
DELIVERING THE FOOD STANDARDS AGENCY'S REGULATORY STRATEGY

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1 SUMMARY

- 1.1 The achievement of the FSA's strategic objectives for 2015-2020 will require a fundamental redesign of its regulatory role and of the way in which the regulation of food businesses is delivered. These are not tasks the FSA can achieve itself. We will need businesses, local authorities, other government departments, consumer groups and a wide range of others to work with us. To launch that process the FSA has arranged an event on 10 February 2016, when we propose to seek views from a range of stakeholders on some key features of the potential future regulatory delivery.
- 1.2 The purpose of this paper is to invite the Board to consider and comment on the outline framework of principles that will be a basis for discussion at the event on 10 February.

2 INTRODUCTION

- 2.1 In 2014 the FSA published its strategy for 2015-2020 ("Food We Can Trust") and renewed the pledge it made in 2000 to put the consumer first in everything we do. We recognised that:

It is the responsibility of people producing and supplying food to ensure it is safe and what it says it is ... and the Food Standards Agency has a key leadership role in making sure that they step up to that responsibility.

- 2.2 We also recognised that to achieve our strategic goal of food we can trust will require a comprehensive redesign of our regulatory role and the way in which the regulation of food businesses operates. We want regulation to achieve an operating environment for food businesses where businesses want to do the right things for consumers, and demonstrate to us that they do.
- 2.3 In January 2015, the FSA Board agreed principles for our future regulatory approach:
 - *We will put consumers first in everything we do.*
 - *We will be open to using a wide spectrum of actions and interventions*
 - *We will seek to align incentives and disincentives for food businesses with the interests of consumers*
 - *Our focus will be on the outcomes we are seeking to achieve, keeping an open mind about the means by which those outcomes are achieved.*

- *Our future regulatory approach should be truly risk-based and assessed in terms of impacts.*
- *We will differentiate between the FSA's regulatory functions in relation to food law compliance and our broader objectives.*
- *We will use our powers to deliver our strategic objectives - which go beyond our regulatory responsibility in respect of verifying compliance with food law.*
- *Government intervention (including legislation) is warranted where its benefits to the public are proportionate to the costs/disbenefits of its application.*
- *The costs to businesses of regulation should be no more than they need to be.*
- *It is not the FSA's or LAs' role to achieve compliance – that is clearly defined in law as the responsibility of business.*

3 BACKGROUND

- 3.1 Since January 2015, we have been thinking, exploring ideas, and learning from others, as we move towards defining our future regulatory role, and the delivery models and tools we will use to fulfil it. We have seen that, whilst the challenges facing our food supply and its regulation are, as the FSA strategy states, very large, so, equally are the opportunities.
- 3.2 At present our regulatory regime relies largely on physical inspection to gain assurance that food safety and integrity is being achieved by businesses. Fundamentally our regulatory system relies on methods – physical inspection by local authority officials or FSA inspectors and official veterinarians – unchanged in decades. We can do much more to take advantage of the opportunities available from modern scientific techniques, we can make far better use of businesses' own data and of the information gathered by other government departments/agencies. We have begun a range of pilots and discussions, to explore the extent to which these approaches can contribute to regulatory delivery.
- 3.3 The UK, and hence the FSA's, regulatory regime are increasingly part of a global regulatory regime, working to make safe a global food system. There is a significant body of international food law developed within the Codex Alimentarius under the World Health Organisation, and the vast majority of food safety law is directly applicable EU Regulation. It might be thought that the scope, within that legislation, for the FSA to achieve significant change in its regulatory delivery without legislative change, is limited. However, from our visits to other EU member states and countries it is clear that within that legal framework, internationally and across the EU, there is a very wide range of regulatory regimes. As we move forward to implement a new approach to delivery, there are likely to be areas of food law where we will want to seek amendments at an EU or wider international level, but the existing variety of ways in which the existing legislative and policy outcomes are achieved in other countries shows that there is very considerable scope within the current

legal framework for the FSA to make changes [Annex 1 - table showing a comparative analysis of other regimes].

- 3.4 In order to assure itself of the effectiveness of the current delivery by local authorities of the system of food law enforcement the FSA has relied in the past on an annual return from local authorities (Local Authority Enforcement Monitoring System (LAEMS)). The annual report from the LAEMS data is elsewhere on the Board's agenda. Gathering this data each year requires local authorities to submit a return to the FSA which always presents a historic view of performance and uses a large, cumbersome and relatively expensive database. As part of our comprehensive review of the way our regulatory regime is delivered we will re-examine our approach to the gathering of information about local authorities' activities. This will involve going behind the data in the annual report to form a more in depth and contemporary picture and considering to what extent gathering and analysing data should be the FSA's role and to what extent it should be done by others.

4. STRATEGIC AIMS

- 4.1 In paragraph one above, this paper explains the key role of the regulatory strategy in achieving the FSA's strategic aims and sets out the principles for the regulatory strategy agreed by the Board in January 2015. Those principles can be summarised by the following:

We're here to make sure businesses do the right things for consumers, and encourage them to change their behaviour if they're not.

- 4.2 Through the three elements of this definition – identifying the “right things for consumers”, gaining assurance and where appropriate applying the levers to change behaviour - we will aim to achieve the commitment in our strategy, to deliver food we can trust, and to ensure that those who produce and supply food step up to their responsibility to ensure that it is safe and what it says it is.
- 4.3 Different businesses will have different levels of knowledge about what consumers want, and what they need to do to provide them with it, so government will have an important role to play in helping businesses understand and meet their responsibilities.

5. EVIDENCE

- 5.1 Much research has already been done into what motivates businesses, and how to use this to drive positive outcomes for consumers (in food and other sectors). We are working with colleagues working on the Science, Evidence and Information strategy to fill any remaining gaps, which we intend to do principally through piloting approaches so we can test how they work in real life.
- 5.2 A lot of our effort through 2015 has been gathering evidence of the work of other regulators, and of other food safety systems across the EU and in other

jurisdictions. We have been discussing options with businesses, agencies and other stakeholders to shape our future approach. We are committed to continuing this open, collaborative approach to the design of our regulatory delivery in future.

6. DISCUSSION

Implementation

- 6.1 One of the principles of the regulatory strategy is that we will be open-minded about how we achieve the outcomes we seek on behalf of consumers. We accept that to achieve our objectives we will need to work with a broader range of bodies than regulators have done traditionally, for example in deriving assurance that businesses are doing the right things for consumers. As the strategy explained, things are changing quickly, and to be too prescriptive or narrow-minded about methods will mean we could miss opportunities, and not be future-proofed because the food sector is evolving fast. That said, consumer protection is at the heart of our strategy so before we commit to any approach we want to be sure it works. So, we will pilot, trial, and learn what works, and what does not.
- 6.2 This paper is the beginning of a process of engagement and joint working with businesses, consumers, our regulatory partners in local authorities and elsewhere in government, and other bodies.
- 6.3 There is a clear role for us in working with consumers to define what they see as the 'right things', in relating this to businesses, and in changing business behaviour when they do not step up to their responsibilities. Our approach to these roles will form the basis of future Board papers. In relation to our role in making sure businesses are doing the right things for consumers, we have already worked up some examples of what our principles will look like in practice.

Consistent principles for regulatory delivery

- 6.4 There should be a single, consistent set of principles, following those of the FSA's regulatory strategy, for the delivery of regulation in relation to all categories of food – products of animal origin, meat and others – and all types of business.

Differentiation

- 6.5 The food industry is incredibly diverse – with some very large businesses, many very small businesses, and everything in-between. Food businesses vary in their attitudes towards consumers, and how much focus and expertise they put into producing food that is safe and what it says it is. A one-size-fits-all approach is not suitable, and we will vary our assurance mix according to the business. We have a clear role in helping businesses understand what they need to do to produce safe food.

Objective and rigorous

- 6.6 The challenge an independent regulator provides is critical for consumers to be able to have confidence in the food they eat. We will maintain that independence, and challenge businesses to prove to us that they are meeting their responsibilities. When we rely on information provided by others, we will assure ourselves that it is of the appropriate quality to rely upon. Our role is to be objective and rigorous in our assessment of business performance.

Using best data

- 6.7 As we have spoken to consumers, other regulators, businesses, and others, it has become clear that there are many ways to gain insights into whether businesses are meeting their responsibilities to produce food that is safe and what it says it is. Inspections carried out by government staff are just a small part of an enormous array of potential sources of assurance, which we could be using to focus our efforts ever more precisely on the businesses who need the most help to come up to standard. We will consider all sources of information, irrespective of whether it is us or a third party doing the check. We will also consider sources of data that do not derive from inspections.

Businesses pay the cost of regulation

- 6.8 Businesses benefit from the confidence an effective regulatory system gives consumers in the UK and abroad. The responsibility for funding this system should increasingly pass from the taxpayer to businesses, with those businesses with the most proactive approach to demonstrating their dedication to food safety paying less than those who require a higher level of state intervention.

Modern digital technology

- 6.9 We need to think hard about our role, and the role of businesses and consumers. We must in future be able to take advantage of new technology so that where electronic sensors and other equipment can provide assurance the regulatory framework is able to take that into account. Through social media and other channels, we could crowdsource information about where there are problems, or where problems are likely to occur.
- 6.10 However, as we develop digital ways of engaging with businesses and consumers and improve our use of social media and other channels, we must not ignore the interests of consumers who cannot or choose not to engage in this way.

Use of regulatory effort in the most effective way and at the most effective time

- 6.11 Through application of the above principles we will develop means of delivery that enable us to apply regulatory effort in the most effective way, tailored to the different types of businesses. For many businesses, the most effective

time for there to be regulatory engagement will be at the point of their registration when they can take account of advice to ensure that they are well-placed to deliver on their legal obligations and meet consumers' legitimate expectations. We need to deliver better, more accessible packages of advice and guidance to meet this objective. Our objective should be that businesses can then, through submission of data through a simple, streamlined means, demonstrate from the outset that they will be able to meet their obligations and are fit to be registered as food businesses.

7 IMPACT

- 7.1 As we move ahead to develop future ways of achieving our regulatory objectives we also need to change our approach of assessing and measuring our impact. We have focused too much in the past on the input of our regulatory model - how many inspections have been carried out – and too little on the impact of regulation.
- 7.2 We must be prepared to measure our success against our strategic goals: is trust in food increasing; are businesses taking responsibility for demonstrating their compliance with their obligations; are consumers better able to make informed choices? We will establish measures for these and other key outcomes of our regulatory regime and report progress towards them in our open meetings in the same way as other aspects of our performance are currently reported.

8 NEXT STEPS

- 8.1 As mentioned, the proposed features of our regulatory delivery framework outlined above, after discussion at the Board, will form the basis of a stakeholder event on 10 February when stakeholders will have a chance to consider them and add any additional ideas that they may have. From this event the programme of external engagement and collaborative working with all of the FSA's stakeholders to develop our future delivery models will be taken forward. Further papers, including progress reports, will come to the Board in due course as we continue with our work to define the most effective future delivery model and the steps needed to transition towards it.

9 CONSULTATION

- 9.1 As indicated above, there have been numerous informal discussions with businesses, local authorities, other government departments, international contacts and other stakeholders to develop the thinking in this paper. However, this is the launch-point for a much more extensive and structured programme of consultation as we make a reality of our commitment to develop our future regulatory delivery with all those who have a role to play in its creation and delivery.

10. LEGAL/RESOURCE/RISK/SUSTAINABILITY IMPLICATIONS

Legal

- 10.1 Many of the issues relevant to this section of the paper have been touched on elsewhere. As paragraph 3.3 indicates, there are likely, as we move forward with the implementation of our plans, to be areas of EU and international food law that we would like to see reformed. The varying approaches taken across the EU to the same legal framework illustrate the inherent flexibility in that framework and the scope to pursue work to maximise that flexibility.

Resources and Sustainability

- 10.2 These are key areas of risk for the FSA's change programme. Whilst to a large extent the necessary reforms to our regulatory delivery will involve the realignment of existing efforts more than the deployment of additional resource, a failure properly to resource the change and in particular to invest enough resources at the early stages will be likely to result in overall failure.
- 10.3 Part of the challenge for this programme – and its opportunity – is the need to develop ways of achieving our regulatory goals that are sustainable for the long term. To do that we must recognise the extent to which the world of government and society as a whole have changed. Policy makers and regulators cannot spend long periods of time in the wholesale design of future regulatory systems. By the time the fruits of their labours are available, the world has moved on. That is why this programme must be genuinely collaborative, and flexible, looking to work with others to pilot possible ways of working, testing and adapting; trying new technologies and techniques and being prepared to stop when an experiment has not worked.
- 10.4 A third risk stems from a natural and often desirable characteristic of a regulatory system and those that apply it; regulators are naturally conservative and risk averse. We will need constantly to ask ourselves whether we are being sufficiently ambitious and radical and resist the temptation to settle for incremental improvement in the status quo.

11. DEVOLUTION IMPLICATIONS

- 11.1 The approach described in this paper is designed to ensure that, through developing a consistent set of principles, and focusing on the setting of standards and the achieving of outcomes rather than a prescriptive single model for delivery, the FSA's regulatory regime will accommodate variation between England, Wales and Northern Ireland should the approaches taken by the administrations of those three countries diverge. We continue to involve colleagues from Food Standards Scotland in the thinking so that they can use what is relevant and contribute where they can add value.

12. CONSUMER ENGAGEMENT

- 12.1 Initial discussions have been held with consumer groups as the thinking outlined in this paper has developed since January 2015. However, to date those discussions have mostly taken the form of high level explanatory

briefings. Full engagement will form a key part of the programme over the ensuing months.

13. CONCLUSION AND RECOMMENDATIONS

13.1 The Board is asked to:

- **Consider:** the framework of principles for the FSA's regulatory delivery at paragraphs 6.4 to 6.12; and,
- **Agree:** that they should form the basis for initial discussions with stakeholders at the event scheduled for 10 February 2016.