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Update

The Food Standards Agency ("FSA") has launched a consultation into the Food Law Code of Practice, which can be found on the FSA's website (at **http://tinyurl.com/pyl2n9f**). Underlying the consultation is the need to ensure a consistency of approach to food safety enforcement that is focused on those food businesses presenting the highest risk. The consultation is vital reading for anyone involved in a food business in understanding and influencing the changes proposed. Responses to the consultation are required by 17 September 2013.

If you have any comments you would like us to make in response to the consultation, then please email us at **SHERegulatory@clydeco.com**.

What is the Code?

In the UK, Local Authorities are responsible for compliance with food law by businesses. Direction and guidance on the approach to be taken is set out in the Code.

This Code requires regular revision so that it reflects current enforcement practices and supports Local Authorities in ensuring that the actions they take are effective, consistent, risk based and proportionate.

What does the consultation cover?

The overall objective of this latest initiative is to enable Local Authorities to adopt a flexible approach to enforcement while maintaining a high level of health protection.

The proposed changes addressed in the consultation cover:

- Risk assessment
- Inspection frequency
- Enforcement powers

The consultation is part of a long-term project by the FSA reviewing food law enforcement, with changes planned well into 2014. In due course, more significant revisions to the Code are likely to be undertaken and we shall keep you updated about these.

What are the key proposals?

The FSA is currently inviting comments on its proposals on the following:

Risk assessment

Local Authorities, in ensuring compliance with food law, must undertake regular official checks of food businesses. Due to the changing nature of the food industry it is imperative that the system employed reflects current working practices in the food industry and reduces any circumstances that result in an inconsistent approach being taken by the regulators.

The Code includes "intervention-rating schemes" for determining the frequency of checks at food establishments using risk assessment criteria.

The existing criteria include:

- The potential hazard or risk
- The level of current compliance by the establishment
- The confidence in management and control systems

However, the FSA has identified inconsistencies in the application of the risk ratings. It appears that establishments carrying out similar activities are being subjected to different approaches, depending upon

how that particular Local Authority interprets the criteria.

The FSA therefore proposes to clarify the risk criteria as set out in the Code to ensure consistency.

Inspection frequency

Linked to the above issues, the FSA aims to improve the effectiveness of enforcement by amending the minimum inspection frequency for businesses. At present, Local Authorities use the risk assessment criteria to determine how often a business needs to be subject to official checks. However, the evidence suggests that Local Authorities have struggled to apply this consistently, resulting in similar businesses experiencing varying degrees of inspection. For example, establishments that are broadly compliant with food law have experienced the same frequency of inspection as those failing to meet their legal requirements.

The FSA proposes amending the Code to help Local Authorities identify those that need more regulatory activity, ensure the inspection regime properly reflects this and allow enforcement to focus on businesses that are non-compliant with food law.

Essentially what this means is that there should be minimum intervention for lower risk establishments and more focus on high-risk organisations.

Enforcement powers

An establishment can be subject to enforcement activity by both the FSA and the Local Authority if it is involved in certain activities. This most often occurs in situations where a food establishment deals with a combination of meat, other products of animal origin and/or products of not animal origin.

To reduce this regulatory burden, the Code will be amended to avoid overlaps in enforcement. The FSA will take over the enforcement of all overlapping activities where possible with the consent of all parties.

What happens next?

Anyone involved in a food organisation is advised to familiarise themselves with the changes proposed and the ways in which this may affect their business. It is hoped that the proposals shall result in businesses that are compliant being subject to less intervention from the regulators in relation to their enforcement activities and a greater focus on those who fail to meet their duties.

The consultation closes on 17 September 2013, following which the FSA shall consider the responses and report on the changes to be implemented. We shall advise you further when this happens.

Further information

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