



**Chartered  
Institute of  
Environmental  
Health**

# **Draft Food Law Code of Practice and the Draft Food Law Practice Guidance**

**Chadwick Court  
15 Hatfields  
London  
SE1 8DJ  
United Kingdom**

---

**Response to the  
Food Standards Agency  
consultation**

Tel: + 44 (0)20 7928 6006  
Fax: + 44 (0)20 7827 6322  
Website: [www.cieh.org.uk](http://www.cieh.org.uk)

August 2005

## **CHARTERED INSTITUTE OF ENVIRONMENTAL HEALTH**

Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and educational body, dedicated to the promotion of environmental health and to encouraging the highest possible standards in the training and the work of environmental health professionals.

CIEH has over 10,500 members working in government, non-governmental agencies, companies and the armed forces. As well as providing services and information to its members, CIEH provides information to government departments and evidence to them on proposed legislation relevant to environmental health.

In 1993 the Chartered Institute became the World Health Organisation Collaborating Centre for Environmental Health Management in Europe.

Any enquiries about this response should be directed in the first instance to

Jenny Morris  
Policy Officer  
Chartered Institute of Environmental Health  
Chadwick Court  
15 Hatfields  
London SE1 8DJ

Tel: 020 7827 5835  
E-mail: [j.morris@cieh.org](mailto:j.morris@cieh.org)

The Chartered Institute of Environmental Health (CIEH) welcomes the opportunity to comment on the consultation on the draft Food Law Code of Practice and draft Food Law Practice Guidance.

## **GENERAL ISSUES**

The Code and Practice Guidance documents are of great importance to enforcement officers and, as a result, it is essential to ensure that they are effective working tools. Unfortunately the size and style of the documents makes them complex to navigate and the consultation process might have been made much simpler and significantly easier for consultees had the changes from the previous code and practice guidance been clearly identified. It is hoped that such an approach will be employed in the future when material is being revised.

The size and complexity of the previous versions has been commented upon by CIEH previously and the redrafting has made little difference to ease of navigation. As a consequence it is likely to mean that the documents will mainly be used as reference text rather than tools to manage operational processes.

That being said, CIEH has previously identified the need to provide robust guidance on new legislation in good time, allowing familiarisation with the new requirements to take place and changes to be made before the laws come into force. Such a consideration applies not only to enforcement officers but often more so to industry. As a consequence, it is very pleasing to note that this consultation is taking place at an early stage and it is hoped that substantial guidance will be issued some weeks before 1 January 2006, when key changes come into force. It is, however, recognised that there may be some difficulties in achieving this given that various matters still remain to be resolved at European Union level. Despite this, there would seem to be considerable merit in providing the majority of the Code and Guidance to enforcers and business at an early stage, with the proviso that subsequently certain amendments will need to be made.

Whilst much of the Code and Guidance reiterates material found within previous editions, there has been significant change in the areas relating specifically to legal procedures. The legal structure is now much more complex, with the need to use both new national and European legislation together with elements of existing UK legislation. Whilst the Code and Guidance seek to clarify the situation, it remains a very complex scenario and, as a result, may be interpreted variously by users. In order to avoid confusion and to aid consistency, CIEH believes that there is a clear need to provide training courses on the new requirements, especially in relation to the changed legal frameworks.

On previous occasions, the Food Standards Agency (FSA) has provided training where new legal requirements have been introduced. Whilst it is understood that some general updating will be provided, as part of the training for enforcement officers on the requirements of Article 5 of Regulation 852/2004, this would seem too limited. CIEH believes that more extensive update training on the changed requirements is needed and trusts that the FSA will facilitate this at an early stage.

## **FOOD LAW CODE OF PRACTICE**

### **1. Section 1. Administration**

#### **1.1 Chapter 1.5. Registration of food business establishments**

- 1.1.1 The registration procedures appear to repeat, in the main, the previous requirements arising from the Food Premises (Registration) Regulations 1991. CIEH, the Local Authorities Co-ordinators of Regulatory Services (LACORS), Which? and the Institute of Food Science & Technology (IFST) believe that such a system does not provide adequate consumer protection. The incoming European hygiene regulations offer the opportunity to make changes and the aforementioned bodies support the move to a

prior approval system. Whilst it is understood that the FSA is currently investigating the potential for a prior approval system, it bears reiterating that the current arrangements are not effective and that the existing registration system has fallen into disrepute. Evidence of this failure is widespread and CIEH and partners will be happy to provide case studies demonstrating the registration difficulties in order to assist the FSA in its investigation of the costs and benefits of a prior approval system.

- 1.1.2 As the current proposal appears in the Food Law Code, a model registration form is provided at Annex 8. It is suggested that it would be helpful to produce guidance notes for completion, as is current practice, to assist correct interpretation by businesses and, as far as possible, eliminate inaccuracies.

## **2. Section 3. General Enforcement**

- 2.1 Some concern is felt about the detailed inclusion of PACE Code of Practice B, Sections 15 to 16, within the Food Law Code and in particular paragraph 3.1.7, sub paragraph 1:1 which advises that powers of entry etc should not be used if there are “less intrusive means of meeting necessary objectives”. This clearly would not be appropriate for commercial premises inspection and there is already a recognised procedure for the inspection of domestic premises. The circumstances in which PACE Code B applies need to be made entirely clear for the benefit of both enforcement officers and business; as the wording currently stands there is potential for confusion. It might also prove beneficial to include advice on the circumstances when a Code B notice should be issued, if not in the Code itself, then in the Practice Guidance.

### **2.2 Chapter 3.2: Improvement Notices**

- 2.2.1 Paragraph 3:2:1 introduces the notion that Section 10 of the Food Safety Act may be used to issue improvement notices to address breaches of food standards legislation. This appears to depart from current procedures and clarification is sought as to this issue, which appears to be outside currently agreed legislative changes.

### **2.3 Chapter 3.3: Prohibition Procedures**

#### **2.3.1 Paragraph 3.3.2.5 Remedial Action Notices**

The Code does not appear to include a model Remedial Action Notice apart from a “Notice of continuing risk to health”, as found at Annex 7.7. It is suggested that inclusion of a model form for a “standard” Remedial Action Notice would prove helpful.

- 2.3.2 Paragraph 3.3.3.3 Page 54, relates to the issuing of a prohibition order by a court in relation to Section 11 of the Food Safety Act 1990. Examples of circumstances that might lead to such a situation might prove helpful and would mirror the approach taken in paragraph 3.3.3.1.

### **2.4 Chapter 3.5: Temperature Control Requirements**

#### **2.4.1 Paragraph 3.5.2 General approach to temperature checks**

The final paragraph of this section states that “Unless temperature control is the subject of a complaint, temperature measurement should normally only be carried out as part of primary inspection”. This appears to be unnecessarily restrictive. Correct temperature control is a key element of food safety, as demonstrated by the choice of “Chilling” as one of the 4Cs of the Food hygiene campaign and as a key element in the structure of the Safer Food Better Business project. There may well be good reason to check temperatures during a secondary inspection, especially in relation to the additional inspections required for product specific premises. Unless there is an essential reason to exclude temperature checks from secondary inspections, it is suggested that this sentence be removed. If this is not possible, then some explanation for its inclusion should be provided.

#### **2.4.2 Paragraph 3.5.3 Food that is warmer than prescribed chill temperatures**

Previously guidance on the four hour exemption had identified that only one period of up to four hours was permitted. This does not appear to be specified in this section and clarification of the new situation is required.

### **3. Section 4. Inspections**

#### **3.1 Paragraph 4.1.2 Primary Inspections General**

3.1.1 From January 2006, a key focus for enforcement officers will be on assisting businesses with the implementation of food safety management systems, as a result of the new requirements of Article 5 of Regulation 852/2004. At the same time, officers will be required to meet inspection targets specifically in relation to primary inspections. To assist in the implementation of the Article 5 requirements it is suggested that the definition of primary inspections be amended to include the educational and advisory activities required to assist implementation of food safety management systems.

3.1.2 Whilst this would assist in addressing the new requirements, in the wider context of the Hampton review a more fundamental rethink about control procedures is required. At present food control concentrates on the numbers of premises visited rather than on achieving improvements in food safety and enhancing consumer protection. Research evidence is emerging about tools that can deliver improvement and a move towards a flexible outcome based system must be identified as a key priority.

#### **3.2 Paragraph 4.2.2 Inspections - General**

3.2.1 In a variety of sections the Code makes reference to the use of model inspection forms, produced by LACORS, individual food authorities or regional groups. It is assumed that the intention of this is to aid consistency. Lack of consistency has been raised as an issue by business for some time, although definitive evidence of major problems does not appear to have been produced. Despite this, the need for consistency is important and is likely to become even more essential if a comprehensive system of publishing hygiene inspection results is adopted nationally. As a consequence the drawing up of an agreed national form could prove beneficial. It is understood that LACORS will be updating their inspection aide memoire and this could provide an appropriate opportunity to work on constructing a suitable form. CIEH would be pleased to assist in this process.

## **FOOD LAW PRACTICE GUIDANCE**

### **Annex 10**

The Practice guidance provided is helpful in identifying the general approach to enforcement and in highlighting the issue of “flexibility” However further guidance will undoubtedly be required. This may be provided through Commission guidance and/or through the new Industry Guides however the timescales for their production are not clear. Even when these become available there are still likely to be questions raised and perhaps the FSA could consider the creation of a web based discussion board and Q and A site to assist in addressing issues and facilitating the exchange of examples of HACCP good practice, process management and system methodologies.