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# **Review of the Food Law Code of Practice, Food Law Practice Guidance and implementation of the Competency Framework - England**

**Food Standards Agency**

**Chartered Trading Standards Institute Response**

**December 2020**

**About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the [Business Companion website](https://www.businesscompanion.info/) to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the [Consumer Codes Approval Scheme](http://www.tradingstandards.uk/advice/ConsumerCodes.cfm) which facilitates high principles of assisted self regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the [Consumer Protection Partnership](https://www.gov.uk/government/publications/consumer-protection-partnership-update-report-2016-to-2018), set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.***

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This response has been composed by CTSI Lead Officer for Food and Nutrition David Pickering. Should you have any queries or wish to discuss the response please do not hesitate to contact Laura Kane, CTSI Policy Executive [laurak@tsi.org.uk](mailto:laurak@tsi.org.uk).

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# **Title of Consultation**

## Executive Summary

The purpose of the consultation is a review of the Code and Practice Guidance, and implementation of the FSA Knowledge and skills for the effective delivery of official food and feed controls and other activities (Competency Framework).

The key proposals are:

* modernisation of the baseline knowledge, skills, and experience requirements to enable a wider cohort of environmental health and trading standards professionals to undertake official food controls and other official activities, which the current Code restricts
* replacing existing competency requirements with the Competency Framework, which defines competency by activity rather than by role
* introducing a provision to enable the FSA to be more responsive in issuing instructions, whereby LAs and PHAs may legitimately depart from the Code, in limited circumstances
* updating the Code to reflect the Official Control Regulation (EU) 2017/625, and EU exit implications, where the negotiated position is known.

## CTSI Response

CTSI welcomes the opportunity to respond to the consultation. Whilst wanting to offer comments on all aspects of the Code and Guidance the short consultation period has meant that providing a comprehensive response has not been possible. CTSI has focused on what has been identified as the more obvious areas for comment and silence on certain contents of the Code and Guidance should not be taken as there being no view on these areas.

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?**

Whilst supporting the FSA desire to offer comprehensive information and guidance the documents are lengthy. One suggestion to reduce the length could be that rather than repeating the statutory provision the Code and Guidance reference them.

1. **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).**

Ideally LAs need increased flexibility to utilise appropriate officers at the right level to increase capacity by attracting new officers to the roles and utilising existing officers in the most effective and efficient way. The proposed requirements appear to offer a pathway to achieve this. However, CTSI asks the FSA to consider the importance of the way such proposals are messaged to existing officers. In times of reduced resources CTSI does not want the proposals to alienate existing officers by making them feel undermined and undervalued. CTSI does not believe that this is the intention of the proposals however without sensitive communications goodwill and support could be easily lost. The support of existing skilled, competent and qualified officers will be vital to support the growth of capacity for food standards work.

Whilst CTSI accept the limitations on the influence the FSA has on such matters funding is still a major issue for all services. CTSI urges the FSA in future to consider more robust interactions with Chief Executives of LAs where they assess the food function isn’t achieving what it should or is under threat.

1. **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 competency framework is very comprehensive. CTSI’s main concern is the potential impact assessing competence of officers will have on the assessing officers’ capacity. Competent and qualified officers are essential to delivering food standards work to the level the FSA and CTSI would expect however there must be a balance between assessment and work being done. It is clearly ineffective to have lots of evidence about competence but gathering this has a detrimental impact on delivery. CTSI would ask that the FSA take the opportunity in the food standards pilot project authorities to closely assess the impact and effectiveness of the framework and be open to change if needed.

1. **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?**

CTSI would agree with this but would ask the FSA to consider the concerns raised in Q2. CTSI would also urge the FSA to continue to work in partnership with CTSI when developing the standards for such competencies

1. **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?**

CTSI believe setting a standard can set the foundations for activities to give confidence to both consumers and businesses that food controls are being delivered to that standard. CTSI asks the FSA to consider further that assurance related activities are different to delivering official controls and this should be reflected in the expected standard. CTSI would also challenge the idea that consistency is a desirable goal in itself and that the aim should be to achieve appropriate outcomes to ensure consumers are protected and FBOs have a level playing field. Consistency can play a part in that but in itself may not deliver useful outcomes. CTSI would also strongly urge the FSA to carefully consider the implications of non-LA delivery in the food standards sector. Independent LA interventions to achieve compliance should not be replaced by third party auditing. Such auditing could be used to inform LA work but as the FSA is aware third-party auditing is an entirely different process to official control delivery methods.

1. **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?**

CTSI support this idea. The COVID-19 situation has demonstrated how the FSA can support LAs by working with them to identify the impact on LA services and what guidance is appropriate to assist LAs to do what they can with the resource they have. Whilst CTSI would hope a situation that has such a dramatic impact on LA food control delivery does not occur again, similar issues may arise that need the FSA to respond quickly.

1. **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?**

CTSI would agree. One concern is it appears that the provisions relating to sampling have been moved from the Code to the Guidance. CTSI is concerned that this may be viewed as a reduction in status for sampling. Sampling can play a vitally important role in food standards work and, as the FSA is aware, sampling budgets and numbers have been reduced over the past few years. This change may result even further reduction in budgets and sampling rates and we would ask the FSA to consider raising the profile of the need for sampling in the Code.

1. **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? 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?**

Whilst broadly supportive of the assessment CTSI would like the FSA to gather further evidence as suggested via the pilot project about the competency assessment times. Each LA will have a different system so the FSA may find real life data more useful to provide an average time. It will also offer an opportunity to gather data about how the assessment works in different LA settings.

1. **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)**

Given the limited time available CTSI would not have a full response to this question.

One issue that CTSI would like to raise relates to the allergen section of paragraph 2.6.6 of the Code Division of responsibilities in two tier Competent Authority areas

“Allergens: District Council Competent Authorities in an area for which there is a County Council Competent Authority, have the power to enforce the provisions of Regulation 9(2) of the Food Information Regulations 2014 in relation to allergen requirements for non-prepacked and prepacked for direct sale foods (PPDS), and it must be agreed at a local level how enforcement of these provisions are to be shared, but it is expected that District Council Competent Authorities will enforce these provisions at catering premises as part of their planned intervention programme”.

Having stated the provisions “must be agreed at local level” it goes on to say “it is expected that District Council…will enforce the provisions” in certain circumstances. CTSI consider this provision to be contradictory and unhelpful If it is to be decided at local level, CTSI’s view would be to leave the provision at that point. The further provision relating to District Councils is unhelpful as the issues can be decided locally and it may not be appropriate in some areas. It could also create an expectation that in some circumstances creates resource difficulties and would be better left flexibly to decide at local level.