

ACHIEVING BUSINESS COMPLIANCE PROGRAMME

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1. Summary

- 1.1. This paper provides an update on the progress being made by the Achieving Business Compliance (ABC) programme, particularly on the project to look at enterprise level regulation and the work underway to quantify the level of risk posed by food sold online.
- 1.2. The Board is invited to:
 - **Note** the progress made with plans to pilot a new enterprise level regulatory approach and **comment** on the guiding principles for the pilots;
 - **Note** the work underway to identify and mitigate risks posed by online food sales; and
 - **Endorse** the programme objectives and approach (**Annex A**).

2. Introduction

- 2.1. Our regulatory system plays a critical role in protecting the public, and the UK economy, from the risks of costly and damaging foodborne disease outbreaks or food scandals and maintaining the high reputation of the UK food industry. But the food sector has changed dramatically in the three decades since the current regulatory system was introduced. Although regulation has continued to evolve, our assurance model has not kept pace with the significant changes in the food industry. In today's food industry there is a wide variety of food businesses, from micro-businesses to a set of large national businesses who have a great deal of influence across the system. The way we buy and consume food has also changed, with an increase in various forms of online sales over the last few years. These changes create new opportunities for us to better protect the interests of consumers. For some parts of the food sector, there may be more effective and efficient ways to ensure that businesses comply with the rules than our current assurance model, which is based heavily on in-person and regular inspection of food business premises by local authorities.
- 2.2. Our aim is to make sure consumers continue to have food they can trust in the future. So, in a rapidly evolving food landscape we need to regulate in a smarter way to make sure that food is safe and what it says it is. Through the ABC programme, we will develop a set of smarter regulatory approaches, which:

- make it easier for businesses to provide safe and trusted food for consumers;
 - target regulatory resources at the areas which pose the greatest risk; and
 - improve compliance across the system by working with and through others, including regulatory partners and influential businesses.
- 2.3. The programme is organised into three key strands of work:
- Making regulation more targeted **and proportionate** for all the food businesses regulated by local authorities.
 - Designing new **enterprise-level approaches** to assurance for a set of businesses that are compliant with regulation and influential in the food chain.
 - Improving **assurance of online food sales** and identifying a series of interventions to improve safety for consumers buying food online.
- 2.4. This paper does not cover the “targeted and proportionate” workstream, but the two projects within it – the Food Standards Pilots and Food Hygiene Delivery Project – are both on track, and updates will be provided in future reports as appropriate.
- 2.5. Although the “targeted and proportionate” workstream is well advanced, the rest of the programme is still at an early stage. In October 2021 we asked the Infrastructure and Projects Authority to undertake an informal, independent programme review, to help assure that the programme has been set up to succeed. They told us that there is confidence and trust in the leadership of the programme, with some good foundations to deliver, but they also made some recommendations for improvement. In particular, they advised us to take the time now to develop and agree a very clear set of objectives and ensure clarity about the scope of the programme. In response we have undertaken a comprehensive review of our case for change, programme objectives and approach, and have included our proposed version for review at **Annex A**. We are considering their full set of recommendations and will develop an action plan.

3. Enterprise Level Regulation

- 3.1. A small number of large businesses possess a significant amount of reach and influence across the entire food system. Through our analysis, we have identified ten food retail businesses with c95% total UK grocery sales, and consequential influence across the food system. The analysis also indicated that these ten supermarkets generally have a high level of compliance with food hygiene requirements across their portfolio of establishments. Under the current regulatory system, these establishments are all inspected on a premises-level basis by individual local authorities, although they may have a relationship at a business level with a primary authority for assured advice on regulatory matters. We are exploring how we could regulate the whole business as a single entity, using existing assurance and audit processes,

which duplicate some elements of inspection activity currently undertaken by local authorities.

- 3.2. Whilst we have started this work with supermarkets, if the approach is successful, we could apply similar principles to other parts of the food system. Research and analysis is underway into manufacturers, contract caterers and franchises, with other sectors to follow. This is a novel approach to regulation, with multiple benefits, including reduction in duplication, allowing local authority resources to be deployed to businesses posing higher risk, and increased oversight, understanding and ultimately influence of the food system for the FSA.
- 3.3. Since the FSA Board in May 2021, we have started to engage with the supermarkets we identified, and their primary authorities, to explore this concept in more detail. The initial design phase will focus on food hygiene only, but food standards could be taken into consideration at a later date, as the project develops. We are currently engaged in intensive policy and process design activity, with an ambition to pilot new approaches with a small number of these businesses during 2022/23. The development plan is included at **Annex B**.
- 3.4. The pilots would need to be undertaken within the existing legislative framework and will need to comply with current law on food regulation (the Official Control Regulations). This means in practice that businesses, primary authorities and local authorities will continue to have the same statutory responsibilities as currently to fulfil, and the pilots will need to be designed in collaboration with them. It is important to note that this project will not involve any lowering of the standards these companies are required to meet, we are simply exploring different ways of assuring compliance with those standards. Self-regulation is not an option being considered. The proposals will undergo significant scrutiny and challenge via programme governance to assure that consumer safety will not be affected.
- 3.5. We have an emerging set of guiding principles to help shape the outcomes of the pilots, on which we would welcome the Board's views:
 - Food safety and consumer confidence must not be diminished.
 - Approach needs to be trusted and supported by local authorities.
 - The resource burden on local authorities must not be increased.
 - The new approach must not undermine the value of FHRS.
 - Regulation must be at the enterprise level i.e., the whole business.
 - Non-compliance procedures will require careful consideration, to ensure enforcement action is taken at the correct level (premises or enterprise).
 - Complaints must be handled swiftly, with robust feedback mechanisms about problems in the systems.
 - A model working across countries would be ideal, with pilots taking place across England, Wales and Northern Ireland.
 - This project must be closely aligned with the Hygiene Delivery Review.

3.6. One of the challenges for ABC is to navigate a complex regulatory landscape for businesses operating across the four countries in the UK. Whilst we will aim wherever possible to apply a common approach to any changes proposed for England, Wales and Northern Ireland, regulatory differences already exist across the four countries which will continue in future. The table below provides the current position, and will be used as a reference point as part of the programme governance to support decision-making:

Regulatory Landscape	Wales	England	Northern Ireland	Scotland (Out of scope for ABC)
Number of local authorities	22	333	11	32
Local authority structure	Unitary (hygiene & standards)	Two-tier: Hygiene & standards can be split across unitary & districts	Unitary (hygiene & standards)	Unitary (hygiene & standards)
Use of primary authority	Widely used*	Widely used*	Not available	Not available
FHRS display	Mandatory	Not mandatory	Mandatory	Separate system
Food Law Code of Practice (FLCoP)	Recent review of FLCoP identified that whilst there are some differences across E/W/NI, they are aligned as much as possible			Different codes in operation

**Large food businesses operating across E&W are likely to have two separate primary authorities for assured advice in the separate countries*

3.7. We will return to the FSA Board in 2022, ahead of pilots commencing, with a further update and more detailed design.

4. Assurance of Online Food Sales

4.1. The UK has seen a rapid increase in online food sales, with users of apps for online food sales almost doubling in the last five years, from 13.6M in 2015 to 24.8M in 2020. Delivered food remains the smallest sub-sector of the UK foodservice market; however, it is the fastest growing, at almost twice the rate of the overall economy. Established aggregators hold the majority of the market share in the UK with Just Eat holding 45%, Uber Eats and Deliveroo both holding 25% in Q1 2021. However, there are a variety of different online selling routes that can be used to offer food for sale such as social media sites, online marketplaces, messaging apps and other online platforms. The limitations of the existing regulatory system are being exposed as some new businesses set up online and (either purposely or inadvertently) do not register

as a food business and may therefore avoid local authority inspection and assurance.

- 4.2. We are gaining a better understanding of some of the different online operating models by working with partners, gathering data and actively investing in the strategic and operational relationships with a cross section of the online business landscape including the established aggregators, Amazon and Google. This is enabling us to begin to understand and assess the consumer risks from online food sales and identify any regulatory gaps. This activity will inform the design or refining of mechanisms, services, and guidance to make it easy for online businesses to comply with requirements and keep consumers safe.
- 4.3. At this early stage of discovery and information gathering, some risks have been identified, for example unregistered businesses and lack of standardised frameworks for selling food online. Whilst these initially appear to be relatively low risk, with clear options emerging to address them, the programme will continue to clearly map and track risk (outlined at **Annex C**)
- 4.4. In response to the identified unknown level of risk posed by unregistered food businesses operating online, we commissioned the FSA Strategic Surveillance team to undertake some work to help quantify the numbers of businesses that were trading but not registered. The most reliable nationwide source of data for this activity was the Google Places API, which Strategic Surveillance secured permission from Google to use in the interest of public health. Looking across two geographic areas with varied demographics we were able to identify around 7% of businesses trading that were potentially not registered. The evidence from this project is being reviewed through the ABC programme, to inform and agree the next steps.
- 4.5. Google Places only includes businesses with a physical address and will struggle to capture the more intangible businesses that trade through online marketplaces. In response to this limitation of data we are exploring two other opportunities to quantify this particular risk. The first is to understand the scale of businesses operating online through leading marketplaces, in response to anecdotal evidence of a large volume of food being sold via this route. We are currently in conversation with these businesses to get their permission to scrape data from these pages.
- 4.6. The second opportunity is in response to the FSA and local authority colleagues seeing reports of food being sold and shared online, in multiple languages, potentially with no traceability or safety checks in place. The ease of entry for online food sales (via aggregator platforms or online marketplaces) enables food businesses to quickly set-up and easily reach a wide range of potential customers. We have started working with a security technology company who can identify which online channels or platforms are the most used and what kinds of products are being sold. We should also be able to gain useful insight about the complaints consumers make about products bought or the companies operating online which will assist in identifying any emerging risks

4.7. Finally, to enable a richer understanding of the risk online sales pose from a consumer perspective, we have commissioned further research to explore consumer attitudes towards buying food offered for sale online. This research, together with engagement with local authorities and food businesses, will allow us to identify any potential gaps in regulatory cover, and highlight areas where we can initiate projects to add value and assurance to the consumer that the food they are purchasing is safe and what it says it is. The complexity of the landscape means we need to take the time to really evaluate and understand the types and scale of risks to consumers, and we will return to the Board with more detail in 2022.

5. Next Steps

5.1. The Board is invited to:

- **Note** the progress made with plans to pilot a new enterprise level regulatory approach and **comment on** the guiding principles for the pilots;
- **Note** the work underway to identify and mitigate risks posed by online food sales; and
- **Endorse** the programme objectives and approach (**Annex A**).

Programme Objectives & Approach

Case for Change

The food landscape has changed dramatically in the three decades since the current regulatory system was introduced. Although regulation has continued to evolve, our assurance model has not kept pace with the significant changes in the food industry.

Today there is a wide variety of food businesses, from home-based artisan bakers to large national supermarkets with hundreds of stores. Some national players have huge influence across the system (for example, 95% of our groceries come from 10 big retailers). The way we buy and consume food has also changed. In the last few years there has been a substantial increase in online sales, allowing even the smallest businesses to reach many more consumers. We can expect this trend to continue. Furthermore, businesses are becoming much more data-rich and data-enabled, particularly those selling online.

These changes create new opportunities for us to better protect the interests of consumers. For some parts of the food sector, there may be more effective and efficient ways to ensure that businesses comply with the rules than our current assurance model, which is based heavily on in-person and regular inspection of food business premises by local authorities. As the central competent authority, we need to make sure that the large national and multi-national businesses, who are influential across the food industry (for example, in the way they set requirements for products or stores) are regulated at a strategic level. Their influence needs to be matched by appropriate regulatory effort so that their activities, across their whole supply chain, are aligned with our regulatory objective of food that is safe and is what it says it is. And we also want to make sure local authorities can target their resources as effectively as possible, as we develop a food regulatory assurance model that is fit for the future.

Our objectives

Our aim is to make sure consumers continue to have food they can trust in the future. So, in a rapidly evolving food sector, we need to regulate in a smarter way to make sure that food is safe and is what it says it is.

The ABC programme will develop a set of smarter regulatory approaches which:

- Make it easier for businesses to provide safe and trusted food for consumers.
- Target regulatory resources at the areas which pose the greatest risk.
- Improve compliance across the system by working with and through others, including regulatory partners and influential businesses.

How we will work

- We will keep consumer interests and consumer safety at the heart of what we do.
- We will use data and digital technology to drive change and inform regulation.
- We will work in partnership with local authorities and businesses to design and test new approaches.

What we will do and deliver

The programme consists of three workstreams:

Targeted and proportionate regulation: We are designing a more targeted and proportionate approach to local authority regulation of food businesses. We will modernise the food hygiene delivery model and we are developing a new food standards delivery model, which incorporates a revised risk assessment scheme and more emphasis on intelligence as a driver for local authority regulatory activity.

- New food standards model already being piloted and will be evaluated (including an assessment for scalability) within 1 year.
- New food hygiene model headline policy approach will be developed within 1 year.

Enterprise-level approaches: We will design new regulatory models for a set of large businesses that are compliant with regulation and influential in the food chain. Working with local authorities, primary authorities and businesses we will develop approaches to assure compliance at a business level rather than an individual premises level. We will start this work with retailers but will also explore the case for enterprise-level approaches to other sectors within the food industry.

- Enterprise-level regulatory approaches with large influential retailers piloted and evaluated in 2-3 years.
- Scoping work is underway now within the programme to test the suitability of enterprise-level regulation for other sectors within the food industry, and the programme will consider whether the models piloted could be applied to other sectors. Further pilots may be considered but would involve a formal extension to the scope of the programme.

Assurance of online food sales: We will use data and research to build up an evidence picture of the new online food sales landscape. We will assess the potential risks to consumers from buying food online, and the regulatory levers available to address these, including working with other regulators, international food safety regulators, government bodies and influential business to improve compliance. We will identify and then pilot or implement a series of interventions to improve consumer safety when buying food online.

- This workstream is at the scoping stage. The FSA has completed discovery underway to describe and understand the online landscape. We are now assessing the scale of the scale of unregistered businesses. We have also commissioned research into the potential of digital tools to remotely monitor food safety risks of on-line food businesses. Timescales and further deliverables are still being determined.

Our intention in all three workstreams is to develop regulatory approaches which are deliverable within existing food law, but the programme will also identify any areas in which legislative change could support our objectives and may make recommendations for change.

What success looks like: our vision for food regulation

The changes designed by the ABC programme should lead to a future in which:

Regulation evolves with the rapidly evolving food system, so all food is safe for consumers regardless of where and how it is bought.

The FSA collaborates with local authorities and industry to make sure that food regulation is data driven, and that resources are targeted at the areas of highest risk. FSA tools and services make it easier for food businesses to provide food that is safe and what it says it is.

ANNEX B

Enterprise Level Regulation Project – Development Plan

We identified ten supermarkets that we might be able to regulate in a different way, and have started to engage with these businesses and their primary authorities:

Discussions Underway	Planned Discussions
Aldi	Asda
M&S	Co-op
Morrisons	Iceland
Tesco	Lidl
Waitrose	Sainsburys

In Wales we are also working with Shared Regulatory Services (a collaboration between Bridgend, Cardiff and the Vale of Glamorgan Councils) and the other primary authorities who have partnerships with large retailers. As the primary authority scheme is owned by BEIS we have also engaged with them to consider how we can continue to strengthen the primary authority relationships.

By April 2022 we will:

Design a Pilot Framework:

- Design and agree a regulatory pilot framework, which will be developed alongside key stakeholders' requirements, with independent external scrutiny and challenge.
- Agree and embed the framework internally, to ensure it is robust and previous learnings are considered.
- Explore policy implications and areas for further policy development, to ensure we are working within legal frameworks.
- Establish retailer commitment to develop a pilot, with formal commitment at a stakeholder event to test new regulation models in real-life.
- Ensure the new approaches are scalable and improve efficiency without creating further barriers for all stakeholders.

Engage with local authority colleagues:

- Design and implement a local authority engagement plan to ensure colleagues are part of the design process, and can contribute to, and understand their roles in this project.

Understand potential service design opportunities:

- Discover the data requirements that retailers use for their business compliance and what potential there is for FSA to support primary authorities in using that data as part of their assurance process.

Communications and engagement

The communications and engagement plan for the ABC programme is currently in its first phase and focussed on conversations with targeted stakeholders to gather insight and views around the 3 workstreams.

In addition to the stakeholders who have been engaged with as part of the Enterprise Level Regulation Project, the following organisations have been provided an overview of the programme:

- Food Standards and Information Focus Group
- National Food Hygiene Focus Group
- British Retail Consortium
- Food and Drink Federation
- Chartered Institute of Environmental Health (CIEH)
- Association of Chief Trading Standards Officers
- Welsh Food Advisory Committee
- Safe Sustainable Authentic Food Wales
- Directors of Public Protection Wales
- Uber Eats
- Deliveroo
- Just Eat
- eBay

An introduction to the programme has also featured in speeches to the Westminster Food and Nutrition Forum and CIEH.

A communications and engagement lead has been in post since 20 September. Over the course of the next few months, we will be carrying out more discovery work, including a stakeholder mapping session. This will ensure interested parties are given the opportunity to be sighted and to provide feedback as the workstreams develop.

Updates on activity will be provided through our website and through Smarter Comms for local authority partners. As the programme delivery progresses, we will look at other channels for engaging stakeholders, including events and speaking opportunities.

The communications plan will be regularly updated in line with developments to the programme. This will include proactive communications through external channels such as the media when it is considered appropriate and proportionate.

Online Food Sales – Identification of Risk

