

Consultation on Mobile Traders Food Hygiene National Standards

Analysis of Responses

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ANALYSIS OF RESPONSES

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INTRODUCTION AND BACKGROUND

The Scottish Government is committed to using all means possible to support economic and business growth. Making Scotland the best place to do business in Europe requires a regulatory landscape that protects our citizens, our heritage and our environment while concurrently providing a favourable business environment in which companies can grow and flourish.

Scotland's Economic Strategy continues to recognise the important role of better regulation in delivering a more successful and sustainable Scotland. The Regulatory Reform (Scotland) Act 2014 created a more diverse toolkit to deliver better regulation and to further improve the way regulations are applied in Scotland. It will protect our people, our environment and help businesses to flourish and create jobs. Where regulation - or the way it is applied - does not meet the principles of better regulation it can hinder growth in business, employment and in the economy generally.

Business has provided examples of growth being constrained or unnecessary burdens being placed on them from inconsistent application of regulation. One complaint from a food business and its trade association highlighted the inconsistent application of standards in respect of street trading vehicles which operate in different local authority areas. Under the Civic Government (Scotland) Act 1982 for the purposes of a street trader's licence application a mobile food business required a certificate of compliance from the food authority in which the application is being made. As a result mobile food vans had to be inspected separately by each authority in which the business wished to operate in order to obtain a certificate. Upon closer investigation of this we found that this duplication of effort costs businesses and local authorities time and money.

Provisions within part 3 of the Regulatory Reform (Scotland) Act 2014 amend section 39(4) of the Civic Government (Scotland) Act 1982 to make it clear that the certificate to be produced for the purposes of a street trader's licence application for a mobile food business is to be from a food authority that has registered that establishment (rather than the food authority for the area in which the application for the licence is made). These changes mean that if a mobile food business wishes to trade in more than one local authority area in Scotland it can, for each street trader's licence application, produce a certificate from the same registering food authority.

National standards have been developed to provide consistency and transparency, efficiency and effectiveness in the implementation of regulations and inspections of mobile food business in respect of certificates of compliance for a street trader's licence application. Wider operational aspects were also included as part of this work, with the view of delivering consistency across mobile trading food hygiene more generally. This document provides an analysis to the consultation responses and the way forward.

CONSULTATION PROCESS AND PROFILE OF RESPONSES

This document provides a report on the main issues arising from written responses to the Consultation on Mobile Traders Food Hygiene National Standards.

The consultation process started on 27 July 2015 and closed on 19 October 2015, although some leeway was afforded to a small number of stakeholders who requested more time to respond.

The consultation document and individual responses are available at:

Consultation document: <http://www.gov.scot/Publications/2015/07/8388>

Consultation responses: <http://www.gov.scot/Publications/2015/12/7336>

We would thank all who responded to the consultation.

Respondent Groups

A total of 18 consultation responses were received. The 18 respondents were assigned to one of 4 broad interest groups, for which the underlying classification logic is provided below. A full list of respondents is provided in the Appendix.

Local Authorities - this group comprises the Scottish Councils.

Businesses - this group includes businesses and a range of business and industry associations.

Professional Bodies - this definition covers regulatory practitioners, and their respective institutes and societies, etc.

Individuals - those who have responded in a personal capacity. Can include both members of the public, as well as those who hold some position in an organisation (managers, professors, etc.).

The findings in this report are specific to the consultation exercise and do not necessarily reflect the weight or range of views within the groups as a whole, as the respondents have not been representatively or purposively sampled.

ANALYSIS OF RESPONSES

The standard responses counted in the statistics are broken down in the table below. One response was in non-standard format and did not directly answer all the questions within the consultation. Non-standard responses are included in the analysis where a view was clearly expressed. Due to rounding, percentage shares may not sum to 100%.

Responses

Group Type	Number	Percentage
Local Authorities	12	67%
Businesses	1	6%
Professional Bodies	2	11%
Individuals	3	17%
Total	18	100%

Q1 Do the standards provide clear and practical guidance?

Group Type	Yes	No	Total
Local Authorities	5	7	12
Businesses	1	0	1
Professional Bodies	0	1	1
Individuals	1	2	3
Total	7	10	17
Percentage	41%	59%	

59% of respondents were of the view that the standards did not provide clear and practical guidance. Comments included that the wording was ambiguous at times, required clarification and was not ideal for trade. It was suggested that there should be a clear indication of whether the standards were legal requirements or good practice, and that some of the proposals reduced the current legal requirements (both of which were also raised in response to question 2).

Specific comments were provided on the different sections within the standards (see individual responses for more detail).

Q2 Do you consider the standards meet the legislative requirements?

Group Type	Yes	No	Total
Local Authorities	5	7	12
Businesses	1	0	1
Professional Bodies	1	0	1
Individuals	2	1	3
Total	9	8	17
Percentage	53%	47%	

Views were mixed in response to this question, and slightly more than half of respondents (53%) considered that the standards met the legislative requirements.

A few respondents suggested that in a number of areas the standards exceeded the legal requirements. Some specific examples were provided, for example within section 3 - sinks; section 5 - cleaning and disinfection; and section 6 - personal hygiene. Some were of the view that it was difficult to differentiate between legal requirements and good practice, and that it should be made clear what is law and what is good practice. It was suggested that the standards could take the form of Approved Industry Guides For Good Hygiene Practice or Approved Codes of Practice.

Q3 Are there any requirements which are not included but should be?

Group Type	Yes	No	Narrative	Total
Local Authorities	7	5	0	12
Businesses	0	1	0	1
Professional Bodies	0	1	0	1
Individuals	0	2	1	3
Total	7	9	1	17
Percentage	41%	53%	6%	

While 53% of respondents were of the view that no other requirements should be included, 41% considered there were further requirements that could be included. A number of suggestions were made, including Health and Safety, Zero Waste, Gas Safety Certificates and Food Allergens. In respect of Health and Safety it was noted that, in terms of the Civic Government (Scotland) Act 1982, this is not covered by the requirements for certificate of compliance but is something that some local authorities will consider in terms of general obligations for public safety before issuing a licence.

Q4 Does the period of validity for the certificate reflect a risk based approach?

Group Type	Yes	No	Total
Local Authorities	7	5	12
Businesses	1	0	1
Professional Bodies	0	1	1
Individuals	1	2	3
Total	9	8	17
Percentage	53%	47%	

Views were mixed on the proposed period of validity for the certificate. 53% of respondents considered that it reflected a risk based approach. Of the 47% that did not agree, several highlighted that the inspection periods could cause an additional burden for both local authorities and food businesses as they would result in a number of mobile units being inspected more frequently.

Some respondents suggested that the period of validity should be consistent with the Risk Rating Annex 2 within the Food Law Code of Practice, and that it could be useful to link the renewal date of a certificate with the renewal of a street trader's licence, although it was recognised that these may not coincide.

Q5 Does the proposed certificate template (Annex 1) incorporate the necessary information to provide assurance to both environmental health officers and licensing boards?

Group Type	Yes	No	Total
Local Authorities	8	4	12
Businesses	1	0	1
Professional Bodies	1	0	1
Individuals	1	2	3
Total	11	6	17
Percentage	65%	35%	

A majority of respondents (65%) considered that the template incorporated the necessary information, with 35% of the opinion that it did not.

Some respondents welcomed the inclusion of a photograph. It was also suggested that it could be helpful to include the chassis number, where the unit is able to be towed by different vehicles.

It was noted that while the certificate referred to Health and Safety at Work etc. Act 1974 this is not a material consideration for a certificate of compliance for a street trader licence under section 39 of Civic Government (Scotland) Act 1982 (see also question 3). It was also clarified that Civic Government licensing is overseen by local authority committees rather than licensing boards.

Q6 Do you agree national standards should be established for both structural and operational aspects of mobile food units?

Group Type	Yes	No	Other	Total
Local Authorities	8	3	1	12
Businesses	1	0	0	1
Professional Bodies	1	0	0	1
Individuals	2	0	1	3
Total	12	3	2	17
Percentage	71%	18%	12%	

There was strong support (71%) for standards to be established for both the structural and the operational aspects of mobile traders food hygiene.

Respondents in favour noted that it is beneficial to have operational aspects included and it would provide for consistent enforcement. One respondent however noted that while there are good reasons for having both there are a number of problems associated with this particularly when traders are based but don't operate in the inspecting authority, or are not yet operating. On a similar note, another respondent highlighted that as each food authority will still check to ensure mobile food vendors are operating hygienically in their area the standards should be limited to structural matters.

Two respondents referred to existing legislation: Regulation EC 852/2004 which has a specific section on moveable and/or temporary premises, and the Licensing (Food Hygiene Requirements) (Scotland) Order 2011 which "appeared to amend the Civic Government (Scotland) Act so that all of the EU food hygiene requirements were covered by the section 39 certificate requirements". One respondent noted that the standards should also try and cover health and safety issues which are arguably of greater risk (also suggested in response to question 3).

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

This section was used to address views not covered within questions 1-6, and also to provide further specific comments on the proposed standards.

One individual commented that the use of Bain Marie was preferable to taking equipment back to base for cleaning.

A few respondents asked about notification, and implementation, including lead in periods for existing operating vans. Several suggested that to improve consistency the standards should also apply to fixed premises i.e. where they may not be subject to street trader licensing requirements.

A range of comments were provided on specific standards, more detail of which can be found in individual responses.

NEXT STEPS

The Consultation on Mobile Traders Food Hygiene National Standards invited views on draft national standards to provide consistency and transparency, efficiency and effectiveness in the implementation of regulations and inspections of mobile food business in respect of certificates of compliance for a street trader's licence application.

Following analysis of the consultation responses it is clear that while there is broad agreement in some areas, such as whether national standards should be established for both structural and operational aspects of mobile food units, there are mixed views on other aspects of the proposed national standards such as whether the standards provided clear and practical guidance. Respondents also provided a range of comments around notification and implementation such as lead in periods for existing operating vans.

It should also be borne in mind that a large proportion of responses to this consultation were from local authorities.

We will use these responses, and continue to engage with stakeholders, to bring forward proposals for national standards which will meet the needs of both businesses and local authorities in Scotland.

LIST OF CONSULTATION RESPONSES

Aidan McCormack
Aberdeenshire Council
Clackmannanshire Council
Dundee City Council
East Ayrshire Council - Environmental Health
East Lothian Council
Falkirk Council
Fife Council
G&M Whyte
Ice Cream Alliance
Law Society of Scotland
West Lothian Council
Midlothian Council
Renfrewshire Council
Scottish Borders Council
Scottish Food Enforcement Liaison Committee
South Lanarkshire Council
The Highland Council



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