

## **Regulating our Future – Food Standards Agency proposals for the future of food regulation**

### **Purpose**

For discussion and direction.

### **Summary**

The Food Standards Agency (FSA) are developing proposals to radically reshape the way food businesses are regulated, with potentially significant implications for councils if these changes are implemented. This paper provides some background on the issue, ahead of a presentation at the Board meeting by Tim Bennett, Deputy Chair of the FSA.

### **Recommendation**

The SSC Board provide an initial steer on the proposals being developed by the Food Standards Agency.

### **Action**

Officers to take forward as directed by the Board.

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## **Regulating our Future – Food Standards Agency (FSA) proposals for the future of food regulation**

### **Background**

1. In February 2016, the Board considered a paper on the FSA's Food Hygiene Rating Scheme (FHRS), which also noted that the FSA was embarking on a major piece of work to redesign the existing system of food regulation. This paper provides an update on the detailed proposals emerging from the FSA. Tim Bennett, Deputy Chair of the FSA, will be in attendance to talk about the proposals and answer any questions.
2. In discussing the paper last February, the Board indicated their support for the introduction of both a mandatory FHRS system (in which businesses are required to display their rating, as in Wales and Northern Ireland) and registration fees for food businesses, to provide additional resources and ensure parity with the accepted approach to funding regulation in other sectors.

### **Issues**

3. Councils have a range of responsibilities for regulating food and the food chain, principally including food safety and food hygiene, normally delivered by Environmental Health, and food standards which may be delivered by Trading Standards and/or Environmental Health.
4. In discharging these functions, councils are supervised by the FSA, which has overall responsibility for food safety and food standards in England and Wales. The FSA's Food Law Code of Practice and equivalent Feed Law Code set out the way local authorities should apply food law and work with food businesses, while the Framework Agreement on Local Authority Enforcement sets out the organisation's interaction with local enforcement officers.
5. In recent years, the FSA has identified a number of reasons for the development of a new strategy for food regulation in the UK. Although not the only factor driving this work, there is no doubt that the pressures on local regulatory services and the reduction in environmental health and trading standards capacity has shaped this thinking. The Agency's stated rationale for rethinking the existing system are:
  - 5.1. The current one size fits all approach is not fit for purpose in achieving consumer protection.
  - 5.2. Meat industry regulation is the most outdated regime of regulation.
  - 5.3. Local authorities are under severe pressure, and this is worsening.
  - 5.4. There is a major opportunity to use technology to fundamentally change the way we regulate the food industry.

6. The FSA has publicly stated that it is aiming for revolutionary rather than evolutionary change. As the February 2016 paper noted, this has potentially significant implications for councils, given their current role delivering official food and feed controls on behalf of the FSA.
7. The FSA has set out five principles on which a future system of regulation should be based:
  - 7.1. It is the responsibility of food businesses to produce food that is safe and what it says it is.
  - 7.2. Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not.
  - 7.3. The regulator should take into account all available sources of information.
  - 7.4. FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of food businesses.
  - 7.5. Businesses should meet the costs of regulation, which should be no more than they need to be.
8. The FSA has developed an overarching blueprint for a future model of food regulation. Key features of the model include:
  - 8.1. A focus on **set up and registration/permission to trade**, to ensure businesses understand what is expected of them and are supported to achieve this. The registration system will need to ensure that regulators (and potentially others) have ready access to information about who is registered, to support the process of segmentation. This may include the option to reject applications that cannot demonstrate they will operate safely, and there will be a clear focus on encouraging businesses to share information with regulators.
  - 8.2. **Segmentation** of businesses, moving away from the current one size fits all approach. Segmentation will be based on two factors: risk (e.g., type of food, sector, stage in food chain process) and compliance (e.g., FHRS score, compliance history, best practice approaches) and take account of the availability of third party assurance information and willingness on the part of the business to share it. While there is further work to be done to develop the segmentation of businesses (and it is intended the model will be refined through continuous improvement) early indications of different segments include the high risk food businesses; caterers and retailers.
  - 8.3. **Assurance** will be provided by a range of sources through a 'three lines of defence' model. The first line of defence will shift from the current public inspection led approach to a range of sources, including official bodies (such as councils), earned recognition schemes and businesses' own assurance. The second line will be the FSA, as the overarching regulator. The third will be internal and external audit.

- 8.4. **Intervention by regulators as required.** The model is focused on intervening to head off events before they occur, through processes of monitoring, surveillance and verification. Where incidents do occur, regulators will have a role in inspection, audit and sampling, as well providing advice and education. Overall, ongoing compliance will be rewarded with a light touch approach; robust sanctions will be applied where the business is non-compliant and does not take action to address this.
9. The key changes to the outline model from a local authority perspective are changes to the registration process; currently, food businesses register with their local authority and it is not clear if that is the working assumption for the new model. Additionally, the proposal for first line assurance to be provided through multiple sources alongside local authorities and other public bodies is a major departure from the reliance on inspections by local authorities and other regulators in the current system.
10. As noted in the earlier paper, the model is heavily shaped by the model of food regulation currently being implemented in New Zealand, where accredited bodies are used to provide assurance and public authorities provide a backstop of regulatory intervention rather than being solely responsible for providing assurance. One point to note is that the New Zealand model is designed around its position as a major exporter of food, with the system intended to enable it to export into markets such as the EU – something which would be extremely relevant in future.
11. Since the FSA published its outline proposals, it has been working with stakeholders, including businesses and local authorities, to develop them further. An expert advisory group of professionals working in environmental health and trading standards has been inputting to the work. Early discussions between LGA officers and FSA officials have emphasised the need to ensure there is local political engagement, hence the invitation for the FSA to attend the Board meeting. Additionally, an initial pilot of some of the ideas in Bristol is currently being evaluated.
12. A related pilot has seen some English local authorities allowed the freedom to use the Localism Act to charge for FHRS re-visits. The learning from this will also feed into the Regulating our Future work.
13. Reaction to the FSA's proposals among officers working in food regulation in England has been mixed, with some supportive and others opposed on the grounds that removing the requirement for inspection by LA officers poses a risk to public health and protection. As set out below, there has been a much stronger reaction in Wales, where the Directors of Public Protection in Wales group (DPPW) and Welsh LGA have publically opposed the proposals.

#### **Possible questions for the FSA**

14. There are a number of issues on which it would be useful to seek clarity from the FSA, and the Board may wish to pose questions on these.
15. As the model is partly inspired by the New Zealand new model of food regulation, can the FSA provide an update on how well the system is operating there?

16. It would be helpful to understand how the FSA envisage the role of local authorities in the new model, including in relation to both the FSA and third party providers. This is particularly the case when, as set out in paragraphs 22-24 below, there is clear opposition to the proposals in Wales but FSA sources have suggested there may be some misconceptions over the future role of councils.
  - 16.1. What role does the FSA envisage for local authorities in their proposed model of food regulation, in terms of both food hygiene and food standards?
  - 16.2. Are councils intended to be the backstop regulator for all struggling or non-compliant local food businesses or just some and if the latter is the case, which ones?
  - 16.3. Would local authorities have the power to intervene quickly in any business if there were intelligence to suggest this was necessary?
17. If the proposed model of multiple sources of assurance is introduced, it would be extremely important for councils to be able to compete against third party providers on a level playing field (rather than being responsible for managing non-compliant businesses). Many councils have the capacity and commercial experience to offer these services, and should not be prevented from doing so. However, to enable this, the restrictions on councils being able to charge for services would need to be considered and addressed as part of any changes to legislation.
18. Similarly, the model would need to work alongside councils' existing primary authority relationships, whereby councils agree contracts to act as the lead authority providing advice to national businesses and trade associations on specific issues.
  - 18.1. Will councils be able to provide the same commercial services as third parties?
  - 18.2. Can the FSA provide assurance that it will take account of the restrictions on councils' ability to charge for services in developing a new model?
  - 18.3. Can the FSA also provide assurance that the proposed model would work alongside primary authority arrangements?
19. We understand that aspects of the new model have recently been trialled by Bristol Council, Tesco and one other business.
  - 19.1. What piloting of the new model is taking place?
  - 19.2. Over what period will the piloting take place and what arrangements are in place to ensure the independent evaluation of the outcomes of the trials
20. The Regulating our Future work commenced before the vote to leave the European Union. With the vast majority of food legislation derived from European directives and decisions, Brexit could have significant implications for how we regulate our food, although opportunities for reducing regulation are likely to be limited for any business that wishes to export to the single market.

20.1. What legislative changes, if any, would be required to implement the new model proposed by the FSA?

20.2. What do the FSA foresee are the implications of Brexit for this work, and for food regulation more widely?

**Questions for the Board to consider**

21. In order to frame an LGA response to the emerging FSA proposals, it would also be helpful for the Board to discuss what they consider to be councils' role in food regulation. In our Remodelling Public Protection document, we recognised that resource pressures could mean there was a need to reshape some regulatory responsibilities between the public and private sector; there was also an appetite at the Board discussion in 2016 to explore the New Zealand model further. The FSA has done just that, and it would therefore be helpful to understand, in light of the information provided by the FSA, whether the Board are comfortable with the changes being proposed to the respective roles of councils, businesses and third parties.

22. In doing so, it might be helpful to consider related discussions about how to use accredited schemes and bodies in other areas of regulation. In animal licensing, the Government has been considering how the Kennel Club's assured breeder scheme (among others) could support local authority inspection and licensing. Our line on this has generally been to argue that accredited schemes should operate within statutory frameworks, rather than separately to them. Therefore, a Kennel Club assured breeder would still need to be registered with a council, but the council's inspection approach would then be tailored by the fact it is a member of an accredited scheme – leaving the council to target its resources at businesses that aren't members of such schemes.

22.1. What does the Board see as the key priorities for local authorities' role in food regulation? What activities does the Board believe councils should be able to undertake in order to support these priorities, shape their places and protect local residents?

22.2. What is the Board's view on the use of accredited bodies and third parties in regulatory frameworks overseen by councils? Does the FSA approach reflect this view?

22.3. One of the specific concerns in Wales is that inspection by third party auditors paid for by businesses rather than by local authorities protects businesses rather than consumers. Does the Board believe there is sufficient trust in food businesses to enable them to do so?

22.4. Are there alternative approaches the Board would like to explore, recognising the ongoing pressures on regulatory capacity in councils? Is a mandatory FHRS scheme with compulsory upfront registration/licensing fee managed locally a viable or preferable alternative from a local authority perspective?

### **Implications for Wales**

23. As set out above, the proposals have provoked unanimous opposition in Wales (and Northern Ireland). There are a number of reasons why there has been a stronger response in Wales than in England. In particular, there is recent history of high profile food borne illness and consequent death where businesses deliberately set out to operate outside the law. Secondly, there is evidence to suggest that public protection budgets have been afforded greater protection in Wales than in England; combined with the mandatory FHRs promoting an increase in compliance and standards among food businesses, this has led Welsh authorities to refute the suggestion that the current system is broken and needs to be radically changed. The fact that there has been a history of difficult relations between the FSA and Welsh Government/councils may also have contributed, alongside the fact that the Directors of Public Protection of the 22 unitary councils in Wales form a much more cohesive group than the equivalent officers in England.
24. The Welsh LGA has publicly criticised the proposals, arguing that they represent a dilution of food regulation by allowing food businesses to regulate themselves. The Welsh government has called on the FSA to work with it to develop an enhanced, fee-based system of registration/licensing for food businesses, and expressed a preference for continued independent local authority hygiene inspections to be maintained at current levels.
25. The FSA has said that it believes there is some misunderstanding in Wales about the future role of local authorities in the system, and the Board meeting is therefore a good opportunity to seek clarity on this from the FSA.

### **Financial Implications**

26. None.

### **Next steps**

27. Members are asked to provide a steer on the Board's views of the emerging proposals, to enable officers to develop appropriate next steps.