

**Directors of
Public Protection Wales**



Directors of Public Protection Wales Consultation Response

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

March 2021



**Safonau Masnach Cymru
Trading Standards Wales**



The Directors of Public Protection Wales (DPPW) is the collective organisation of officers heading up public health protection services within local authorities, with the following Mission Statement:

'To protect personal, environmental, economic and social well-being through policy, regulation and education. By these means to create a safe living and working environment for the communities we serve.'

Public Protection services include all aspects of licensing, environmental health and trading standards. DPPW has two constituent Heads of Service groups - Environmental Health Wales and Trading Standards Wales. Under these groups, there are a selection of specialist/expert panels, and groups focusing on generic aspects of delivery such as training, enforcement, and performance management. We also have representation on an extensive range of fora, advisory groups and steering committees.

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Foreward

Directors of Public Protection Wales (DPPW) welcome the opportunity to respond to the Food Standards Agency (FSA) Review of the Food Law Code of Practice, Food Law Practice Guidance and proposals for a new Competency Framework. We have considered the proposals in some detail as local authorities will be most impacted by the proposals in the short term. Collectively, as competent authorities for food, we regulate over 35,000 food businesses in Wales. The potential impact of the proposed changes on consumers and businesses has been a key consideration in our response.

Further to our correspondence on 21 October 2020, in which we raised concerns about the timing of the consultation in the midst of a pandemic, and the time to consider and respond, we appreciate the 14 weeks afforded to stakeholders in Wales compared to the four weeks afforded to stakeholders in England and Northern Ireland. We are also grateful for the funding provided by FSA Wales to help facilitate this response. We are committed to working with the FSA to ensure the achievement of our shared objective, that food in Wales is safe and what it says it is.

As the proposed changes in the consultation relate largely to the local authority workforce, it is important to appreciate the significant interdependencies that exist between the food workforce and other public health protection functions which have not been appreciated or acknowledged by the FSA in the consultation. As an example, there is the potential for changes to the profile of officers employed to deliver food controls to impact on local authority capacity to investigate incidents and outbreaks of notifiable infectious diseases.

The questions in the consultation are not sufficiently focused to obtain our views on the potential impacts and unintended consequences of the proposals. To provide additional context we have set out in detail more information about the food regulatory landscape in Wales and some of the future challenges.

The FSA has not identified all key stakeholders who will have an interest in this consultation. We have therefore shared this response with Public Health Wales, Local Health Boards and academics. Further, Industry and Consumer representatives will be signposted to our response on the WLGA website.

Holistic approach

Our holistic approach to regulation, delivered through local authority environmental health and trading standards services, safeguards the public and reduces burdens on businesses, ensuring they are supported in achieving compliance. In practice, this holistic approach means that officers who interact with food businesses in Wales to verify compliance with food legislation are able to effectively signpost, or themselves provide advice and verify compliance with a range of other provisions during the same intervention. These include provisions relating to health and safety at work, control of foodborne infection, smoke free legislation, noise and odour control, waste disposal, weights and measures, fair trading, product safety, underage sales and COVID restrictions. Broader risks associated with illegal migrant workers, modern day slavery

and other potential criminality are also identified through this holistic approach, with prompt referrals to other agencies for investigation.

This holistic approach not only reduces the burden of multi-inspectorates on food businesses, but reduces the cost burden to taxpayers and ensures better health protection outcomes.

Flexible workforce, assessing and responding to risk

The current COVID-19 pandemic has led to a dramatic loss of human life and posed unprecedented challenges to public health, food systems and the world of work. Local authority public protection officers have been critical to the Wales response to the pandemic, managing incidents, clusters and outbreaks across a range of sectors, including care establishments, schools and workplaces. The public protection response has comprised contact tracing, advising businesses on regulations and enforcing restrictions. They have worked at the heart of local communities, supporting people and the local economy. The value of holistic officers, with skills across a range of disciplines, able to be deployed flexibly has been key to the success of the local authority COVID response in Wales.

With many restaurants and other catering businesses closed for much of the last 12 months, and some planned food interventions suspended by the FSA, officers who would ordinarily deliver official food controls have been deployed to other high priority work. These officers have ensured that the public remains protected from food risks by responding to matters of public health significance as they arise. Many food businesses that have remained open, including supermarkets, takeaways and manufacturers have been subject to local authority checks, with the emphasis on reducing transmission of COVID -19. Officers have also supported the economy by providing advice and, where necessary, advisory visits to newly registered food businesses. This risk-based approach has been fundamental to the public health response.

The same officers who deliver food and COVID controls have also been advising food businesses in their preparations for EU exit, and some were involved in the emergency response to localised flooding in the early part of 2020. Further, local authorities in Wales have been working with the FSA to implement elements of its transformation programme and have volunteered to pilot a new way of working to address known issues with the FSA's current food standards delivery model at the local authority's cost.

Supporting food businesses

Ensuring consumers are protected from risks associated with food is a priority for local authorities in Wales. The resources allocated to food services (5.5 full time equivalent

(FTE) officers per 1,000 food establishments) is significantly higher than in England (2.9 FTEs) and Northern Ireland (4.3 FTEs).

Our performance in delivering food hygiene interventions has been consistently high with 93.8%, 91.5% and 89.1% of all due interventions achieved in 2017/18, 2018/19 and 2019/20 respectively. In each of these years, performance in delivering planned food hygiene inspections in Wales has exceeded that achieved in England and Northern Ireland. In 2019/20, local authorities in Wales delivered 99.7% of due food hygiene interventions at the highest risk (category A) food establishments, and have demonstrated through returns the application of a risk-based approach.

We are proud of our achievements in supporting and regulating food businesses. Wales' flagship statutory Food Hygiene Rating Scheme, which relies on independent assessment of food business compliance by local authorities, has resulted in significant improvements in hygiene standards, with 97% of food business achieving a rating of 3 (generally satisfactory) or above in March 2020, compared to 83% in 2012. Further, almost 70% achieved the highest rating of 5 (very good) compared with 37% in 2012.

Consistency exercises facilitated by the FSA, and other exercises coordinated by local authorities have demonstrated that officers in Wales are assessing food hygiene ratings consistently. In a FSA national consistency exercise in 2019, 77% of local authorities in Wales issued a rating of '4', the expected outcome, while the remaining authorities issued a rating of '5'.

In respect of food standards, local authorities continue to prioritise high risk establishments and in 2019/20 achieved 90.8% of due food standards interventions at the highest risk (category A) establishments. There is a continuing trend towards adopting more intelligence led approaches to food standards, particularly at lower risk establishments. A review in 2018 provided evidence of the need for change to the FSA's current delivery model for food standards and we are pleased a local authority in Wales will be participating in a pilot to inform development of a new delivery framework. This work was initially due to start in 2020, but postponed until 2021 due to the impact of COVID-19.

Good regulation protects consumers and provides a level playing field for business. Where food businesses have a flagrant disregard for the law and other approaches have failed, local authorities in Wales have not hesitated in escalating action and in 2019/20, 498 food businesses (1.4% of all businesses in Wales) were subject to formal enforcement action. In England and Northern Ireland, 0.9% and 0.3% of all businesses were subject to formal enforcement action respectively.

There is no evidence that local authorities in Wales are not targeting their skilled people where they are most needed, contrary to the suggestion in the consultation.

Public health workforce

Ensuring food safety and authenticity is a public health issue. Unsafe food has the potential to add to the burden of infectious disease and cause life threatening allergic reaction. Poor diet is linked to increased morbidity and mortality. As economic pressures increase the risks of food fraud, work by local authorities to ensure food is what it says it is, is becoming increasingly more important as our ambitions to trade across wider international boundaries are realised. Local authorities require a workforce that is multi-skilled, flexible and adaptable to meet the challenges now and in the future, in the face of likely budgetary constraints. Environmental health and trading standards are a key component of the public health workforce in Wales, and to build on the collaborative approach adopted across public health organisations during COVID, there is a need to build capacity to ensure future resilience.

The FSA's proposals provide local authorities with limited additional flexibility through the ability to use unqualified and less qualified officers to deliver food controls, subject to a competency assessment. It will be important to ensure that the flexibility and resilience provided by the current qualified and multi-skilled workforce is not lost over time. These proposals could have significant unintended consequences and impact on consumers, businesses and on the ability of local authorities to respond to future pandemics, major incidents and other emerging issues. Further, the need to provide current and future trading partners with confidence about food produced in Wales must be a consideration. The lowering of the qualification requirements for those who provide assurance, as proposed in the consultation, may be ill conceived. The burden of implementing the FSA's proposals could also be counter intuitive.

Work has commenced to build environmental health and trading standards capacity in Wales, including proposals for a level 4 Regulatory Compliance Officer apprenticeship. If the proposal is accepted, it will provide an additional route into food regulation for individuals interested in further development. The FSA's proposals have the potential to undermine these plans and the FSA should ensure that its considerations regarding local authority workforce are included in this work. The FSA is welcomed as a key stakeholder in this work.

Public Health Wales is currently reviewing the public health workforce and links to that review could usefully be made by the FSA to ensure a joined-up holistic approach.

The challenge of new Border Control Posts in Wales

As a consequence of the UK no longer being part of the single market or customs union, physical checks are required on certain goods, including some foods, entering the UK from the EU. As a result, Border Control Posts (BCPs), where the required physical inspections will take place, are being established across the UK.

At Holyhead, inspections will be required on some goods entering Wales from the Republic of Ireland. These checks will need to be in place in order to ensure goods entering the UK do not pose a risk to public health, or to the spread of animal or plant

diseases. On 12 March 2021, Welsh Government announced a site for a new Border Control Post (BCP) in Holyhead and a planning consultation will commence shortly.

Border Control facilities are also needed for ports in South West Wales and work is on-going to assess potential sites with the support of Pembrokeshire Council.

Import checks were meant to be phased in from April and July 2021 but on 11 March the UK government confirmed it will postpone checks on food imports from the EU. Import declarations have now been delayed from 1 April until 1 October, while physical checks have been delayed until 1 January 2022 and some full checks have been delayed to March 2022.

A detailed assessment of the workforce requirements for BCPs in Wales is not currently available. However, early indications are that a significant number of food competent officers will need to be recruited when the facilities open. Discussions with the local authorities concerned have identified that **the changes proposed in the FSA's consultation will almost certainly not provide the additional officer capacity that is likely to be required to deliver the necessary food controls at BCPs.** This is a potential crisis, requiring identification of an alternative solution for Wales. We would welcome the urgent establishment of a multiagency working group, including Welsh Government, local authority, FSA and professional body representatives to ensure the co-production of a robust, practical and sustainable solution to the workforce for BCPs.

A common competency framework

One of the FSA's stated objectives is to develop a Competency Framework for all individuals engaged in delivering front-line food and feed law related activities. These include local authorities, FSA, FSA delivery partners and those in the private sector who undertake assurance activities that are formally recognised to inform targeting/frequency of local authority and FSA official controls, such as FSA approved assurance schemes.

We agree that all those providing assurance in relation to food and feed must be competent and are confident that local authority officers delivering official controls in Wales meet the qualification and competency requirements in the current Code, and that authorisations reflect their level of competency as assessed by lead food and feed officers.

The removal of restrictions on the duties of officers who do not have a qualification that provides the underlying knowledge, subject to a competency assessment by their employer, is a cause for concern as it has the potential to introduce inconsistencies.

Whilst it is stated in the consultation document that the Competency Framework describes the competencies required for specific activities, rather than take a role-based or profession-based approach, individuals are appointed to specific posts where the role and/or professional credentials have to be clearly defined. This is a requirement for job evaluation and impacts on the funding available for posts.

Extending the duties/authorisation of some officers may not be possible even if they are deemed competent by their employer if the funding is not available to remunerate them for these additional duties. Local authority structures are informed by local demand and available funding. The proposed Code refers to role-based activities e.g. in respect of Regulatory Support Officers, which is contrary to the FSA's new approach

It should be noted that local authorities recruit a range of officers to their food services. These include those with no formal food qualifications who work as Technical Support Officers, to those with specialist food qualifications, such as the Higher Certificate in Food Control and professionally qualified environmental health and trading standards officers. In practice, officer authorisations reflect their qualifications, training and experience. Less experienced officers and those with lower level qualifications, typically undertake lower risk activities to reflect their knowledge and experience. Typically, lead food officers in Wales are either qualified environmental health or trading standards officers. They are responsible for assessing competency and determining the level of officer authorisations in their local authority.

Professionally qualified officers, whose competencies have been independently assessed and are maintained, are important in a local authority context as food law enforcement decisions can be challenged in court. The qualifications and professional credentials of enforcement officers are used to demonstrate their professional judgement, expertise and credibility as a witness in court. Unqualified officers are at greater risk of having their credentials challenged, which could increase the risk of a court case being unsuccessful. Lost court cases can result in significant costs being incurred by local authorities and may put the public at risk.

The need for co-production - FSA and local authorities working together

The proposals in the consultation have not been co-produced despite the expectation that the FSA and local authorities work together.

In February 2018, the Cabinet Secretary for Health and Social Care wrote to DPPW setting out the expectation that Welsh local authorities and the FSA work together to co-produce approaches. A committee, *Safe, Sustainable, Authentic Food Wales* (SSAFW) was subsequently 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. The committee has not been involved in development of the proposals in the consultation 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.

Directors of Public Protection in Wales recommend that:

1. The FSA acknowledges the interdependencies that exist between the delivery of food official controls and other public health protection functions, and recognises the value of holistic officers who are professionally qualified, and provide local authorities with a flexible workforce for the benefit of consumers and businesses in Wales.
2. The FSA/ Welsh Government does not implement the proposed changes to the Code of Practice and the Practice guidance regarding the implementation of a new Competency Framework, and the ability of the FSA to instruct local authorities to legitimately depart from the Code in limited circumstances. Further consideration should be given to these proposals through SSAFW.
3. A multiagency working group be established, including Welsh Government, local authority, FSA and professional body representatives to co-produce a robust, practical and sustainable solution to the workforce needs at proposed Border Control Posts in Wales.
4. The FSA and local authorities work collaboratively through the Safe Sustainable Authentic Food Wales (SSAFW) committee to assess and identify options for ensuring the sustainability of the local authority food and feed law enforcement workforce for the future. This work should be carried out in conjunction with wider work that is underway to develop the public protection workforce in Wales.
5. Ensure that, in accordance with the Cabinet Secretary for Health and Social Care's expectation set out in 2018 correspondence, the FSA works with local authorities to co-produce policy proposals in the context of wider public policy and service delivery considerations in Wales. This will help to ensure the principles of The Wellbeing of Future Generations (Wales) Act 2015 are met.

Response to Questions in 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 and consider these to be secondary considerations. It is important that the focus of the consultation is the content. Generally, the documents were easy to read and interpret. However, the combined volume of the revised Code, Practice Guidance and Competency Framework (circa 400 pages) presents a significant additional resource burden on local authorities as all officers will need to refer to all three documents to perform a competency assessment.

The use of colour coding to identify proposed changes is welcomed.

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).

Whilst theoretically the proposed suitable qualification requirements will allow local authorities and port health authorities to employ a wider cohort of individuals to undertake food control activities, which the current Code restricts, it will not provide the ability to deploy existing resources any more efficiently or necessarily increase officer capacity for food controls. Additional officer resource is dependent on available funding, and the availability of officers with the underlying knowledge and skills to perform the role.

There is no data in the consultation on the likely or desired impact of the proposals on the workforce, and the number of additional officers required in local authorities and BCPs has not been quantified. Further, there have been limited discussions between the FSA and local authorities on current and future workforce needs.

Currently, officers with specified lower level qualifications are restricted from undertaking certain activities. For example, an individual with an Ordinary Certificate in Food Premises Inspection cannot seize and detain food. However, the proposed changes enable such officers to be fully authorised, subject to a competency assessment which places the onus on the local authority to assess that the individual has the requisite underlying knowledge which would otherwise be demonstrated through a higher level qualification. The same principle applies in respect of food standards official controls, where an officer with a lower level qualification could be deemed competent to undertake interventions at high risk A rated establishments subject to a competency assessment.

The Ordinary Certificate in Food Premises Inspection and some of the food standards qualifications listed are historic, and there are unlikely to be significant numbers of officers in employment holding these qualifications.

The inclusion of those holding a degree and MSc in environmental health without the professional qualification (currently required) has the potential to increase food workforce capacity subject to there being a stream of new graduates who choose:

- i) to work in local government in Wales and
- ii) to work in food law enforcement.

The omission of an estimate of the number of newly qualified individuals that may be available to work in local authorities and BCPs in Wales has meant that it is not possible to consider the potential impact of the proposals.

In respect of food hygiene, the footnote in the Code states that the qualifications listed all require 'successful completion of all elements, including written exams, portfolios, oral exams, practical exams, professional interviews, as specified by the awarding body'. This is not necessarily the case for those qualifications awarded by bodies other than the professional institutes. Professional qualifications are important in that they provide independent and consistent assessment of the practical application of academic knowledge.

A survey of the local authority food workforce commissioned by SSAFW was issued in 2020 but has not yet been completed as a consequence of COVID. SSAFW agreed that the survey was needed to collate information on the local authority food law enforcement workforce in Wales. The results of this survey will be key to informing immediate and future workforce needs. It should be noted that local authorities have experienced some difficulties recruiting suitably qualified and experienced officers where vacancies arise.

Professionally qualified officers, whose competencies have been independently assessed and are maintained, are important in a local authority context as food law enforcement decisions can be challenged in court. The qualifications and professional credentials of enforcement officers are used to demonstrate their professional judgement, expertise and credibility as a witness in court. Unqualified officers are at greater risk of having their credentials challenged, which could increase the risk of a court case being unsuccessful. Lost court cases can result in significant costs being incurred by local authorities and may put the public at risk.

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'

The stated aims of the Competency Framework raise some questions. One 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. In respect of food standards the activities in the Framework are limited:

B1.2 There is a significant lack of detail in relation to traceability (and the specific requirements for particular products), and there is no reference to food compositional standards. The entire section comprises only two lines of an excel spreadsheet. The majority of this section (9 lines of the spreadsheet) focuses on the ability of officers to assess food safety management and quality assurance systems.

B6 Considers composition but in very broad terms and could lead to differences in interpretation. Very few food standards inspections are carried out without an inspection of food or an assessment of its composition.

B6.3 Assessing product labelling and information (covers the assessment of food and/or feed product labelling, advertising and other information, including information provided online, to determine whether it complies with applicable legal requirements). The scope of this activity is too broad and should be separated into further sub-activities e.g. general labelling requirements; product specific Regulations; nutrition and health claims. However, this could further increase the complexity of the Framework and the time it takes to complete a competency assessment.

B5.1 Official control and formal sampling rely on different processes and techniques to assess the standards of food and feed. It would be appropriate to separate sampling activities for food hygiene (microbiological sampling), food standards and feed.

B1.4 It would be beneficial to include feed fraud and feed crime in addition to food fraud and food crime.

An investigation file (C1.1) and a prosecution file (D3.1) are the same and could be combined.

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?

Defining competency by activity has the potential over time to diminish a highly skilled professional workforce. Whilst this approach may provide some flexibility in the utilisation of resources for the delivery of food law, it has the potential to reduce flexibility across public protection services. It also creates difficulties for local authorities to recruit into posts which have defined duties.

Flexibility is provided by officers who are able to deliver a wide range of food control activities and, in the case of environmental health and trading standards professionals they are also able to work across a range of public protection disciplines. This provides benefits to consumers, businesses and local authorities and is more cost effective.

The preference is for officers to possess qualifications which provide the underlying knowledge and for the qualifications to be mapped to the FSA's Competency Framework. All qualifications in the Code should be mapped to the Competency Framework and any gaps identified and addressed as appropriate. This ensures consistency and supports local authority lead officers in the recruitment process. Qualifications should be available at levels 4-7 providing a clear career path for those providing assurance.

Urgent workforce capacity shortfalls such as those already identified at BCPs should be addressed through a bespoke co-produced solution, comprising specialist training which will be recognised in the Code.

There is a significant risk that the proposals will weaken the public health protection system in Wales.

Increasing workforce capacity is a shared aim. However, a change from a role or profession-based approach will necessitate close mentoring, monitoring and supervision of those employed to undertake limited tasks/activities. This will place an increased level of responsibility and burden on the existing skilled, professional workforce.

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?

No. There is no information or data in the consultation document relating to the current quality or consistency of delivery across the public or private sector. In the absence of suitable metrics, it is difficult to assess the impact the 'standard' may have on the quality or consistency of food controls.

Results of the FSA's 2019 national consistency exercise, which demonstrated consistent application of food hygiene ratings by local authorities in Wales, have not been included in the consultation documents. Local authorities, with the support of the FSA Wales and Welsh Government have invested considerable efforts in delivering consistency training for officers responsible for food hygiene controls across Wales. This training is ongoing and takes place within and across local authorities.

Setting a standard will not improve the quality and consistency of food control activities across the public and private sector. It is the consistent application of the standard which has the potential to deliver improvements. It is noted that the FSA is still

exploring how this will be achieved and until there is clarity, we are unable to support the implementation of the Competency Framework in Wales. Except in respect of local authority delivered control activities, where there is currently a competency framework in place, centrally produced competency frameworks do not exist for those providing control activities or assurance in other public or the private sector, so this should be a priority for the FSA. Research commissioned by the FSA into how other organisations assess and authorise competency has not been completed.

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

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. Departure from the Code has the potential to impact not just on local authorities and port health authorities, but also on businesses and consumers. Such departures should be subject to independent scrutiny by the appropriate Minister. This ensures the accountability of the FSA. Requests for Ministerial approval for departure from the Code should be accompanied by a robust case setting out the justification for departure.

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 programme for the year ahead together with the resources required. 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 questionable whether it is appropriate to 'instruct' a departure from a Code, which has previously been subject to Ministerial approval and has legal status without independent 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. It is considered that these have been adequately reflected. The consultation document states that the general performance of official controls and other official activities under the OCR remain substantially the same.

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

There is no information provided on the expected costs to local authorities or any attempt made to quantify the likely impact of the proposals on the local authority workforce. This is a further significant omission. We are doubtful the proposals will solve the emerging workforce crisis at BCPs or recruitment and retention difficulties in the longer term.

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. It has been a longstanding expectation of the FSA that all officers have *knowledge and understanding of relevant legislation, codes of practice, guidance, policies and procedures*. This is also set out in the new Competency Framework.

The consultation document states that lead 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 of 46 pages, the Competency Framework 100 pages, the Code 88 pages and the Practice Guidance 244 pages. It is recognised that lead officers will need to disseminate information to officers, however, officer time to consider information disseminated to them has not been included.

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. There is a contradiction later in the same paragraph stating that it 'might take longer'. The view of lead officers in Wales is that the new Competency Framework assessments are likely to take substantially longer than they would currently spend on officer competency assessments and that this will place a significant unnecessary additional burden on already stretched local authority resources. As there is no evidence that

local authorities are employing officers who are less than competent or that official controls are being delivered inconsistently raises a question about the value of the proposals. 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 e.g. those working at BCPs and official fish inspectors where the requirement for a qualification has been removed, is almost certainly going to increase the time it takes to undertake the assessment of competence.

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 unquantified shortfalls in the workforce. Further, the shortfall in local authority and port health authority 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 has been identified as an integral component of the work by Directors of Public Protection in conjunction with other key stakeholders to develop a sustainable public protection workforce in Wales.

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 the 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'. This statement is not supported by any evidence and it is difficult to envisage how this has been determined. There is no supporting information provided in the consultation documents about current quality and consistency of food control activities delivered by local authorities. The proposals have the potential to reduce consumer safety and confidence for the reasons outlined in this response.

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?

No. Assumptions on familiarisation and dissemination time have been significantly underestimated. See response to question 8.

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?

The time it takes to assess the competency of a newly appointed member of staff is highly variable, depending on their qualifications and experience. However, lead officers are able to obtain some assurance where officers hold a relevant professional qualification. The competencies of officers already in post are assessed on an ongoing basis through regular work reviews.

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

Yes, the new Competency Framework is significantly more extensive and implementation will necessitate the allocation of a disproportionate amount of lead officer time. There is no suggestion in the consultation document of additional funding being available for this additional work, which is a matter of concern when local authority resources are already under pressure and the future of public sector funding is uncertain in light of COVID.

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

This varies across local authorities. The workforce survey commissioned by SSAFW will provide this information. Local authorities also typically use agency staff and contractors. It is not clear in the consultation document whether these will need to be subject to assessment against the Competency Framework if they have one of the qualifications listed in the Code of Practice.

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

It is anticipated that new staff will need to be appointed to the BCPs planned for Wales in 2021/22.

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).

There are likely to be cost implications for local authorities arising from additional training and updating of policies and procedures around competency and authorisation of officers.

The proposals have the potential in the longer term to reduce local authority capacity and resilience to respond to other public health protection matters e.g. investigation of notifiable infectious diseases.

There is a real risk that lead officers faced with the burden of implementing the new Competency Framework will seek employment outside local authorities, particularly if there are no measurable benefits.

Officer time expended in identifying and referencing the evidence required to inform the new competency assessments will impact on their ability to deliver official controls.

Changes to the qualification requirements of those who can provide assurance on food could impact on international trade. This risk has not been identified in the consultation.

Other Comments

Practice Guidance

There is duplication at:

3.4.1 The Competency Framework is activity-based and describes the competencies required to undertake an activity. (this sentence is repeated in paragraph 2)