4 The consultation document may be found at <https://www.food.gov.uk/news-alerts/consultations/review-of-the-food-law-code-of-practice-food-law-practice-guidance-and-implementation-of-the-competency-framework-northern>

3.0 Main Proposals of Consultation

- 3.1 The modernisation of the baseline knowledge, skills, and experience requirements to enable a wider cohort of Council professionals to undertake official food controls and other official activities, which the current Code restricts,
- 3.2 Replacing existing competency requirements with the Competency Framework, which defines competency by activity rather than by role,
- 3.3 Introducing a provision to enable the FSA to be more responsive in issuing instructions, whereby Councils may legitimately depart from the Code, in limited circumstances
- 3.4 Updating the Code to reflect the Official Control Regulation (EU) 2017/625, and EU exit implications, where the negotiated position is known,

- 3.5 Simplification, clarification and alignment of the Code and the Practice Guidance with those of England to promote consistency in the interpretation and implementation of food control activities. This includes the removal and relocation of sections of the Code to the Practice Guidance; and
- 3.6 Inclusion of other minor amendments to keep pace with current practices.

4.0 Response to consultation Document

- 4.1 EHNI have drafted a reply to the consultation document which has been used to prepare a response on behalf of Council. This may be found at Appendix 1 to this report and summarised below.
- 4.2 Concerns are raised regarding the necessity to apply the proposed competency framework retrospectively to officers who are fully compliant under the current code. It is also considered that the current detail provided in the proposed Competency Framework will not facilitate consistency without significant training and further supporting guidance.
- 4.3 There should be an exemption for those who are currently fully compliant under the current code and a fast track option for those who are already working towards competency.
- 4.4 The proposed Competency Framework will be prohibitive to Councils building resilience into the Environmental Health Service by hindering or restricting the movement of officers into the Food Control function from other core functions when the need to redeploy resources arises.
- 4.5 The proposed Competency framework is too detailed and prescriptive. The level of detail lends itself to the requirement for regular updating as new and emerging activities and processes emerge. There are concerns that the prescriptive detail of the Specialist and High-Risk Activities could leave the competency status of Food officers open to legal challenge. A more generic non-exhaustive listing of activities would reduce the burden of completion and recognise the wider skills of Environmental Health Officers. This would also mitigate against legal challenge of an officer's competency.
- 4.6 The preparation time and resource requirements have been grossly underestimated by the FSA. The implementation of the proposed Competency framework will be a significant cost and burden to Council.

5.0 Recommendation

It is recommended that the Environmental Services Committee recommends to Council the adoption and confirmation of the response prepared to the FSA Consultation of the Food Law Code of Practice, Food Law Practice Guidance and implementation of the Competency Framework paper at Appendix 1 to this report.

Food Standards Agency Consultation

Review of the Food Law Code of Practice, Food Law Practice Guidance, and implementation of the Competency Framework

Causeway Coast and Glens Borough Council Response

Consultation subject/purpose

To seek stakeholder views on the FSA proposals to update and simplify the Food Law Code of Practice (Northern Ireland) (the Code) and the Food Law Practice Guidance (Northern Ireland) (the Practice Guidance)

Causeway Coast and Glens Borough Council welcomes the opportunity to comment on the Review of the Food Law Code of Practice, Food Law Practice Guidance, and implementation of the Competency Framework. Causeway Coast and Glens Borough Council wishes to express serious concern regarding the short 4 week formal consultation period allotted to consider what are deemed to be complex issues which will have significant implications for the delivery of official food controls for years to come. It is also of concern that this consultation has been released at a time when Local Authorities across the UK and further afield are in the middle of a pandemic and resources are extremely stretched. This is in addition to the preparatory work that is ongoing in relation to EU Exit. However, Causeway Coast and Glens Borough Council do recognise that a number of the changes to the code will facilitate some Local Authorities in terms of recruitment of staff.

In view of the serious concerns raised by the Local Authorities in Northern Ireland, Causeway Coast and Glens Borough Council have included these in the consultation response which may be outside of the questions posed in the format provided.

Following correspondence received by EHNI on 25th November 2020 from Maria Jennings, FSA NI, regarding an extension on the date of the final submission of Council responses to 31st January 2021, this is a draft submission which will be submitted by the requested date of 10th Dec 2020. It will be followed up by a formal Council response by 5th February 2021.

Consultation Questions:

- 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?**

Causeway Coast and Glens Borough Council agree that the layout/presentation and clarified text make the document easier to use.

Causeway Coast and Glens Borough Council do not agree that the current detail provided in the Competency Framework will facilitate consistency without significant training and further supporting guidance.

Causeway Coast and Glens Borough Council would seek clarification on the legal basis of Section 5.2.5- Practice Guidance and boundaries of application. Causeway Coast and Glens Borough Council would welcome further discussions with the FSA on the practical applications of this section of the guidance.

2. Do you agree that the proposed suitable qualification requirements provide DCs 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 it is agreed that the proposed suitable qualification requirements allow for a wider cohort of professionals to undertake food control activities Causeway Coast and Glens Borough Council do not agree with the need to introduce the proposed competency framework for officers who hold the EHRB qualification and who are fully competent under the current Code. These officers should be exempt from the need to migrate to the proposed competency framework. There needs to be recognition of the qualifications obtained by these officers.

Officers who hold the EHRB qualification but who are not fully competent in Food Control should be capable of a fast track method to achieve competency without the need to complete the full proposed Competency Framework. Recognition of these officers existing competencies must be reflected in any proposed Competency Framework.

Causeway Coast and Glens Borough Council also recognises the benefits of using the competency framework for staff who may carry out limited food safety duties and are not required to complete all of the assessment sections. However, it is generally recognised that Councils in NI require EHO's that have a wider range of skills and competencies available to provide a more holistic Environmental Health approach across a number of key areas to maximise the outcomes from any contact with businesses. This allows for the development and movement of staff with an Environmental Health qualification between functions in the wider Environmental Health Service.

The proposed complex and resource intensive Competency Framework will be prohibitive to Councils building resilience into the Environmental Health Service by hindering or restricting the movement of officers into the Food Control function from other core functions when the need to redeploy resources arises.

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 DCs 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 sub-activity?**

If not, what changes would you wish to see, and why?

- a. The competency framework is too detailed and prescriptive. This level of detail lends itself to the requirement for regular updating as new and emerging activities and processes emerge. Causeway Coast and Glens Borough Council are concerned that the prescriptive detail of the Specialist and High Risk Activities could leave the competency status of Food officers open to legal challenge. A more generic non-exhaustive listing of activities would reduce the burden of completion and recognise the wider skills of EHO's. This would also mitigate against legal challenge of an officer's competency. Causeway Coast and Glens Borough Council would expect that the FSA will provide no cost training in all the currently prescribed Specialist and High risk activities if these are to be retained within the Competency Framework.
- b. Causeway Coast and Glens Borough Council are unable to comment on the relevant activities for those working in the private sector. It is recognised though that those in the private sector in these roles should meet the same competency standards as an EHO.
- c. Refer to comments in a above. The FSA must recognise that NI Councils enforce both Food Hygiene and Food Standards legislation. It is therefore duplicitous to require an officer to complete certain sections common to both Food Hygiene and Food Standards when the applicable skills are transferable.

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

Competency by individual sub activity fails to recognise the skills of an EHO. There are aspects of a competency assessment that could facilitate the use of resources from other functions within the Environmental Health Service. However, officer activities may have to be restricted due to qualifications and would limit their usefulness with regard to a particular activity. To address Causeway Coast and Glens Borough Council's concerns, the FSA should carry out a competency mapping exercise for officers who meet the baseline

qualification in order to expedite the completion of the proposed Competency Framework. Causeway Coast and Glens Borough Council would welcome input into any future mapping exercise.

- 5. Do you agree that by 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?**

It is difficult to answer whether this will improve quality and consistency of delivery across the public sector. While the EHRB provided a consistent qualification that all candidates had to complete, under the new proposals each individual will be submitting different evidence for assessment and assessed by differing lead food officers. The EHRB was a useful qualification for the profession and employers in that it provided a recognised independent level of consistency and removed the burden from the employer to carry out assessments.

It is difficult to comment whether setting such a standard will achieve the desired outcome as the assessment methodology has not been fully developed at the time of issue of this consultation. To ensure that the proposals achieve the aim of improving quality and consistency of delivery, comprehensive training, guidance and support must be provided by the FSA.

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

Causeway Coast and Glens Borough Council do not foresee any problems with the provision.

- 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?**

Causeway Coast and Glens Borough Council agree with this statement.

- 8. Do you agree with our assessment of the impacts on DCs, 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? 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?**

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?

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

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

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

a. The timeframe for familiarisation and dissemination time has been grossly under-estimated. To date Lead food officers from NIFMG have had a number of sub group meetings well in excess of the allotted time of '3' hours to read and two hours to prepare and disseminate' suggested in the consultation. This does not include the time taken by each of these Lead Officers to familiarise themselves with the competency framework. To analyse the spreadsheets alone has taken significant time spend. The subgroup advising Causeway Coast and Glens Borough Council has reported that each officer has spent more than 20 hours on research, analysis, meetings, webinars and drafting the consultation response to date.

To prepare and disseminate this information requires significantly more time than the proposed time of 2 hours stated in the consultation. It would require more than 2 hours for officers to familiarise themselves with the spreadsheets alone. From previous experience in disseminating the 2016 Competency Framework it took in excess of a full working day to disseminate the information. This does not take into account the ongoing guidance, advice and assistance which Lead Officers would have to provide to both new and fully authorised staff to complete their individual assessments.

b. Causeway Coast and Glens Borough Council strongly refute the FSA's assumption that there would be 'no significant additional burden' to local authorities to introduce the new competency framework. Causeway Coast and Glens Borough Council believes that significant time will need to be taken to complete the proposed ongoing assessment of officers. This assumption is based on the experience of the implementation of the current Competency Framework and would conclude that the new Competency Framework is a more complex and time consuming process. Lead Officer experience would indicate that it took at least 5 days for officers to complete the existing Competency Framework document as prescribed in the current Code.

Significant time is required by the Lead Food Officer to assess the proposed Competency Framework and complete the necessary administrative duties. In conclusion Causeway Coast and Glens Borough Council estimate that it will take 5 days per officer and 2 days of the lead officer time per assessment to complete the proposed competency framework.

To mitigate against this significant time spend Causeway Coast and Glens Borough Council propose that current fully authorised officers retain their current Competency Framework now and into the future and are not required to transition to the proposed Competency Framework.

- c. Experience would indicate that it took at least 5 days for officers to complete the existing Competency Framework document as prescribed in the current Code. Significant time is required by the Lead Food Officer to assess the proposed Competency Framework and complete the necessary administrative duties. Causeway Coast and Glens Borough Council predict that it will take 5 days per officer and 2 days of the lead officer time per assessment to complete the proposed competency framework.
- d. Although this question is limited to new staff, the FSA must consider the redeployment of existing staff into the food function, maternity cover and the employment of agency staff. Causeway Coast and Glens Borough Council cannot respond on behalf of individual Councils in respect of new staff being employed per year.
- e. Causeway Coast and Glens Borough Council cannot fully predict the number of staff required as Councils will have to address the out-workings of food related work at the end of the Transition Period and the implementation of the NI Protocol.

Additional resources will be required to address the current Council backlog of inspections for all 11 Councils due to the Covid pandemic and to address the businesses which were inspected outside the Mandatory FHRs. Dealing with these priority issues will necessitate additional resources to address the Competency Framework and officers authorisations.

Many Councils may be undergoing restructuring exercises due to budget constraints and this may impact on staffing levels.

Costs to FSA approved assurance

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)

Councils are currently in the midst of covid operating procedures as well as preparing for EU exit under the NI protocol. The FSA priority guidance issued in June 2020 was welcomed however Councils are struggling to complete these priorities in the current climate. Covid has affected our ability to recruit and retain staff.

Lead Food Officers presently have significant monitoring duties to complete in order to fulfil the requirements of the food service delivery plan and required procedures. The proposed competency framework would pose a further burden onto the current competency assessment monitoring. The employment of temporary and agency staff would further increase the burden on lead food officers. A further complication for short term contract staff would be the need to have an agreed system for the sharing of competency assessments between local authorities.

There is a considerable backlog of inspections across all District Councils due to the Covid19 pandemic which the FSA are aware of. Causeway Coast and Glens Borough Council will require direction from the FSA on how best to utilise current resources, as the completion of the new Competency Framework for existing authorised officers would impact on our ability to complete the FSA priorities on Official Controls as directed by FSA communication dated 30th September 2020.

The completion of the competency assessment is an onerous task at present and is seen by officers as a deterrent to entering the food safety role. The proposed competency framework is significantly more onerous and can only increase the pressure on food units to recruit and retain staff.

Additional resources will also have to be deployed to review and amend certain internal policies and procedures to comply with the changes in the COP and Practice Guidance.