

22 January 2016

## **Local government and food regulation**

### **Purpose**

For discussion and direction.

### **Summary**

This paper summarises ongoing discussions relating to the future of food regulation, and seeks the Board's views on key issues.

### **Recommendations**

The Board are invited to:

- i) approve the recommendation that the LGA publically endorses mandatory display of food hygiene ratings, subject to appropriate resources being made available to support this; and
- ii) provide an initial steer on the direction of travel indicated by the Food Standards Agency's discussion on its regulatory strategy.

### **Action**

Officers to progress as directed.

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## Local government and food regulation

### Background

1. Councils have a range of regulatory responsibilities for regulating food and the food chain. Unitary and district authorities are responsible for regulating the **safety and hygiene of food**, the controls under which food is manufactured, prepared and sold, and matters of pest control. They are also responsible for regulating food hygiene at primary production premises (eg farms) and for the controls under which animal feed is manufactured.
2. Unitary and county councils are also responsible for regulating **food standards**, that is the composition and labelling of food and animal feed products.
3. In discharging these functions, councils are supervised by the Food Standards Agency (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.
4. The FSA is currently consulting on two issues of interest to local authorities: the case for mandatory display of food hygiene ratings at food premises, and the future regulatory strategy for food. This paper seeks direction from the Board on both these issues.

### Issues

5. The **food hygiene rating scheme (FHRS)** was introduced by the FSA in 2010, replacing a number of locally developed council schemes. The scheme has very wide coverage as all English councils are now signed up to the scheme; however, there is no obligation on councils to participate or on businesses in England to display details of the rating they have been awarded.
6. The FSA's strategy for 2015-20 sets out the Agency's support for the introduction of mandatory display of food hygiene ratings by food outlets. Mandatory display already exists in Wales, where it has been introduced successfully; Northern Ireland will follow in October this year. The FSA believes that mandatory display in England would help to strengthen the current scheme by enhancing transparency and creating a level playing field among businesses. It also believes that the scheme will help to improve food hygiene / public health and reduce the negative impact of foodborne illness.
7. Mandatory display is supported by the consumer organisation Which?, the Chartered Institute for Environmental Health and many environmental health officers. Bolton Council has written to the LGA to ask it to publically support mandatory display of food hygiene ratings. The LGA has previously expressed support for the principle of mandatory display, subject to any additional resource burdens being fully funded.

8. The FSA is currently seeking views on its draft impact assessment for the introduction of mandatory display. The draft sets out four options for the future of FHRS:
  - 8.1. **Option 1** - 'Do nothing', and continue with the current voluntary scheme.
  - 8.2. **Option 2** – Undertake greater promotion of the current voluntary scheme to increase consumer awareness and use.
  - 8.3. **Option 3** - Introduce a statutory scheme for England with mandatory display of ratings at food business premises and with mandatory local authority participation.
  - 8.4. **Option 4** - Introduce a statutory scheme for England with mandatory display of ratings at food business premises and with mandatory local authority participation, plus cost recovery from businesses where they choose (take a commercial decision) to request a re-rating inspection.
9. The FSA's preferred option is option 4. It highlights key features of the mandatory Welsh scheme which this option would incorporate, as follows:
  - 9.1. Local authority participation is mandatory rather than voluntary.
  - 9.2. Businesses are required to display their stickers at their premises and to provide the rating verbally if asked. Fixed penalty fines apply for failure to display and there is an option for prosecution.
  - 9.3. There is a longer appeal process, and local authorities must undertake requested revisits within 12 weeks.
  - 9.4. Businesses are charged for revisits. The legislation requires the cost to be reasonable; Welsh local authorities have determined this at £150 per inspection.
  - 9.5. Consideration is being given to provision of a rating or link to the rating of the FSA website at point of choice when ordering food online.
10. The draft impact assessment estimates that option 4 would increase the cost of the scheme to councils, in terms of informing food businesses about the new scheme and increased numbers of appeals, re-rating inspections and right to reply submissions. However, it envisages councils achieving efficiency gains as the scheme leads to improved levels of business compliance with food hygiene law, and that councils would be able to recover some of these costs through charging businesses for re-inspections. The overall total cost to councils over ten years is estimated to be £3.8m.
11. **The Board are asked to give their views on the future of the FHRS, and whether the LGA should support the FSA's preferred option 4 for a mandatory scheme.**

#### **FSA consultation on future regulatory strategy**

12. The issue of fees and resourcing for food work links to the wider work the FSA is undertaking to reassess its future regulatory strategy and associated delivery models. A

recent consultation event on this attracted a wide audience from across industry, local government and its stakeholders.

13. The FSA are emphasising that there are many reasons for believing that business as usual is not sustainable, and that pressure on funding from taxpayers is just one driver of this. More important, they argue, is the simple reality that as food systems change – due to globalisation, population growth and changing consumer preferences, among other things – regulators need to change too.
14. The FSA have set out five principles on which they believe a future system should be based:
  - 14.1. It is the responsibility of food businesses to produce food that is safe and what it says it is.
  - 14.2. Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not.
  - 14.3. The regulator should take into account all available sources of information.
  - 14.4. FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of food businesses.
  - 14.5. Businesses should meet the costs of regulation, which should be no more than they need to be.
15. The FSA intends that the new strategy will for the first time explicitly recognise the responsibilities of consumers, as well as their rights. However, helping consumers to make informed choices that are in their interests means changing existing systems and the environment so that consumers can embrace these responsibilities.
16. Similarly, in regard to business responsibilities, the FSA are for the first time questioning 1) whether we are spending taxpayers money doing checks that businesses do or might reasonably be expected to do and 2) whether there might be a more active role for businesses in demonstrating that they are meeting the responsibility enshrined in the first principle.
17. The discussion at the FSA consultation event covered a range of issues that the FSA have started to raise in early discussions with local government officers, including the potential segmentation of businesses for regulatory purposes, how it might be possible to use businesses own third party audit data, and whether it is possible to charge businesses for food regulation.
18. The discussion event also heard from a senior official at New Zealand's Ministry of Primary Industries (MPI). New Zealand is currently implementing a new Food Act that has reformed its regulatory strategy for food.
19. The New Zealand model is based upon 'verifiers' undertaking independent audits of food businesses to check that agreed standards are being met. While regulators (mainly at local level) retain capacity and act as the 'verifier of last resort', businesses are free to appoint accredited verifiers who have met accepted competency standards. Food

businesses themselves must meet the cost of the verification process; the MPI will administer a database of all food businesses once the Act is fully in place.

20. The FSA's regulatory planning may offer some opportunities for councils, and regulatory services, but may also pose some challenges.
21. On the issue of the costs, the Board may wish to consider whether, in common with licensed businesses, food businesses should be required to meet the costs of food regulation in the form of a fee, for example an upfront registration fee before they can begin trading. This is an accepted principle in other areas of regulation, and could generate significant additional resources to help sustain food regulation activity, including a more prominent FHRS scheme.
  - 21.1. This would be a significant departure on current practice, under which food businesses are not required to pay a fee to cover the cost of regulation. While the indications from larger businesses represented at the FSA event are that many would pay a fee for what they described as 'good regulation', this view may not be shared among smaller businesses, which may create much more of a political challenge. The Board's view on whether the LGA would support the introduction of some form of registration / licensing fee, and should advise the FSA of this, would be helpful.
  - 21.2. The Board will wish to note that, if new fees for food regulation were to be introduced, there is likely to be a keen debate as to whether such fees should be collected locally, or at national level, and who therefore should set them.
22. In relation to the model of regulation, were the FSA to seek to replicate elements of the New Zealand approach, there could be significant implications for the role of local government as 'verifiers' of local food businesses. The use of accredited bodies in place of council regulators is also taking place in other areas of regulation – for example, Defra appears keen to explore the scope for using accredited bodies to undertake some aspects of animal licensing work (up to now this has been limited to the regulation of greyhound tracks).
23. The FSA expect to continue their work on a revised regulatory strategy over the coming months. Officers are seeking to clarify the timetable for the FSA's work, and what opportunities there will be for formal input from bodies such as the LGA.
24. At this stage, it would be extremely useful to have the Board's perspective on the issues outlined in paragraphs 15 to 22 above, and what the Board see as local government's requirements for and involvement in the future of food regulation.

### **Next steps**

25. Members are asked to:
  - 25.1. Agree an LGA position on the future of FHRS; and
  - 25.2. Provide initial views on the wider issue of food regulation, based on the principles and areas for discussion set out in the FSA's regulatory strategy work.



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Communities Board**

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**Financial Implications**

26. None.