

Food Standards Agency ‘Regulating our Future’ Programme Update

Purpose of report

For discussion.

Summary

This paper updates the Board on the Food Standards Agency’s (FSA) ‘Regulating our Future’ programme, and introduces a presentation by Heather Hancock, Chair of the FSA.

Recommendations

Members of the Safer and Stronger Communities Board are asked to note and comment on the FSAs Regulating our Future programme.

Action

Officers take forward as directed.

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Food Standards Agency ‘Regulating our Future’ programme update

Background

1. In February 2016, the Food Standards Agency (FSA) launched ‘Regulating our Future’ (RoF), a major reform programme intended to overhaul the way food businesses in the UK are regulated. In January 2017, the then Deputy Chair of the FSA, Tim Bennett, presented an overview of the programme to the Safer and Stronger Communities Board meeting: the paper for this previous meeting can be found [here](#).
2. From the outset, the programme has been exploring how food regulation could be strengthened by: developing an enhanced registration process for food businesses; segmenting businesses depending on risk and other factors; and using existing internal food business data and third party assurance processes to inform official controls undertaken by councils.
3. As reflected in the January 2017 Board meeting, an early professional concern about the RoF programme was a perception that the programme may reduce current local authority involvement in official food controls by introducing a formal role for third party assurance bodies.
4. The RoF programme is predicated on using an iterative, open policy making approach, and consequently the focus of the programme has developed over time. As the role of the assurance framework is now seen as one of the longer term themes for the programme, concerns about the use of third party assessors has reduced somewhat. However, there remain significant concerns among professionals and particularly in Wales about the direction of travel on some of the shorter term RoF proposals, as set out in the key issues below.
5. The changing focus of the programme also reflects the forthcoming impact of EU exit, following the vote to leave the EU after RoF was originally launched. Brexit intersects with RoF in a number of ways: firstly, in that virtually all of the UK’s existing food legislation is derived from European laws; secondly, because of the need for the UK to demonstrate assurance with standards as a country that will in future be outside the EU but exporting to it; and lastly, because of the expected lack of Parliamentary time to implement legislative changes linked to the RoF programme, meaning that the programme is focusing in the first instance on what can be achieved without the need for legislative amendments.
6. Following the January 2017 Board meeting, it was agreed that the Chair of the Board should meet with Heather Hancock, Chair of the FSA, to seek further clarity on the future role of local authorities in food regulation. Two meetings have been held to date, in April

2017 and in September 2018, at which it was agreed that it would be useful for Heather to attend a future meeting to update the Board.

Issues

7. As set out above, since the last update to Board, the FSA have grouped the RoF programme into short term and longer term objectives and is moving forward with different aspects of the proposals at different speeds.
8. The following summarises developments across the key components of the first phase of the RoF program and highlights some of the key issues and areas of concern that have been flagged.

Business start-up and enhanced registration

9. Enhanced registration is about improving the registration process for new food business operators (FBOs). This is based on the principle that registration offers a key opportunity to provide proactive advice and support to new businesses during the start-up phase, helping them to get things right from the outset.
10. It is intended that the availability of better quality data about food businesses, through the enhanced registration process, will help councils to prioritise and target resources and give the FSA an overview of all of businesses; currently there is no central list of FBOs.
11. The FSA have completed the majority of development work for the new online registration service for businesses, which is now undergoing testing. The new system is due to go live by March 2019, once new content has been tested. The FSA will roll out an engagement programme starting early next year to develop key third party alliances for example with trade associations and financial institutions, raising awareness of the need to register and signpost businesses to the FSA website.

Segmentation of food businesses

12. Currently, all new food businesses are inspected when they first start trading. The FSA argues that this 'one size fits all' approach is not sustainable and has therefore sought to develop a more risk-based and proportionate approach to differentiating between businesses. This would allow resources to be targeted according to risk, for example based on data about the type of activities undertaken by the business, or compliance history.
13. The result of this work has been the development of a 'risk engine' which uses a set of business rules to generate a 'risk score'. New businesses registering via the online service will be segmented into categories which are used to determine the nature,

frequency and intensity of official controls. The suggestion that not all food businesses receive an initial inspection appears controversial with some professionals.

14. The next phase of this work will be for the FSA to consult on proposals to move away from inspecting all food businesses when they begin trading, towards a more targeted approach where 'low risk' businesses only receive a visit if issues arise.
15. An initial version of the risk engine will be released in conjunction with the new enhanced registration system by March 2019, although improvements will continue to be made as the evidence base for interventions improves.
16. The Board meeting is an opportunity to seek clarity about how the FSA imagine that food businesses will be segmented and how thinking has developed around how the Food Hygiene Rating Scheme (FHRS) will operate within this new system of segmentation

Primary Authority National Inspection Strategies

17. Primary Authority (PA) was introduced to ensure the provision of consistent regulatory advice to businesses and has been operating in regulation for several years. It offers businesses (and more recently umbrella organisations like trade associations) an opportunity to form a legally recognised partnership with a local authority - the primary authority – which can then provide assured advice for other local authorities to consider when carrying out inspections or dealing with non-compliance. PA operates across a number of different areas including environmental health, trading standards and fire safety; there are around 2500 PA partnerships across the country.
18. As part of their advisory role, PAs have the ability to develop inspection plans which set out national priorities for inspection of the business in question and is a way to focus routine regulatory activity by local authorities to where it is most needed.
19. An inspection plan can go a stage further; the PA can propose a National Inspection Strategy (NIS) that controls the number and frequency of proactive council interventions. For example, the PA could decide that based on evidence that a business (or group of businesses) is well managed, a lower number, or a more tailored style, of regulatory interventions are appropriate. A proposal for a NIS needs to be approved by the Secretary of State before coming into force.
20. NIS essentially focuses compliance work on business wide controls rather than those at individual premises. Assurance that the business is meeting its responsibilities will be assessed centrally by its primary authority, with feedback from LAs used to check that the NIS is working.

21. Whilst this is an approach used in other sectors, and PAs have the necessary powers to develop food safety NIS, to date none have. The FSA have identified that the reason for this is there has been no guidance for authorities on using NIS. They have taken steps to address this through updates to the Code of Practice on Food Law, to acknowledge NIS and outline what LAs should do if a primary authority was to issue one.
22. In the context of food safety, the FSA has suggested that NIS would be suited to primary authority relationships with multi-site businesses (or groups of businesses) that demonstrate high levels of compliance. Any proposed NIS would need to meet the FSA's robust standards. A key aspect of this proposal would be that the PA assesses the Food Hygiene Rating rather than the local councils.
23. The FSA have worked with a number of authorities to test out how NIS could work, which has resulted in the development of a set of criteria to form the basis of an 'FSA standard' for primary authorities wishing to develop a NIS, which was tested as part of a pathfinder project between 2017 and 2018.
24. Working with six primary authority partnerships, the project analysed the primary authorities' assessments of business data and compared this with findings from local authority hygiene inspections to determine whether the PA's assessment of the rating and local authority inspection outcomes were consistent.
25. The FSA reported promising results from these pilots, with 80 per cent of PA predicted ratings matching the actual FHRs following an LA inspection. In total 95 per cent of the assessments were the same or lower, meaning only five per cent of PA assessments over-estimated the FHRs score given following an actual inspection.
26. Whilst results were promising concerns were raised by the officers involved about the type of businesses this is appropriate for and the need for sufficient oversight.
27. The FSA argue that the pilot suggests that using business data to predict local level compliance provides a reasonable level of accuracy. More detailed work has been carried out to look at where there were variations between predictions and actual scores and the reasons for these.
28. The FSA has reported that a small number of PA hygiene partnerships in England are actively considering developing NIS, with the view to trialling the concept early in 2019.
29. The early proposals suggest that the PAs will use business data and information, combined with intelligence from the relevant local enforcing authorities, to better inform the frequency of local food hygiene inspections. The outcomes of this work will be used to further refine the FSA standards and test how these work in practice for PAs, LAs and the FSA.

30. This proposal has been met with some significant pushback in Wales, where it is believed that NIS would dilute the mandatory FHRS and associated high levels of standards. The WLGA wrote to Heather Hancock in September to outline concerns (see [Appendix A](#)).

Longer term workstreams and other developments

31. The FSA is also exploring the scope for combining food standards and hygiene work for some businesses, and is surveying LAs on how these controls are currently delivered. Typically (although not exclusively), standards are currently delivered by Trading Standards and hygiene by Environmental Health.
32. A new digital tool, known as the '**Balanced Scorecard**' has been developed to inform the FSAs oversight of local authorities' performance. This will draw on statutory LA data returns, but will also be able to draw on other data sources, including FHRS, to provide a more rounded picture. LAs will be able to access 'a version of' the tool to help benchmark their performance against others'.
33. The FSA have also been looking at other forms of **regulated private assurance** and how they may be used to inform official controls. This includes exploring how information about business' compliance with the Business Retail Consortium (BRC) Standard for Food could be used to inform official control activity. The recent review of Cutting Plants and Cold Stores has identified some areas of work to act as feasibility study for this.
34. The review of Cutting Plants¹, which was launched following the exposé at 2 Sisters Food Group chicken plant in 2017, has also put forward some significant recommendations on the delivery of official controls, including a proposal to **pilot the use of a single organisation to deliver all Official Controls** relating to these businesses in a given geographical area.
35. The future of **charging** is also being explored and the FSA is currently scoping out a new funding model that would see businesses meet the cost of regulation (in line with the recommendations of the Cabinet Office's Regulatory Futures review). Currently at the options appraisal stage, the FSA intends to consult on options for 'providing sufficient ring-fenced financial resource for ongoing delivery of the changing regulatory system.'

Possible questions for the FSA/ to guide discussion

¹ https://www.food.gov.uk/sites/default/files/media/document/fsa-and-fss-review-of-meat-cutting-plants-and-cold-stores-final-report_1.pdf

36. 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:

36.1 What reassurance can you give that local authorities will still be notified that a food businesses has registered locally? How will the new online registration service link up to local systems?

36.2 The suggestion that as a result of segmenting businesses not all food businesses receive an initial inspection appears controversial with some professionals. It would be useful to have some practical examples of the type of businesses the risk engine might suggest do not receive an initial inspection.

36.3 It would be useful to understand whether the FSA has any concerns that the Primary Authority National Inspection Strategy (NIS) approach risks turning the Food Hygiene Rating Scheme into a paper based exercise.

36.4 What is the current thinking about the timetable for work around third party assurance and charging models?

36.5 What has the survey of LA food hygiene and standards work revealed about the scope for joining these services up?

Implications for Wales

37. As noted in the January 2017 [Board paper](#), the RoF programme has provoked particularly strong feeling in Wales. This is partly because of the perception that council food hygiene and standards work has suffered smaller cuts than in England and is therefore considered to be more robust, meaning that the rationale for overhauling the current framework is weaker.

38. These concerns persist. Steve Thomas, Chief Executive of the Welsh Local Government Association (WLGA) wrote to Heather Hancock in September 2018, to outline the WLGA's concerns about NIS and their view that this would potentially undermine the existing mandatory FHRS in Wales ([Appendix A](#)).

Financial Implications

39. None.

Next steps

40. Members are asked to note and comment on the FSAs Regulating our Future programme.