

**ITEM No ...3.....**

**REPORT TO: COMMUNITY SAFETY & PUBLIC PROTECTION COMMITTEE – 24 SEPTEMBER 2018**

**REPORT ON: CONSULTATION RESPONSE – THE FOOD STANDARDS SCOTLAND – FOOD LAW CODE OF PRACTICE REVIEW**

**REPORT BY: EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES**

**REPORT NO: 282-2018**

**1. PURPOSE OF REPORT**

1.1 To seek Committee's approval for the Council's proposed response to the Food Standards Scotland - Food Law Code of Practice (Scotland) Review 2018.

**2. RECOMMENDATIONS**

2.1. It is recommended that Committee approves the attached response and remits the Executive Director of Neighbourhood Services to submit this to the Scottish Government accordingly.

**3. FINANCIAL IMPLICATIONS**

3.1. There are no financial implications arising from this report.

**4. MAIN TEXT**

**4.1. Background**

4.1.1. The Food Code of Practice (Scotland) sets out instructions, processes and criteria to which all 32 local authorities in Scotland must have regard when they carry out Official Food Controls in their role as Food Authorities. The current version of the Code was published in April 2015 following the creation of Food Standards Scotland (FSS) on 1st April 2015.

4.1.2. FSS now wish to consult with all stakeholders on an updated Code of Practice (CoP) that reflects changes in legislation and practice since 2015 along with seeking to align the CoP with the FSS's Regulatory Strategy, The Scottish Government's approach to better regulation (as set out in the Scottish Regulators' Strategic Code of Practice), and FSS's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish.

4.1.3. The updated Code of Practice also aims to prepare for future planned and prospective changes that will take place in 2019 and beyond, including the new Food Law performance rating system that will replace the current Annex 5 of the Code.

**4.2. Consultation Response**

4.2.1. Food Standards Scotland has invited responses to the consultation by the 21st September 2018 and this has been extended to allow for the Committee to agree to the proposed submission. Appendix 1 sets out the proposed responses to the consultation questions posed. A copy of the full consultation document is available on the Food Standards Scotland website at: <https://consult.foodstandards.gov.scot/enforcement-delivery/food-law-code-of-practice-scotland-review-2018/>

5. **POLICY IMPLICATIONS**

5.1 This report has been subject to an assessment of any impacts on Equality and Diversity, Fairness and Poverty, Environment and Corporate Risk. A copy of the Impact Assessment is available on the Council's website at [www.dundee.gov.uk/ia](http://www.dundee.gov.uk/ia).

6. **CONSULTATIONS**

6.1 The Council Management Team have been consulted in the preparation of this report and agree with the content.

7. **BACKGROUND PAPERS**

7.1 None.

Elaine Zwirlein  
**Executive Director of Neighbourhood Services**

Tom Stirling  
**Head of Community Safety & Protection**

24<sup>th</sup> August 2018

1. What is your name?

Name **Lindsay Matthew**

2. What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email **[lindsay.matthew@dundeecity.gov.uk](mailto:lindsay.matthew@dundeecity.gov.uk)**

3. What is your organisation?

Organisation **Dundee City Council**

Your 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).
4. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Our current staffing is required to meet additional demands arising from increase in tourism numbers, trend towards more community and large scale events of more than 10 000 people, etc. Close monitoring of these developments require to be carried out to ensure that sufficient food safety and health and safety controls exist.***

***The Regulatory Reform (Scotland) Act is intended to improve the way regulation is developed and applied and deliver consistent and proportionate regulation. This will create more favourable business conditions in Scotland along with supporting improvements to the environment. However, in our opinion the Scottish Regulators COP is designed for the main regulators such as FSS. Local authorities need to encourage and support business development by ensuring that correct standards are followed and apply FSS guidance in a balanced way to ensure consistency across Scotland.***

***The Regulatory Reform (Scotland) Act includes provisions that support:***

- the Scottish regulators' strategic code of practice, which describes how regulators should apply regulatory principles and good practice to contribute towards sustainable economic growth.***
- the mobile trader food hygiene national standard, which was developed to provide consistency, transparency, efficiency and effectiveness in the implementation and enforcement of food hygiene regulations. Dundee City Council is following the Local Authority Guidance in relation to mobile traders and the Code should contain a hyperlink to it.***

Your 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).
4. . Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

Sub-section 4 of the Code - Qualifications and Competence contains clear and appropriate information for Competent Authorities to follow.

***Dundee City Council welcomes the fact that Lead Food Officers must meet competency requirements and that Lead Food Officers are responsible for ensuring that their Authority's procedures and service meet the requirements of the Code. A commitment to complying with the Code should be built into service planning. This would include any service reviews being carried out in consultation with the statutorily appointed lead officer.***

***Where the service and arrangements in any authority may no longer be capable of fulfilling food law enforcement activities, having regard to any specific requirements in the Code, it is incumbent on Lead Food Officers to bring this to the attention of their superiors in writing and this must illicit a written response: "Where the Lead Officer does not consider that service and/or procedures are likely to meet the requirements of Food Law or this Code, he or she shall notify the relevant senior official of the nature of any significant deficiency or concerns in writing and retain a copy of any related correspondence. The retained record should specify the relevant decision-making arrangement and authority."***

***Capability and Capacity Audits by Food Standards Scotland's Audit Branch give added assurance and verification that Food Authorities have effective and appropriate arrangements in place and that the Lead Food Officer's role and responsibilities are recognised.***

***Where local authorities are found to have ineffective arrangements or inadequate resources to meet the requirements of the Code, the local authority concerned must carry out a Root Cause Analysis as to why such serious non-conformances existed and prepare an action plan to ensure that the problem is suitably resolved.***

***Valuable information is available about capacity, performance and costs from the Association of Public Service Excellence (APSE) performance network data.***

Your 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.

6. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Dundee City Council agrees with this sub-section and sees no difficulty in recognising and avoiding any potential conflicts of interest.***

***LAs are major food providers. With regard to the Food Authority's arrangements for ensuring compliance with Food Law in premises where the Food Authority is itself the proprietor of a food business and the steps taken to ensure enforcement decisions are free from any conflict of interest; Dundee City Council introduced the post of Corporate Food Safety Advisor specifically to provide a single point of contact with liaison responsibilities for the various services e.g. schools, nurseries, sheltered housing, community centres, care homes, etc. as well as architects dealing with new build projects in the City. This model has proved invaluable in providing reliable, authoritative best practice advice and ensuring consistency across the entire Corporate estate and food portfolio.***

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

This sub-section has been updated to reflect:

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

7. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***This sub-section provides useful information for local authorities on how to maintain records of registered and approved food establishments. The current registration system is unsatisfactory and, in many cases, inaccurate and needs to be overhauled and reconstituted.***

***The registration arrangements for mobile traders contained in "National Standard for Street Traders Local Authority Guide (Version 9)" should either be incorporated into the Code or referred to by hyperlink. Ultimately, ownership and administration of the Mobile Food Business Database will have to be decided and GDPR implications resolved to allow data sharing amongst the 32 local authorities and FSS.***

***Dundee City Council takes the view that licensing of food establishments is the best means of controlling non-compliant businesses that don't register, don't pay for refuse contracts and don't pay business rates. Licensing would ensure (by imposing Conditions) that all food businesses have the necessary planning and building standards consents; suitable space standards; suitable and sufficient water supply, ventilation system and refuse arrangements and a host of other pre-requisites including documented food safety management systems, training for staff, adequate washing facilities, cross contamination and allergen controls. Consideration could also be given to requiring healthy eating choices or limiting salt, sugar and saturated fats in menu choices.***

***Registration should be part of the licensing process and involve a centralised, online form to be completed and paid for (on a sliding scale) by the applicant with mandatory fields that must be completed. No licence application would be considered by the Local Authority until a valid registration form is submitted.***

***Any food business found to be trading without a licence or in breach of conditions would have trading suspended until all of the above requirements had been met and the application had been considered and decided by the relevant authority's Licensing Committee. Food Business Operators should also be subject to Police checks to reduce the risk of food fraud, food crime and criminal activity in food business establishments.***

Your 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.

8. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes. In particular can you please provide your views on any content that you believe should be included in Practice Guidance, rather than in this Code.

***Dundee City Council believes that the existing content should remain in the Code but that when Central Logging of Intelligence Operations (CLIO) is rolled out to every LA, it would be helpful to have user instructions and case studies contained in the Practice Guidance.***

***Content that could be included in Practice Guidance by way of contextual information for Local Authorities:***

***In 2016, a joint FSA/FSS project was launched to review and better understand the food withdrawal and recall mechanisms operating within the retail sector in the UK, and make recommendations for improvement. The scope of this project included withdrawal and recall processes in UK food retail businesses and by association suppliers to retailers, including manufacturers, distributors and wholesalers. Withdrawal and recall processes relating to feed and the service sector i.e. catering, hospitality, public sector catering such as schools and hospitals were out of scope.***

***There had been an increase in the number of food alerts issued over the past 3 years and, although the strengths of the current system have been recognised by independent reviews, improvements proposed in the paper "Review of the Food Withdrawal and Recall System in the UK Food Retail Sector" were intended to enhance the overall effectiveness and resilience of the system, as well as help maintain public confidence in food as the UK exits the EU.***

***The research findings highlighted the key strength of the current UK system as it being a centrally co-ordinated system, where the FSA/FSS provide a key leadership role in the oversight of the withdrawal/recall system, and both organisations' websites provide a central place for trusted information on all food safety recalls. This was also recognised by Lynn Faulds Wood who conducted the independent 'UK consumer product recall review' carried out on behalf of the UK government in 2016.***

***The research identified areas for improvement, which have been validated by external stakeholders and agreed by the FSA/FSS executive teams. These are:***

- ***Clearer roles and responsibilities;***
- ***More accessible and consistent information;***
- ***Increased consumer awareness;***
- ***Introduction of more systemic root cause analysis and feedback loops to aid prevention.***

***These have been further developed into four proposed outcomes:***

- 1. A withdrawal and recall system that is founded on a clear and distinct set of roles and responsibilities, agreed and commonly understood by all participants.***
- 2. Information to consumers is consistent and accessible, based on proven best practice and underpinned by cross-industry sharing of approaches and impact.***
- 3. The public are aware of the recall process and what actions they should take. (Consumers with any allergies or intolerances (or who prepared food for people with one) were significantly more likely to look for the information, although even among allergy sufferers, only a minority claimed to take proactive action. Only 13% had visited a government website and only eight percent had signed up for allergy and text alerts)***
- 4. Feedback loops and a philosophy of continuous improvement amongst all stakeholders underpins the withdrawal and recalls system. Industry confirmed that reviews/root cause analysis would be carried out internally/in isolation and that sharing of learnings and feedback between industry was limited. Through Kantar research, industry suggested that sharing of learnings should be done more routinely to prevent similar incidents occurring in the future.***

***Currently there is no mechanism for information on root cause analysis of incidents to be fed back to competent authorities after an incident and this prevents the FSA/FSS having oversight of trends or issues impacting on the food industry. The international benchmarking exercise that was carried out during the research identified that competent authorities in other countries have built in feedback loops to assess what caused an incident and whether corrective actions and the recall have been effective. This included either requiring businesses to send a post recall report to the competent authority or the competent authority conducting a post recall audit.***

***A feedback process should be introduced and included in the Code, where information on the root cause of an incident that results in food being withdrawn or recalled for food safety reasons, and potentially information on recall effectiveness is fed back to the FSA and/or FSS then shared with competent authorities.***

Your 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:

1. Definitions.
2. The FSS organisational structure that supports the investigation of Food Fraud and Food Crime.
3. 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.)

9. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Dundee City Council agrees with the content of sub-section 9 - Food Crime and Food Fraud refers to the Memorandum of Understanding (MoU) agreed by FSS and SOCOEHS in the event that suspicions are alerted that serious food fraud or food crime is happening in its area. It would be preferable if a hyperlink could be embedded in the Code to the most current MoU, which would be best kept up to date on the FSS website or SFELC Knowledge Hub.***

**Reporting Food Fraud or Food Crime - the Scottish Food Crime Hotline 0800 028 7926 should be listed as well as the email address.**

**In relation to surveillance and intelligence gathering, one to one training sessions for local authorities are needed in order to familiarise officers with Memex. Cascade training has not been a suitable method of achieving this aim. The existing Memex system is neither intuitive nor user friendly and input will remain low until more users are able to access it and know when to use it.**

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

This sub-section has been updated to reflect:

1. The new requirement to share information with FSS using the Scottish National Database.
  2. New data protection legislation.
  3. A change to paragraph 12.3 - Concerns about Industry Practice - as this is relevant to all Food Business Establishments, not just Approved Establishments.
  4. An update to sub-section 12.4 regarding live bivalve mollusc purification centres.
10. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

**Dundee City Council agrees the content of sub-section 12 Information to be supplied to FSS. In relation to SND, the Data Sharing, Exchange and Processing Agreement has not been mentioned. Dundee City Council has passed the document to our Information Governance Manager for comment/advice.**

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

This sub-section has been updated to reflect:

1. The National Food and Feed Compliance Spectrum (contained within the FSS Regulatory Strategy).
  2. 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.
  3. Clarification of the need to indicate timescales for the rectification of each contravention in correspondence with Food Business Establishments (see paragraph 14.7).
11. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

**Sub-section 14 Approach to Enforcement - Dundee City Council considers the spectrum non-specific and care should be exercised in applying it to individual circumstances.**

**For example, a confused FBO may not understand cross contamination leading to a real risk to health yet ignorance of the law is no excuse so their behaviour is potentially criminal.**

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

This sub-section has been updated to include:

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



12. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Dundee City Council welcomes documentation and consolidation of Detention and Seizure procedures in sub-section 19.***

Your views on sub-section 27 of the Code: Interventions.

This sub-section has been updated as follows:

1. Inclusion of information about Food Authorities' duties to produce an Annual Service Plan.
2. Removal of reference to Annex 10 - Primary Production. This Annex has been removed from the Code.
3. Removal of information about, and reference to, Annex 5A. This Annex has been removed from the Code.

13. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***The requirement for each food authority to complete an Annual Service Plan, which details the interventions programme (adequately resourced) for the coming year is noted.***

***Removal of Primary Production activities that now fall within the scope of the Feed Delivery Manual and removal of reference to Annex 5A are also noted.***

Your 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:

1. Reference to the new Approved Establishments Scottish National Protocol.
2. 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.
3. Paragraph on live bivalve mollusc purification centres has been removed.
4. Clarification that approval numbers must be unique and should not be re-used (see sub-section 34.12).

14. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***The hyperlink to the Approved Establishments Scottish National Protocol is a welcome addition that helps to consolidate and give added importance to such documents.***

Your 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).

15. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Dundee City Council agrees with the content of sub-section 37 of the Code: Matters Relating to Fresh Meat.***

Your views on Annex 7 of the Code: Model Forms of Notice.

Annex 7 has been updated to include:

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

***Every model notice now contains a privacy notice and Dundee City Council will ensure that the necessary changes are made to all notices served.***

Your 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.

17. Please use the text box and / or the file upload facility below to provide any feedback you may have on these changes.

***Dundee City Council notes the change to Annex 8: Model Application Form for the Registration of a Food Business Establishment and will ensure that this for is updated accordingly.***

Your 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.

An entire copy of the Code is available for review below.

18. Please use the text box and / or file upload facility below to provide any feedback you may have on any other sub-section(s) of the Code.

***At 227 pages, the Code is unwieldy and it is welcomed that work is progressing to make it more user friendly and interactive using hypertext and dividing it into smaller, more manageable documents.***

***The draft version above doesn't have page numbers.***

***Now that the Framework Agreement on Food Law Enforcement is incorporated within the Code, a Ministerial Foreword would help promote the importance of the document.***