

FSA 22-06-11 - Report from the Director of the FSA in Northern Ireland

Paper outlining some areas of focus for the Food Standards Agency in Northern Ireland since the last report to the Board in September 2021.

Report by Maria Jennings, Director for Regulatory Compliance, People and Northern Ireland.

1. Summary

1.1 This paper outlines a number of areas that the Food Standards Agency (FSA) in Northern Ireland (NI) has been focusing on since the last report to the Board in September 2021. It provides an update on the priorities that were outlined to the Board, consideration of achievements, current priorities and a forward look at the upcoming priorities for the FSA in NI.

The Board is asked to:

- Assess the effectiveness of the outlined work to deliver FSA priorities;
- Comment on the alignment of this work with the FSA's strategic direction and nature of the FSA's three country approach; and
- Consider and comment on the identified priorities for the FSA in NI for this financial year.

2. Introduction

2.1 The FSA in NI is responsible for devolved legislation and policy relating to food and feed safety, dietary health, standards, food composition and labelling.

2.2 In NI, the FSA has additional remit responsibilities in relation to dietary health policy and nutrition surveillance and research. This includes leading on food industry focused policies such as out of home calorie labelling, front of pack nutrition labelling and restricting promotions of food high in fat, sugar and salt.

2.3 Since the end of the Transition Period, the FSA in NI has been operating in a new landscape. For example, the FSA has responsibility for some of the legislation listed in Annex II to the Protocol on Ireland/NI ('the Protocol') that continues to apply in NI.

2.4 This directly applicable EU legislation provides the legislative underpinning for policy to keep NI consumers safe and while the requirements apply directly, it is the FSA's responsibility to ensure that they are appropriately enforced. This involves making domestic legislation through the Department of Health (DoH), using European Union (Withdrawal) Act 2018 powers.

2.5 There is an increased legislative workload, with many of the pieces of subordinate legislation being subject to the draft affirmative procedure which requires them to be debated by the NI Assembly.

2.6 As EU Food Law continues to apply in NI, under the current terms of the Protocol, this means that regulated products require authorisation under the EU's authorisation procedures before being placed on the market in NI.

2.7 Working in this new landscape requires the FSA in NI to work with colleagues across the FSA, other government departments and stakeholders to ensure that food is safe and what it says it is.

2.8 This paper highlights the work that has taken place to achieve the priorities set out in the last update to the Board in September 2021, outlines a number of additional achievements and sets out current priorities and a forward look for this financial year.

3. Update on priorities from September 2021

3.1 The Board will be aware that the last paper in September 2021 highlighted five priorities that the FSA in NI would be considering in the following six to twelve months:

3.2 **NI Food Strategy Framework.** This work is led by the Department of Agriculture, Environment and Rural Affairs (DAERA) but is being developed collaboratively with officials across departments in NI. The FSA has been involved throughout the process, with a representative on the Food Programme Board. The draft Framework was out for consultation between September and November 2021 and the consultation responses are being considered. It is envisaged that the final Framework will be launched by the new NI Executive.

3.3 **Implications of the Command Paper.** Ambitions, as set out in the UK Government's [Command Paper](#) in July 2021, were to have outcomes on the Protocol agreed by the end of March, so that no checks or documentation would be required for goods moving from Great Britain to NI and staying here. Whilst technical discussions with the EU remain ongoing, traders are expected to continue meeting the requirements of the Protocol as they are currently being operated, including the continuation of grace periods beyond expiry dates; this is the standstill period. We have continued to work closely with district councils (DCs), DAERA and the Department for Environment, Food and Rural Affairs (Defra) on a range of matters that could potentially affect the movement of goods into NI and making certain that NI interests are taken into consideration in decision making relating the Command Paper.

3.4 **Ongoing engagement with the EU Commission.** The team continues to engage with DG Santé in relation to the arrangements to exchange information on food and feed incidents, non-compliances and agri-food fraud information between the EU and NI. The first review of arrangements took place in November 2021 and the next review will take place within the next six months.

3.5 **NI Budget 2022-25 bid.** Our bid to the Department of Finance (DoF) aligned with the FSA's SR21 bid and detailed a compelling case that will provide the resources necessary to deliver the FSA's priorities and activity in NI. In the absence of an agreed Executive budget, we have received a contingency planning envelope from DoF to allow us to make decisions on the allocation of resources until a Budget is established. Our funding envelope allows us to deliver on all priorities outlined in our bid.

3.6 **NI Assembly and Executive.** The Assembly and Executive timetables were extremely challenging in 2021-22, and we were unable to secure the necessary approvals for two proposed Statutory Rules ahead of dissolution. These would have provided a consequential deterrent against adding prohibited vitamins, minerals or other substances to foods and provided for the enforcement of some requirements related to official controls carried out to verify compliance with food and feed law. The Chair wrote to the Minister of Health in March setting out the need to progress this legislation in the new mandate. Officials from the FSA in NI continue to work with

officials from NI departments to prepare to deliver food and feed legislation.

4. Achievements

4.1 In addition to working towards the priorities outlined in Section 3, the FSA in NI has completed a number of other significant pieces of work since the last report to the Board. Examples of some of these achievements are outlined below.

4.2 The team has recently successfully launched revised Nutritional Standards for Health and Social Care settings. The updated Nutritional Standards, which were launched in partnership with the Public Health Agency, Safefood and DoH, are designed to make the food on offer for staff and visitors in hospital restaurants, cafés, vending machines and retail outlets healthier. They were produced in partnership with Health and Social Care colleagues with the overall aim of helping to address overweight and obesity and improve staff and visitor health and wellbeing.

4.3 The Standards have been updated to take the latest evidence and guidance into account. This has resulted in increasing fruits, vegetables and wholegrains while decreasing the amount of saturated fat, salt and processed meats. In addition to specific guidance for each food group, the Standards now also address vending and the food environment.

4.4 Work has also been continuing on the Common Frameworks programme. Common Frameworks set out working arrangements among officials and Ministers in all four countries. The Common Frameworks provide the four nations with the mechanisms to work together to effectively manage areas where different policies emerge, seeking to ensure there is minimal undesirable impact on citizens and businesses.

4.5 In NI, the FSA is party to three Common Frameworks which align to the FSA's policy responsibility in NI:

- Nutrition related Labelling, Composition and Standards (NLCS)
- Food and Feed Safety and Hygiene (FFSH) and
- Food Compositional Standards and Labelling (FCSL).

4.6 Since the last update to the Board, the NLCS Common Framework has been updated following Parliamentary Scrutiny and received final agreement from the Minister of Health. The Common Framework will be put forward for final agreement by a new First and deputy First Minister. The FCSL Common Framework underwent Parliamentary Scrutiny in NI in March 2022 and will be updated following Parliamentary Scrutiny in each of the nations. The FFSH Common Framework is in the process of final sign off from the Minister of Health and will require sign off from the new First and deputy First Minister.

4.7 A notable achievement for the FSA in NI has been the designation of National Reference Laboratories (NRLs) and Official Laboratories (OLs) for food and feed. The OLs carry out the analyses, tests and diagnoses on samples taken during official controls and other official activities and the NRLs are specialist laboratories which provide advice, support and have a co-ordinating role with the OLs. The Protocol requires the NRLs for NI to be located in EU Member States and OLs to be located in NI or an EU Member State.

4.8 The initial procurement process, which commenced in December 2020, for the designation of food and feed NRLs for NI within member states was challenging, as uptake and bids for the tenders from eligible EU laboratories were limited. The team carried out additional scoping of the market and the extension of application timeframes, and now have four year (with two year break clause) contracts in place for all NRL functions. For those areas in which no bids were received, the team has collaborated with relevant state laboratories in the Republic of Ireland and secured

Memorandums of Understanding (MoU) (with twelve monthly reviews) to fulfil these NRL requirements.

4.9 Prior to EU Exit, the FSA designated a number of OLs in NI and these laboratories continue to be designated for NI official testing purposes. A gap analysis was carried out with new designated laboratories identified to replace those previously carried out in GB laboratories. The team has designated a number of EU based laboratories for most of the common testing areas. We are continuing to source and designate OLs for emerging needs.

4.10 Work is ongoing to develop these new relationships between the NI OL network and the new European NRLs, ensuring knowledge exchange, quality assurance and a harmonised approach to sampling and analysis.

4.11 Over recent months, the team also completed the 2022 classification review of the 32 shellfish harvesting areas in NI, using the recently amended FSA protocols for the investigation and consideration of anomalous results from Class A harvesting areas. The FSA in NI works closely with colleagues from across the FSA to ensure delivery of this regulatory work.

4.12 The FSA in NI successfully bid for funds from Treasury for 2022-23 to provide DCs with the resources needed to fulfil their legal obligations at NI Points of Entry (PoE). In developing the bid, we produced a robust resource projection model covering the required import checks on FSA commodities. The model, based on 2021 trade flow data and operational insight, has been future-proofed to enable it to produce effective projections for any future scenario planning.

4.13 The modelling required positive engagement with DCs to review their staffing profiles and structures to prioritise the use of Authorised Officers at each site. DC engagement included a well-received presentation at SOLACE (the forum for NI DC Chief Executives).

4.14 The suspension of P&O vessel movements between Cairnryan and Larne (between 17 March and 24 April) led to considerable disruption on transport routes from GB-NI resulting in the diversion of trade to Belfast. This resulted in a significant increase in the number of consignments being dealt with by Belfast Port Health staff who continued to apply a proportionate approach to controls during this time. DC staff responded well within these challenging circumstances. The FSA, DAERA and Defra will be engaging in a lessons learned exercise for this incident, with a focus on improving resilience and capacity to react to unforeseen challenges at UK ports.

4.15 As the Board will be aware, the FSA in NI has a Service Level Agreement (SLA) in place with DAERA for the delivery of official controls and associated activities by the Department relating to meat, milk, egg and primary production hygiene in establishments registered by, or holding certain approvals from the FSA. The cost of the service is £7.5 million per annum.

4.16 The SLA continues to operate well, and the team has recently completed work on a review of the SLA. The 2022/2023 agreement has been signed off alongside a data sharing agreement, and MoU. The SLA provides improved clarity on service delivery expectations between both parties as well as enhanced governance for milk and egg establishments.

4.17 The team in NI is fully embedded into the FSA's C3 (Command, Control and Coordination) efforts and this has been evident recently in relation to both the Kinder products recall and sunflower oil substitutions. During both incidents, the team engaged across the FSA as well as with industry, DCs and other government departments in NI to ensure joined-up approaches and to keep consumers safe.

4.18 Over the last year, engagement with NI government departments has increased and where appropriate we provide relevant information and updates to ensure that the voice of the FSA is heard. For example, we are engaging in the inter-departmental working groups in NI led by the

Executive Office focussed on tackling common challenges in relation to the continued implementation of EU legislation.

5. Current priorities

5.1 Divergence. EU food and feed legislation continues to apply in NI. While some differences in how we do things in the UK are not new, this change to our operating environment means we are developing robust, consistent processes to ensure we are managing divergence across the UK. We provide regular updates on new EU legislation to support DCs in fulfilling their enforcement responsibilities. We are building on our existing engagement with industry stakeholders to develop a proactive approach to exchanging information and intelligence on new EU legislation.

5.2 To date, divergence has primarily been driven by new EU legislation. Many changes relate to regulated product authorisations where changes are business driven or are routine technical amendments that do not introduce any practical difference between the regimes. As new policy and legislation develops in the UK, our risk analysis process will continue to take a four-country approach, with impacts across the UK considered even though changes may not be introduced in all four countries.

5.3 For example, following the removal of the authorisation for use of E171 Titanium Dioxide (TiO₂) as a Food Additive in the EU and consequently in NI, the team has been engaging with industry and DCs on the impact of the authorisation removal. TiO₂ is currently permitted on the GB market. This is currently going through the FSA's risk analysis process. It is estimated the independent scientific assessment will conclude in the first quarter 2023, with a decision on the use of TiO₂ in GB expected thereafter. The team will continue to update DCs and industry and seek to assist where possible.

5.4 We are also continuing to monitor potential EU regulatory change which is likely to have more significant impacts, such as the planned review of policy and legislation on food information to consumers.

5.5 Due to this proactive monitoring, we have positioned ourselves to engage with the European Commission on relevant issues. A recent example of this was when the team contacted the Commission to seek clarification on issues related to legislation on food for specific groups. The Commission confirmed its views on the requirements and the team is now working to ensure these requirements can be appropriately enforced in NI.

5.6 Bread and Flour Regulations Review. The team is engaged in a four-nation review of the Bread and Flour Regulations 1998 and the Bread and Flour Regulations (Northern Ireland) 1998. This legislation covers specific rules on the composition and labelling of bread and flour, including mandatory fortification to replace what is lost in the milling process and to protect against nutrient deficiencies. The review is governed by the FCSL Common Framework, which provides formal assurance and structures that any new policies within this review will be taken forward on a four-nation basis. The team in NI, alongside FSA colleagues in Wales, are working collaboratively with FSS and Defra and also engaging with DoH and their counterparts across the UK, due to crosscutting health interests.

5.7 The review will ensure that the 1998 Regulations are fit for purpose and support UK industry, whilst protecting consumers. It is also intended the joint four-nation decision on the Mandatory Fortification of Flour with folic acid will be implemented under this review. To assist the review, a Bread and Flour Technical Working Group has been established to help identify and explore the issues and provides a platform for engagement with relevant industry across the UK.

5.8 MoU with the Food Safety Authority of Ireland (FSAI). To ensure a sustained joined-up approach to food safety on the island of Ireland, we have also recently been engaging with FSAI to update the MoU in light of new arrangements.

5.9 We have continued to enjoy productive and positive relationships with FSAI, and the updated MoU will reflect the additional challenges posed by the Protocol and ensure that we can continue to share data and information to protect public safety across the island of Ireland.

5.10 Obesity Strategy. The current NI DoH led obesity prevention Framework 'A Fitter Future for All' comes to an end this year. We have been working closely in the development of the new Strategy which will incorporate a whole systems approach to obesity prevention and include a strong focus on the food environment and health inequalities. We are represented on the Obesity Strategy steering group and the whole systems approach sub-group and are currently attending thematic workshops to assist in the co-production of a new 10-year strategic framework, building on the outcomes of 'A Fitter Future for All' whilst seeking new evidence-based outcomes, actions, collaborations and alignments to deliver real change.

5.11 Resourcing. Further to our successful bid for additional funding, we have been able to finalise our plans to build capacity and capability in the NI office as well as supporting DCs. This has included the extension of our Trade, Imports and Exports team, increasing our science capability and building our senior management capacity with the introduction of a new Deputy Director post. This additional resource was essential to cope with the extensive additional workload and ensure joined-up working across the FSA and other government departments in NI.

6. Forward look

6.1 At the time of writing, a new NI Executive has not been formed. Although caretaker Ministers remain in place, they are limited in the decisions that they can take. The major impact on the FSA in NI is that without a functioning Assembly and Executive, legislation cannot be progressed.

6.2 We have taken steps to plan and resource effectively to ensure that we can deliver business as usual in the next six to twelve months and there are a number of key priorities in NI which we will be working on. However, the Board should be aware that the current political situation may impact on the delivery of some of the following key objectives:

6.3 NI Assembly and Executive. In the new Assembly mandate, we will seek to establish relationships with incoming Ministers and the Committee for Health to deliver on FSA priorities. As part of this work, we will be working towards final sign off for the three Common Frameworks. We will also consider any priorities set by the new NI Executive, including a Programme for Government, and where appropriate, will be aligning our work to deliver on outcomes relevant to the FSA.

6.4 Legislation. We have an ambitious legislative programme for the new Assembly mandate, including plans to seek primary legislation to secure additional powers to investigate food and feed related offences committed under the Fraud Act 2006 in NI. The programme also includes secondary legislation to: require businesses which supply consumers with food via online order to display their Food Hygiene Rating online; update the Bread and Flour Regulations following a four country review, including mandatory folic acid fortification; provide for the enforcement of safety requirements on recycled plastic food contact materials; and provide for the enforcement of requirements on total diet replacement for weight control and food intended for infants and young children.

6.5 EU Transition. The team will continue to consider the implications of the Protocol and any proposed legislation introduced by the UK Government to ensure that food safety requirements

continue to be met and public health continues to be protected.

6.6 Obesity Strategy and NI Food Strategy Framework. Our participation in the development of the new Obesity Strategy for NI represents a significant workstream for the FSA in NI. The team will be considering and developing its contribution to both the development and delivery of the new Strategy. We will continue to be actively involved in the establishment of the NI Food Strategy Framework and work will be undertaken to further understand how the FSA in NI can help to deliver relevant outcomes.

7. Conclusions

7.1 This paper provides an overview of work that fed into the priorities for the FSA in NI which the Board commented upon in September 2021. It also showcases a wide range of achievements that have been delivered in sometimes challenging circumstances and what the key priorities are moving forward.

7.2 The FSA in NI has been operating in a new landscape but has been rising to each challenge and we have taken significant steps to ensure that consumers can be confident that food is what it says it is.

7.3 Some of this work has been delivered in association across government and other delivery partners and we will seek to build upon these relationships to deliver upon the FSA's priorities and strategic direction as set out in the new FSA Strategy.

7.4 A lot has been achieved in recent years and the forward look priorities for the next six to twelve months emphasise that we will continue to be ambitious.

7.5 Overall, the Board is asked to:

- **Assess** the effectiveness of the outlined work to deliver FSA priorities;
- **Comment** on the alignment of this work with the FSA's strategic direction and nature of the FSA's three country approach; and
- **Consider** and **comment** on the identified priorities for the FSA in NI in this financial year.