

Chartered Institute of
Environmental Health



Sefydliad Siartredig
Iechyd yr Amgylchedd

Food Standards Agency Consultation

Implementation of the Official Controls Regulation

Wales specific Consultation

Response of the Chartered Institute of Environmental Health (CIEH) in Wales

October 2019

About the Chartered Institute of Environmental Health (CIEH)

The CIEH is the professional voice for environmental health representing some 8,000 members working in the public, private and non-profit sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

For more information visit www.cieh.org and follow CIEH on Twitter @The_CIEH.

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This submission

In producing this submission, the CIEH has drawn on comments provided by its members. The CIEH is extremely grateful for their assistance.

General comments

The CIEH has members working across Wales to ensure food is safe and what it says it is. They work in the public, private and third sectors, making a real difference, training food handlers, working for food businesses advising them of their legal obligations and, on the front line, delivering official controls. They all work with a common aim - keeping consumers safe.

Environmental Health Practitioners in local authorities are committed to ensuring consumers have the necessary information to make informed choices about where they eat and purchase food through their participation in the mandatory Food Hygiene Rating Scheme. We are encouraged that the new Regulation (EU) 2017/625 (OCR) at Article 11 *Transparency of Official Controls* states that:

“Competent authorities may publish, or make otherwise available to the public, information about the rating of individual operators based on the outcome of one or more official controls, provided that the following conditions are met:

- (a) the rating criteria are objective, transparent and publicly available; and
- (b) appropriate arrangements are in place to ensure the fairness, consistency and transparency of the rating process”

Although the CIEH was not listed in the consultation document as an ‘interested party’ we are interested and would be grateful to be listed in future FSA Wales consultations as an interested party. Despite this, we welcome the opportunity to comment on FSA proposals for the implementation of The Official Controls Regulation (EU) 2017/625 (OCR) which will apply from 14 December 2019 if:

- the UK remains in the EU
- or agrees an implementation/transitional period with the EU.

As a general comment, providing meaningful feedback on this consultation has proven challenging not least because of the volume of information provided (95 pages), the layout of the document, the limited time to consider the proposals in consultation with our members and difficulties locating Annexes A to D - the Annexes in the consultation document have not been correctly labelled. Further, it is noted that the proposal is for the FSA to prepare three statutory instruments (SIs) to ‘provide the execution of powers and enforcement to the OCR and tertiary legislation in Wales’ but they are not available at the current time. Further information would have been welcomed on how the three SIs will be structured and their scope. If the opportunity arises, we would welcome the opportunity to comment on the draft SIs when they become available.

We have restricted the CIEH response to our five main areas of interest. Others will be better placed to address the specific questions in the consultation.

Enforcement Sanctions

The CIEH supports work planned by the FSA to consider whether greater use could be made of non-criminal sanctions for food offences that have limited public health impacts. Criminal sanctions can be disproportionate and place unnecessary burdens on professional officers. However, we are of the firm view that along with new non-criminal sanctions, criminal sanctions should be maintained as a fall-back position to deal with persistent offenders or where it may be more profitable for offenders to pay repeated fines than comply with legal requirements.

Financing Official Controls

We note that (EU) 2017/625 (OCR) expands upon the EUs existing legal basis for the financing of official controls and we welcome this as an opportunity to build a sustainable, adequately funded regulatory system in the UK. Cuts to public services have seen a reduction in resources available at a local level to deliver official controls. The FSAs LAEMS data provides robust evidence of this. We question why the FSA does not anticipate introducing any changes now or immediately after 14 December 2019 to explore new systems for financing official controls. This may be a missed opportunity and is not consistent with one of the FSAs Regulating Our Future (ROF) principles. Principle 5 states that *"Businesses should meet the costs of regulation, which should be no more than they need to be"*. As a starting point the CIEH would like to see the FSA explore the introduction of fees to cover the costs associated with following up non-compliance.

Import Controls on Food Not of Animal Origin (FNAO) and Products of Animal Origin (POAO) for Human Consumption

Whilst there are currently no Border Inspection Posts (BIPS) or Designated Points of Entry (DPE's) in Wales, it is possible that in the future a Border Control Post will be established. Further, it is noted that there are proposals for identity and physical checks on imported foods to be carried out at inland control points. Both of these have the potential to impact on the work of Environmental Health Practitioners.

Moving forward, it will be necessary to have a sustainable pool of qualified and experienced EHPs to cover Imported Food Controls at a potentially sensitive time for food imports. This is in order to both facilitate trade and provide appropriate risk-based interventions to protect public health.

CIEH considers that the wording of (EU) 2017/625 (OCR) provides for a more overarching interpretation of the definition of "Official Veterinarian", allowing for both Official Veterinary Surgeons (OVS) and EHPs to carry out checks at ports providing flexibility and continuity at a time of great change and potential challenges.

In the current legislation that enacts the related European legislation concerning veterinary checks into UK law – the Trade in Animal Products Regulations 2011 (TARP Regs), a specific derogation exists, and EHPs are referred to as Official Fish Inspectors:

"Appointment of official veterinary surgeons and official fish inspectors

12.—(1) The Secretary of State must appoint suitably trained veterinary surgeons to be official veterinary surgeons for any border inspection post authorised to import animals.

(2) The district council for an area with a border inspection post authorised to import products must appoint suitably trained veterinary surgeons to be official veterinary surgeons for that post.

(3) The appointment under paragraph (2) may be made by the Secretary of State rather than the district council if the approval for the border inspection post only permits the importation of animal by-products.

(4) If the approval for the border inspection post permits the importation of any product (other than snails) for human consumption listed in Chapter 3 of Annex I to Commission Decision 2007/275/EC the district council may appoint suitably trained environmental health officers to be official fish inspectors for that post in relation to fish and fishery products, and that inspector has all the powers of an official veterinary surgeon in relation to these products"

Article 49 of (EU) 2017/625 (OCR) does not provide a designation for Authorised Officers or Official Fish Inspectors. Interestingly however, it does make the following distinctions:

*"animals, except aquatic animals, or meat and edible meat offal, by an official veterinarian, who **may be assisted by staff trained** in accordance with the requirements established under paragraph 5 in veterinary matters and designated by the competent authorities for that purpose;"*

*"aquatic animals, products of animal origin other than the ones referred to in point (a) of this paragraph, germinal products or animal by-products, by an official veterinarian **or by staff trained** in accordance with the requirements established under paragraph 5 and designated by the competent authorities for that purpose".*

The critical distinction here is the use of the phrases "may be assisted by staff trained" (for meat and edible meat offal) and "or by staff trained". This second phrase allows for the continuing use of EHPs in checks for fish and non-animal origin foodstuffs. The CIEH calls upon the FSA to state explicitly in the new Official Controls Regulations that EHPs can be the authorised officers to carry out this work for the avoidance of doubt and continuity of the service.

Training

The changes to delivery identified in the consultation document suggest that non-Official Veterinarian staff will be required to undergo additional training to

carry out official controls. We are not aware of any evidence that supports the need for additional training of EHPs/ Official Fish Inspectors who currently carry out official controls on these products. Such training would be an unnecessary burden to the taxpayer and importers who will have to foot the bill. Further, it could lead to unnecessary delays at a time when keeping trade flowing smoothly will be a Government priority.

We believe the (EU) 2017/625 (OCR) presents a significant opportunity to build future sustainability for Imported Food Controls with a fit for purpose service. Currently, the TARP regulations give a designation of "Official Veterinary Surgeon". This is similar, but not a direct transfer of the EU requirement for "Official Veterinarian". The definition of Official Veterinarian in Article 3 of 2017/625/EC means a veterinarian appointed by a competent authority, either as staff or otherwise, and appropriately qualified to perform official controls and other official activities in accordance with this Regulation and the relevant rules referred to in Article 1(2);". It is specific to the **tasks being carried out** at the Border Control Point but does not state the professional qualifications required (leaving this free to Member States to decide). Whilst in the past UK legislation has deemed that Official Veterinarians need to be Official Veterinary Surgeons, this may be an over-interpretation of EC law. Our members advise us that most ports currently employ OVS who are EU nationals. They are not UK qualified Veterinary Surgeons. This situation may not be sustainable. It would therefore be hugely beneficial to define EHPs practising in these fields to be deemed to be Official Veterinarians to build operational flexibility into future imported food controls.

Qualifications and experience of EHPs

Qualified Environmental Health Practitioners (EHPS) are appropriately trained and have the necessary level of technical competence and expertise to implement the new OCRs and enforce the legislation. Food enforcement in the UK is primarily the responsibility of EHPs who are trained in food safety and standards. Their Environmental Health degree qualification is recognised in the Food Law Code of Practice. EHPs working at ports have also completed practical and theoretical training and examinations to meet the requirements set out by the CIEH to inspect, detain and seize meat, as well as products of non-animal origin at a port of entry or the point of sale.

In addition to their qualifications, EHPs working at ports receive regular training covering all aspects of imported food controls to ensure their skills and knowledge are kept up to date. This training is provided in-house, as well as by the EU, FSA, DEFRA and CIEH Port Health Panel. Many EHPs working at ports will have also completed 50 or 200 hours of meat inspection, which in addition to allowing them to inspect meat independently also confers the status of a 'veterinary auxiliary'.

In the UK, EHPs working at ports enforce import controls on fishery products, high risk non-animal origin foods, other non-animal origin foods, organic imports and fishery products. We are not aware of any serious deficiencies identified by

third party audits, which would necessitate or justify changing who carries out official controls in the future.

EHPs have experience in risk rating, targeting for the most relevant contaminants and taking the most appropriate course of action in line with legal parameters when non-compliance is found. Port Health Officers (PHOs) are fully conversant in import controls and certification schemes and, most importantly, note the Public Health aspects and risks of the role. In the event of a No Deal Exit or the need for additional checks on food products at ports, it is vital that a qualified and highly trained profession is not excluded from carrying out and enforcing these official controls.

The CIEH calls on the FSA to ensure that EHPs will be able to continue to carry out Official Border Controls when the new Regulation is adopted. In addition, the CIEH calls upon the FSA to replace the phrase Official Veterinary Surgeon with Official Veterinarian and apply the definition for Official Veterinarian as set out in Article 3 of 2017/625 allowing for the use of EHPs as Official Veterinarians to achieve all the benefits outlined in this response.