
REGULATING OUR FUTURE – DEVELOPING THE FSA’S NEW APPROACH TO REGULATING FOOD BUSINESSES

Report by Nina Purcell, Director of Wales and Local Delivery

For further information contact Alice Biggins on 02072768293

Email: alice.biggins@foodstandards.gsi.gov.uk

1 SUMMARY

- 1.1 A key component of the FSA’s strategic commitment to playing its part in achieving “food we can trust” is an effective, robust and proportionate system of ensuring that food businesses comply with the regulations put in place to protect consumers’ interests.
- 1.2 In January 2016 the Board discussed this, reaffirmed its commitment to the protection of consumers’ interests as the central driver of any new system, and agreed that the FSA should engage with key stakeholders to begin the process of designing a new approach to supporting regulatory compliance.
- 1.3 This paper reflects the feedback we have had from stakeholders so far, and seeks to outline the beginnings of a blueprint for the future. Once we have Board input we will take this out for further discussion, challenge and collaborative development.
- 1.4 The Board is asked to:
 - **Note:** the engagement to date and feedback received
 - **Agree:** to strengthen the programme governance structure, including establishing a strategic reference group for the programme
 - **Agree:** to establish an expert advisory panel
 - **Note and comment:** on the risks associated with the programme and the proposed arrangements for their management
 - **Discuss:** the initial outline blueprint, which will form the basis for the next phase of engagement.

2 BACKGROUND

- 2.1 The FSA’s 2015-20 strategy focuses on the role that the FSA plays in delivering “food we can trust” and recognises the critical importance of working in partnership with others to protect consumers’ interests in relation to food.
- 2.2 The regulatory strategy agreed by the Board in January 2015¹ identified three important aspects of our work with businesses to support a food system that works in the interests of consumers:

¹ <http://www.food.gov.uk/sites/default/files/fsa-150104.pdf>

- ensuring that businesses comply with regulatory requirements that protect consumers' interests;
 - improving the regulatory framework to make it more risk based and effective for consumers; and
 - finding ways to encourage businesses to go beyond bare regulatory compliance in doing what is right for consumers.
- 2.3 Because of the level of complexity and importance of each of these elements, and the urgency of the first as pressures continue to mount on the existing model, the Regulating our Future programme will focus on designing an effective model to support compliance. Work will continue on the other key elements of the regulatory strategy in parallel.
- 2.4 This programme of work will redefine how we gain assurance that businesses are doing the right things for consumers. Those 'right things' are, for the time being, defined by our interpretation of EU and domestic legislation in relation to food, so our initial focus is going to be on redesigning the assurance system and driving up compliance. In parallel, we will be thinking about whether those rules still match our and consumers' expectations of food businesses, and we foresee putting an increasing amount of effort into modernising the rules (and our interpretation of them) to make sure they effectively and proportionately protect consumers' interests.
- 2.5 The FSA approach to our regulatory role is that we are here to make sure businesses do the right things for consumers, and encourage them to change their behaviour if they're not. The Board has recently discussed how open data and transparency approaches can be powerful tools to drive and enable positive business behaviour change, and aligning the interests of businesses with those of consumers remains central to the FSA strategy to 2020.
- 2.6 We are not approaching this fundamental rethink by starting with the status quo and seeking incremental change. We are starting with the best system we could aspire to, and then planning how we collectively take steps to achieve it. It will demand ongoing change within the FSA as well as in business and local authorities.
- 2.7 Within this overall, high level vision, which will take several years to fully design and deliver, there are some priorities and more immediate requirements. The design of delivery options needs to identify new ways of deriving assurance, and better enforcement of official controls. It must propel us and businesses towards better use of new technology, and be compatible with consumer empowerment through increased transparency.
- 2.8 Where there are immediate incremental improvements that can be made to consumer protection, we will of course make them as part of our business as usual activities, but the objective of this programme is to define and then deliver a new regulatory blueprint for a food industry unrecognisable from the one that existed when the current system was designed.

3 ENGAGEMENT TO DATE AND FEEDBACK RECEIVED

- 3.1 The FSA is committed to developing the new model for food and feed controls in collaboration with others who can contribute to getting the best and most effective future design. With this in mind, activity since the January Board meeting has centred on sharing our thinking, listening to what others think, and using this to develop our initial high level design of a 21st century food safety and standards system.
- 3.2 On 10 February we held a launch event in Cardiff, where the 74 attendees were challenged to think about how different things could look in the future, helped by stimulating presentations from Bristol City Council, Nestlé, and the New Zealand Ministry of Primary Industries².
- 3.3 A summary of the feedback we received on the principles we proposed to underpin the development of the new design, all constructive and broadly positive, is at Annex A.
- 3.4 This was followed by a number of events with Local Authorities and Northern Ireland's Department of Agriculture and Rural Development staff, which the majority of Local Authorities attended. Since then, we have continued to meet stakeholders and get their ideas. We are exploring collaborative policy making tools to make sure we can get as broad a range of inputs as possible, in line with the FSA's commitment to openness and as an important part of trying to maximise the chances of successfully implementing the blueprint when it is eventually finalised.

4 GOVERNANCE AND EXTERNAL OUTPUT

- 4.1 This is a critical strategic programme for the Agency, central to our ability to fulfil our statutory purposes and public expectations in the future. We want to be certain that progress has sufficient visibility with Board members and that there are opportunities for Board members to add value throughout. Therefore, in addition to regular updates at Board meetings, we propose that the Audit and Risk Assurance Committee specifically review the risk plans for the programme. We also propose to establish a strategic reference group, comprising the Chair, Deputy Chair, another Board member and the Chief Executive.
- 4.2 To formalise the important role we expect stakeholders to play in refining the blueprint and designing delivery options, we also propose to appoint an expert advisory panel. This will bring consumers, businesses and other government departments together to ensure all points of view are heard and can be taken account of.
- 4.3 An outline of the proposed groups is at Annex B.

² <https://registration.livegroup.co.uk/regulating-the-future/>

5 INITIAL MODEL

- 5.1 The attached slides (Annex D) seek to give a flavour of our current thinking on the possible components of a blueprint, based on our principles and the feedback we have so far had on them and their application.
- 5.2 At this stage we remain agnostic about who should undertake activities within the system. First we must define the overall system and outcomes required and then we can collectively identify functions, roles, delivery structures, and who is best placed to do what. There are likely to be a mixture of delivery options, and variations across the UK. We definitely do not expect a one-size fits all solution.

6 RISK CONSIDERATIONS

- 6.1 There are a number of risks associated with the current situation and with this programme and its approach to changing the approach to assuring compliance. The programme board, chaired by the Director of Local Delivery, will manage a programme specific risk register. At this stage two key risks that are attracting significant focus are:

Capability and capacity

- 6.2 A dedicated programme manager is being appointed, and consideration given to additional support for the Director of Local Delivery to ensure that she has the time to focus on the programme as its Senior Responsible Officer. Additional external support will be deployed as necessary to support the programme. For example, some specific support has just been used to help with the discovery and scope definition phases.

Political willingness to support implementation

- 6.3 Any significant changes to the current model will require a very broad basis of support in order to stand a reasonable chance of successful implementation. This means that stakeholder engagement will be critical at every stage and a full stakeholder management programme will be established as part of the programme to minimise the risk that a lack of support undermines implementation.

7 NEXT STEPS

- 7.1 A detailed programme plan is now under construction, along with the appointment of a dedicated programme manager.
- 7.2 Over the next few months we will make sure we have all the necessary programme assurance in place (including resources required, baselines, metrics, benefits identified etc). There will be material programme expenditure required over the next 2 years or more, alongside “admin expenditure” (i.e. time and human resources) and we have identified financial resources in the plan that can be made available to meet requirements as

they become clear. As always strategic alignment of financial investment will be considered on a regular basis by the Business Committee.

- 7.3 Communication, engagement, and working with stakeholders will continue to be a key priority, with the next wave of engagement focusing on developing and improving the draft model described above. This will help ensure both businesses and regulators can invest their time appropriately in a new system that is fit for purpose in achieving consumer protection.
- 7.4 We are interested in potentially running pilots or pathfinders to trial aspects of the new model, as part of taking an “agile” approach to development. It will be important to have clear criteria for pilots and mechanisms to identify and apply learnings so there will also be a piece of work to identify what role pilots and pathfinders might best play in the development process.

ANNEX A: THE PRINCIPLES

Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so. Consumers have a right to information to help them make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information

This is a fundamental principle of food law. We need to help businesses understand what is required of them, and make sure they're doing what they need to, so consumers can be confident about the food they eat. Businesses need to recognise this responsibility, and demonstrate to us and consumers that they meet it.

Business transparency across a wide range of consumer interests in relation to food is essential in building and maintaining confidence in the industry. Consumers should be able to make informed choices based on the things that matter to them – and businesses need to enable that.

FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses

There is enormous variation in food businesses, in their size, the type of food they produce, the processes they use and their attitude to food safety and authenticity. They will need different levels of support, and different levels of scrutiny. One size will not fit all so we will be considering how to segment businesses – and to do that, we will need good quality, up to date information about them.

The regulator should take into account all available sources of information

There is a wealth of information concerning food businesses that we could be using to build our picture of business behaviour. This can include data industry collects about itself from its own audits and checks, and information from other sources, such as consumers and other regulators. Once we're confident we can rely on these, we should focus our efforts on filling the gaps rather than repeating the work of others. Large businesses with experience of using a range of food data sources have a leadership role to play, in sharing safety and authenticity related insights they gain.

Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not

Many businesses want to produce food that is safe and what it says it is, and do so. They know that consumer confidence in the whole industry is crucial, so are as keen as we are to drive out those who put that confidence at risk. Businesses who put consumers at risk, either deliberately or negligently, need to know that there will be consequences, while businesses who demonstrate to us that they are transparent and prioritise food safety and authenticity will benefit from reduced regulator scrutiny.

We are open to using a range of tools to encourage business behaviour change, including reputational recognition and sanctions.

Businesses should meet the costs of regulation, which should be no more than they need to be

UK food is some of the safest in the world, and UK businesses benefit from consumers (in home and domestic markets) trusting the food they produce. The industry tells us they value a strong, independent regulator. We believe that the regulatory regime should be as cost-effective as possible, for example by working with others and using a range of sources of information. Industry should meet that cost, with those requiring the greatest regulatory intervention/attention contributing the most.

ANNEX B: FEEDBACK ON THE PRINCIPLES AND GRAPHICS – SUMMARY FROM 10 FEBRUARY EVENT

Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so. Consumers have a right to information to help them make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information:

- Agree with principle but *how* will it be delivered?
- Earned recognition
- Self-regulation good but will not work for everybody. Focus on the ‘bad’ businesses.
- How do we avoid businesses and regulators duplicating? Certification bodies are already auditing.
- Influences on consumers are price and availability with labelling much lower down. What does trust look like from a consumer perspective?
- Accreditation important. Can't be cost prohibitive. Don't want checkers checking the checkers. Lack of funding for regulation but big industry have infrastructure and need to be able to prove what they are doing. Allows FSA to target resources to where risks are.
- Primary Authority has been a step in the right direction. We need to build on this.

FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses:

- Is it real reward or less penalty? Rewards are needed, not just recognition
- Gold plating is irrelevant
- Schemes such as Red Tractor could benefit SMEs
- Different crime agencies should work together and share information. Need a more intelligence led approach capturing all areas of the supply chain
- Introduce a business-to-business rating scheme
- Does agency use non statutory tools to penalise businesses? That region should be left to the market
- Name and shame businesses that don't comply however be open to self-reporting failures (lower penalty for transparency)
- Every business will get something wrong at some point. Should sentencing guidelines be different for businesses who are low risk or who have a track record of good behaviour

The regulator should take into account all available sources of information:

- How is data used by the regulator? How do we ensure data protection? Would commercial advantage be protected?
- What does the data mean? Trends are more important than data. What data will add real value? Danger of too much data?
- Businesses need to be confident that information provided won't mean a business is punished while their competitor who isn't sharing info gets away with it.

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- What information does government have that they could share with industry and vice versa?
 - Single database is needed (was successfully trialled at Defra)
 - Business will share data with regulators as long as it doesn't create a disproportionate amount of scrutiny on them. Regulator focus should be on the gaps

Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not:

- Registration and national register needed. Licensing. Spot fines for failure to register.
- Can't expect the dispersed LA resource to deal effectively with the whole range of businesses. Consider HSE model of specialisms
- Is segmentation too rigid and permanent? Could it be done in a phased approach? Segment by activity i.e. food production carries a higher risk than retail
- Consider fixed penalty notices but be careful not to be seen as income generators
- Revisit fundamental factors that drive risk analysis
- Consider how the insurance industry manages risk

Businesses should meet the costs of regulation, which should be no more than they need to be:

- Businesses that do not comply should pay more. Adopt fee for intervention?
- Delivery KPIs needed for paid for services. Consider flat rate registration fee.
- Increasing use of external verifiers (private) could reduce official inspections. Registration / licence fee must take account of need for some verification
- Privatised inspections for businesses achieving good or very good in FHRs could reduce EHO burden without compromising safety
- Consider HSE model
- SMEs should not bear extra costs
- Only fair way to do this is through a risk based approach and based on usage
- Ensure costs don't 'push people under the radar'
- Some businesses are already paying so use their third party audits to avoid paying twice.

ANNEX C: PROPOSED HIGH-LEVEL GOVERNANCE



Strategic reference group

Purpose

For the FSA Board to have regular, formal input into the programme. To ensure the two long-term strands of FSA activity (driving up compliance, and driving business behaviour change in favour of wider consumer interests in relation to food) are consistent.

Members

Heather Hancock, Tim Bennett, Stewart Houston, Catherine Brown

Expert advisory panel

Purpose

This panel is intended to bring a range of perspectives to the development and refinement on the model. Combining different stakeholder groups in one forum will mean that members can be exposed to opinions they might not usually hear. It is another way in which we hope to work creatively and collaboratively with stakeholders to develop the model.

The panel will doubtless provide robust challenge, but to be really effective it will need to be prepared to develop solutions.

Members

Individuals will be selected for their insight, rather than to represent their organisation.

Potential composition:

- Large business
- Medium business
- Small business
- Consumer
- Consumer organisation
- European Commission or Parliament
- Other Government Department
- Accreditation scheme
- A local authority
- A regulator in a different sector
- An FSA Board member