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Consultation on Mobile Traders Food Hygiene National Standards

CONSULTATION QUESTIONS

Question 1 – Do the standards provide clear and practical guidance?

Yes No

Please explain your view

We are strongly of the opinion that the exemptions for category 2 units will lead to more confusion. This could be simplified by detailing that Category 1 remains as is with the word 'wrapped' being replaced with 'prepacked' and any other mobile trader would then be classified as a category 2 unit.

The definition of 'not prepared' also requires clarification. Possibly the definitions of stages of production in EC 178/2002 should be used.

It is our opinion that, even though the Food Business Operator may for a category 2 premises provide a 'sufficient' supply of utensils rather than a sink, this is an unworkable and, possibly also unenforceable, position.

Given that the term 'adequate' is given as a clear example whereby confusion may exist between relevant enforcing authorities, we are surprised that this consultation is not as clear as it could be. In our opinion, both the legal requirements and the guidance should be detailed in these National Standards as the current proposed standards are still open to interpretation. An example of how to define what is legally required and what is guidance would be the recent Body Piercing Licensing Conditions with the separate Implementation Guide.

I would also refer you to the comments under question 2 below particularly in relation to clearly defining what are legal requirements and what are recommendations

Question 2 – Do you consider the standards meet the legislative requirements?

Yes No

If no, please explain with reference to the standards and legislation

The answer to this question could be either yes or no, but on balance we have opted for no for the following reasons

- Whilst legal requirements/references have been detailed, it is difficult to differentiate between the legal requirements and recommendations and/or good practice. It is our view that there must be greater clarity and the document should perhaps take the form of

the Approved Industry Guides For Good Hygiene Practice (and be approved as such) or be in a similar form to HSE Approved Codes of Practice.

- Following on from the above, whilst legal references by Name and number are listed in each section, what the legislation actually says should perhaps be given at the start of each section under legal requirements or reference.
- The word 'must' has been used frequently throughout the document for non-legal requirements. There should be no "gold plating" of legislative requirements. As previously detailed it should be clear is law and what is good practice.
- Whilst the document is quite prescriptive in relation to some issues it is quite vague on others (the use of the words 'suitable' and 'adequate' being examples of these).

Listed below are examples of the bullet points above-

Introduction

Whilst the purpose of the national standards is for those requiring street traders licences the standards within, if adopted, should be applicable to all similar mobile units to ensure consistency and uniformity of enforcement.

Certificate of Compliance

Whilst the reasons behind the registering authority inspecting the mobile unit and issuing the Certificate of Compliance are recognised, this presents difficulty where the trader does not operate in their area in terms of the operational criterion of the standards. This issue requires to be addressed.

In relation to units registered outwith Scotland, if a certificate of compliance (or a similar scheme operates elsewhere) this should be recognised as the legislation is UK wide.

Period of Validity

This is dealt with under question 4 but this is not risk based which is contrary to the requirements of the Food Law Code Of Practice.

Structural and operational requirements

Given that the document differentiates between structural and operational matters (stating that the latter can only be assessed during normal trading and given the matters raised under certificate of compliance re assessing operational matters), should the certificate of compliance relate only to structural requirements?

Water Supply

The disinfectant requirement should be altered to "either BS EN 1276 and/or BS EN 13697 and/ or equivalent "

Wash Basins

There are a number of occasions where must is used for non legal requirements including

- A suitable supply of liquid soap and single – use paper towels....must be provided – the law does not state this as it is only good practice
- Some of the portable hand wash facilities commonly used do not meet the "piped supply" standard nor is the waste water piped to a suitable "closed container ". Again this is neither as per 852/2004 nor as per existing Industry Guides on Good Hygiene Practice.

Sinks

There are many elements of this section which are open to debate in terms of legal requirements including:

- The document states that category 3 unit (Scoop ice cream vendors) require 3 compartment units for rinsing scoops in addition to a wash basin and sink – this is not a legal requirement. The document also refers to a Section 16 but there is no Section 16 in this document.
- Under category 4 unit information, it states business should provide a sign stating fruit is to be washed. I would suggest that this is under the wrong category and should be under the category 1 units. However, this is not a legal requirement and is only recommended good practice
- The categorisation of the units, the sink requirements, the exemptions and Annex 2 definitions of mobile food unit categories and their operations is confusing and is not clear in terms of the strict legal requirements. A definition of the word 'prepared' is required for clarification purposes.

Equipment

Again the use of must and shall is confused including

- 4.1.5 “....Surfaces coming into direct contact with food....that they could contaminate the food if dirty must be capable of being disinfected and should be duly disinfected as appropriate”

Cleaning And Disinfection

Again some elements of this section are good practice rather than legal requirements. The use of must is questioned including:

- “A documented cleaning schedule must be devised” - this is only good practice. Food business operators operating a one person unit and/or a low risk business would not necessarily be required to have a documented cleaning schedule.
- Whilst much of the information given is prescriptive, it should include reference to disinfectants being used at the correct dilution and for the correct contact time.
- The use of the BS EN chemicals may only be appropriate/required for relevant businesses (the E coli O157 Cross Contamination guidelines) and there may be other disinfectants available.

Personal Hygiene

Again the use of must should be assessed and the legal requirements and best practice/recommendations clarified. Other comments include:

- 6.2.3 Whilst this inclusion is understood, this is perhaps more a health and safety issue than a food hygiene issue.
- 6.3.1 It should include after the word clean, where necessary, protective clothing as per the legislation.
- 6.4 This section should more closely follow the requirement of the regulation (852/2004, Chapter VIII, paragraph 2) as there is perhaps too much detail.

Protecting Food From Contamination

The issue of must should be addressed and again matters which are legal requirements and those which are good practice clearly identified.

There is some information which it is suggested is not required e.g. the second sentence in 7.2.3 re “....such as containers and crates should be

used....” 7.2.7 should be re-assessed as it may be acceptable for food in suitable containers or cases of juice to be stored on the floor.

Pest Control

There are matters in this section which are questioned including-

- 8.2.2 “Bins must be lidded.” This should be altered to fully reflect the regulations which include “....closable containers unless the food business operator can demonstrate that other types of containers or procedures are appropriate....” The Industry Guides also recognises this requirement.
- 8.1.2 re the provision of screens on doors. Whilst it says should is questioned, as there is an open serving hatch which is not expected to be screened. We would suggest that the keeping the doors closed as far as possible would suffice.

Waste

Specific items in this section include-

- 9.1.1 re the provision of lidded bins which is addressed in the first bullet point above (8.2.2) - this is contradicted in 9.2.2 re “a closable container may not be necessary”.
- The use of the words may and must in 9.3.1 (may) and 9.3.2 (must). The latter being good practice (Industry Guide : Markets and Fairs)

Temperature Control

The wording of 10.2 Temperature Control – Specific Requirements should be assessed to reflect the actual legal requirements in Scotland (some of which are precise but others which are more vague). Furthermore ice cream no longer has the specific temperature controls detailed in 10.2.7 and also 15.1.4 on Ice Cream, with the temperatures given being good practice. In relation to reheating there is a proviso in law relating to the reheat temperature being at least 82°C and the quality of the product.

Training

It is suggested that the use of must in the text be assessed including-

- The reference to must receive written or verbal instruction (11.1.2) as this is not appropriate for sole traders.
- It is also suggested that the training requirement in relation to HACCP be included.

Ventilation and Lighting

There are no legal references included. It is suggested that these may be Regulation 852/2004, Annex III, paragraph 1 (the general requirements for mobiles). The following comments are also made-

- If there are no legal requirements, should the word must be used and in relation to ventilation? There are Health and Safety ventilation requirements for hot food units.
- The provision of suitably protected lights is a recommendation and should be identified as such.

Additional Requirements Relating To The Sale Of Ice Cream

The comments made previously in relation to ice cream temperature control and the “three bowl method” also apply here. These are good practice but not legal requirements. Much of the information detailed in this section has been covered in the previous sections. It must be clear to operators which are parts are legal requirements and which are good practice.

Question 3 – Are there any requirements which are not included but should be?

Yes No

Please explain your answer

There is an obvious discrepancy in the sample certificate in Annex 1 as this includes a reference to the Health and Safety at Work etc. Act 1974 yet the national standards don't address this.

It appears that, under the Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 which came into force on the 1st October 2015, self employed Mobile Traders may be exempt from section 3(2) of the Health and Safety at Work etc Act 1974. Some Local Authorities may use local intelligence as a reason for inspecting these vehicles but others will only complete reactive interventions should an incident occur. Therefore, this authority would advise that either the Health and Safety reference is removed from the sample Annex or this matter is addressed in the document.

Health and Safety is not covered by the requirements for certificate of compliance in terms of the Civic Government Act but is something that several local authorities will consider in terms of general obligations for public safety before issuing a licence.

Question 4 – Does the period of validity for the certificate reflect a risk based approach?

Yes No

This authority currently assesses all food business operators in terms of the Food Law Code of Practice (Scotland) and Local Authorities are encouraged to adopt a risk based approach to all aspects of food legislation. The validity periods in the National Standard do not reflect this risk based approach and will result in a number of mobile units being inspected more frequently than currently, with very few vehicles being inspected less frequently. This would also have resource implications and may seem an unnecessary burden for food business operators (again with potential resource implications).

It is also noted that a number of authorities operate alternative enforcement protocols for low risk premises/businesses which would not "fit" with the validity criterion.

Question 5 – Does the proposed certificate template (Annex 1) incorporate the necessary information to provide assurance to both environmental health officers and licensing boards?

Yes No

If no, please explain further

This authority welcomes the proposal that a photograph of the relevant vehicle is to be provided on the certificate. The inclusion of “valid until” date is also welcomed.

However, having already highlighted the issue on the certificate with regards to health and safety, the certificate also should be specific in terms of what elements of the EC Regulation 852/2004 have been assessed. The issuing authority may not see the mobile trader in operation as their business may only trade at another neighbouring authority. Therefore, the operational aspects of the vehicle may not be able to be assessed under 852/2004.

Question 6 – Do you agree national standards should be established for both structural and operational aspects of mobile food units?

Yes No

Please explain your answer

Whilst there are good reasons for having national standards for both structural and operational aspects there are a number of problems associated with this as outlined in our comments under Question 2. This includes where traders are based but don't operate in the inspecting authority. In such scenarios the structural requirements can be assessed but the operational requirements can be questioned but not necessarily fully assessed.

In order to ensure consistency and uniformity, the legal requirements and recommendations must be transparent and the standards detailed should apply to all mobile traders regardless of whether they require a certificate of compliance/licence or not.

Question 7 – Do you have any other comments you wish to offer?

I would refer to the comments made under Question 2 and would also add the following (or ask the following questions):

- Existing Mobile Trading Units
As a number (perhaps many) of the current traders currently don't comply with the proposed National Standard particularly in terms of sinks, piped water etc , will these existing units have a lead in period to allow them to improve their vehicles?
- Units purchased from outwith Scotland
As a number of food vehicles are manufactured/purchased/obtained from outwith Scotland will these companies be advised of the structural requirements as these may be different ?
- The purpose of the document was to clarify the standards that Local Authorities would accept in relation to Mobile Traders. However, it still remains open to subjective assessment with the words adequate and recommended being used. It is not clear what the legal status of the national standard is. This is not specifically stated within the document. As detailed under Question 2, there must be greater clarity to separate legal requirements from best practice
- If the national standard has been developed to reduce the need to obtain certificates of compliance for each local authority street trader application then it should stick to the issues relevant to the certificate of compliance only.
- The national standards should include a section on definitions such as (as previously detailed) prepared and reference documents used.

Consultation on Mobile Traders Food Hygiene National Standards



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

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Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

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following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No