
FSA IN WALES: DIRECTOR'S UPDATE

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1. SUMMARY

1.1. This report outlines the key activities of the Food Standards Agency in Wales (FSAW) since the previous report to the Board in November 2016, mapped against the reprioritised strategic outcomes for the Strategy to 2020 and corporate priorities.

1.2. The Board is asked to:

- **comment** on the work to date on the delivery of key objectives for the FSA in Wales since 2016;
- **endorse** the efforts of the FSA in Wales to deliver the reprioritised strategic outcomes and corporate priorities; and
- **agree** the priorities identified in the forward look (paragraph 13) for forthcoming work.

2. INTRODUCTION

2.1. In Wales, the FSA is responsible for food safety and standards and animal feed controls and has overall responsibility for general food labelling and composition requirements. The FSAW has a full complement of 36 and an annual budget of £3.516m. FSAW is responsible for ensuring delivery of all the FSA key priorities in Wales. FSAW provides the lead for the FSA, as a whole, on food supplements policy work, policy in relation to less than thoroughly cooked burgers, and work associated with skin-on sheep meat. Further, with the roll out of Our Ways of Working, FSAW staff have become more involved in FSA wide programmes and are now leading and supporting both EU Exit and Regulating Our Future (ROF) workstreams and delivering for teams across the FSA through communications activities. This flexible approach has not only provided excellent development opportunities for staff but also enabled the FSA to make use of the skills and experience of its entire staff, regardless of location.

- 2.2. This paper updates the Board with progress in Wales since the last report to the Board in November 2016. Since then, FSAW has realigned its resources and refocused its key objectives in order to deliver the FSA's and wider government priorities in relation to EU exit and ROF and the particular challenges that this poses for our remit in Wales. The structure within FSAW has been reviewed to be more effective and provide greater flexibility to utilise resources and people more efficiently. Amongst other benefits, the restructure has increased our ability to use intelligence, knowledge, and evidence more effectively. We are planning the recruitment of additional staff in the coming year to enhance our capacity to deal with EU exit issues and the introduction of ROF deliverables.
- 2.3. Key contributions and achievements of the FSAW to the FSA's key priorities of being an excellent modern regulator (through EU exit work and the ROF Programme) and doing the day job exceptionally well, are outlined in sections 3 to 12 below.

3. EXITING THE EU

- 3.1. FSAW's planning for day 1 of EU Exit in Wales has focused on the five key areas:
- participation in the wider FSA EU exit work programmes;
 - ensuring the operability of all relevant food legislation in Wales;
 - working with local authorities to prepare for any changes, particularly in relation to imported food;
 - liaison with Ministers and WG officials to discuss our outline approach; and
 - participating in negotiations regarding UK frameworks.
- 3.2. We have been successful in a bid to obtain additional funding of £476,000 spread over 3 years from WG for EU Exit, which will enable us to acquire additional resource to support our work.
- 3.3. FSAW is fully engaged with all aspects of the central EU exit work programme to ensure that Welsh needs are taken into account. This includes representation on all workstreams.
- 3.4. More than 90% of food and feed law in the UK is derived from the EU. The vast majority of this is from EU regulations which directly apply across all EU member states. Member states are also then required to implement provisions

within their own domestic legislation to monitor and enforce the EU regulations. FSAW makes all relevant enforcing legislation in Wales on behalf of Welsh Ministers. The European Union (Withdrawal) Act will bring existing EU food law into the law of the UK when we leave the EU. It is likely that the directly applicable EU regulations will be amended at the UK level. FSAW's responsibility lies primarily with ensuring the operability of the Welsh enforcing legislation, providing enforcement bodies with the powers to implement EU legislation. We have scrutinised 100% of relevant domestic legislation for inoperabilities, identified what fixes are needed and have provided drafting instructions for our lawyer on these. Subject to the amendments to the directly applicable EU legislation being made, we are confident that we will have completed this process by the time the UK leaves the EU, and the Welsh statute book will be operational.

- 3.5. Imports pose a challenge for Wales as it does not have the inspection facilities such as Border Inspection Posts or Designated Points of Entry that are required to undertake checks on imported high risk food from third countries. To inform our work in this area we have organised visits to a number of key ports across Wales, to understand more about the volume and type of food that comes through those ports and what resources may be needed in the future to undertake risk based proportionate checks. The data we have obtained is helping to inform our contingency planning. In addition to understanding what checks may be needed in future and the potential impact of this on local authorities, FSAW is part of a multi-stakeholder working group developing imported food and feed training. The training programme will sufficiently train enforcement officers to perform inland checks on imported food and feed to ensure that high standards of food safety and consumer protection continue both at UK borders and inland. FSAW is also part of the Wales Border Planning Steering Group which brings together various government departments and industry representatives.
- 3.6. Food and feed safety are devolved policy areas across the UK but harmonised at the EU level. A unified UK approach will best serve public health and consumers' other interests in relation to food. Ministers from UK, Welsh and Scottish Governments, and senior officials from the Northern Ireland Civil Service, have asked officials in each administration to work together to discuss in detail where common legislative approaches (frameworks) may be required at GB or UK level once we leave the EU. FSAW has been working closely with colleagues across FSA/FSS, devolved administrations and other government departments to work towards agreement between the four administrations on the need to maintain a UK wide framework for policy areas where this is currently maintained by EU legislation.

4. REGULATING OUR FUTURE (ROF)

4.1. Representations were made to WG, from some key stakeholders in Wales, about the direction of travel of the FSA's ROF programme. These concerns related to the engagement process and concerns about possible implications foreseen



for the cohesive and robust regulatory regime which exists in Wales. As a consequence of these concerns, and mindful of WG's position statement of December 2016 on the ROF proposals, Welsh Ministers, commissioned, in early 2017, a new working group to consider wider engagement with the ROF programme, particularly in respect of the Welsh local government landscape and updates and consultations. The working group is led by the Chief Environmental Health Officer for the WG. The FSA is an integral part of the group which is fulfilling its expectations in relation to providing assurances to Welsh Ministers that the proposed regulatory reforms are appropriate to Wales' needs and take account of WG's Position Statement. This is being achieved through building both formal and informal relationships with key influencers of the stakeholder group.

4.2. We have undertaken a comprehensive programme of engagement on ROF with key delivery partners and other stakeholders in Wales to provide updates on our proposals for the new Target Operating Model (TOM) and obtain insights to inform its development. An event for Welsh local authorities was held in June 2017 where the latest iteration of the TOM was considered in depth. This was supplemented by additional workshops in early 2018, which specifically looked at proposals for segmentation. Overall there has been support for the proposals on enhanced registration. Some areas of the ROF programme remain a concern, particularly in relation to segmentation of food businesses, and the desire to maintain the integrity of the Food Hygiene Rating Scheme (FHRS) in Wales. We will continue to engage with stakeholders in Wales as the programme develops. Our continued engagement is having a positive impact, and a number of local authorities in Wales are assisting in informing the

approach and are actively piloting and testing the 'new food business registration digital service' for example.

5. FOOD HYGIENE RATING SCHEME (FHRS)

- 5.1. Implementation of the FHRS and provision of support to the WG associated with the Food Hygiene Rating (Wales) Act 2013 and associated regulations has continued to be a focus for activity for FSAW. FSAW has produced a number of reports as required under The Food Hygiene Rating (Wales) Act 2013. In February 2017, FSAW produced a report following a review of the operation of the appeals system for the period 28 November 2015 to 27 November 2016. The report was laid before the National Assembly for Wales on 28 February 2017¹. Key findings from the review included 1.9% of businesses in Wales issued with a food hygiene rating between '0' and '4' made an appeal and 92.6% of the appeals were determined within the statutory timescale of 21 days.
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- 5.2. A further report was published in February 2018² to meet the requirement for the FSA to undertake a three-year review of the implementation and operation of the Scheme from 28 November 2014 to 27 November 2017, and a further annual review of the operation of the appeals system to 27 November 2017. The review of the operation of the appeals system has found that, between 28 November 2016 and 27 November 2017, local authorities in Wales were largely operating in accordance with the Act and statutory guidance. Only four of the 100 appeals received were determined outside the 21-day period and all were concluded within 25 days. Appeals against ratings were made in less than 2% of the food businesses rated; of these, 84% were not upheld and only 16% resulted in changes to food hygiene ratings.
- 5.3. The latest report evidenced that the mandatory display of food hygiene ratings has been a success in Wales. Food businesses with a rating of 5 (very good) increased by 21 percentage points, 95% of businesses have a rating of 3 (generally satisfactory) or better and there has been a 16-percentage point increase in display, to 84% in 2017, across all ratings. Consumer recognition

¹ <http://www.assembly.wales/laid%20documents/agr-ld10952/agr-ld10952-e.pdf>

² <http://www.assembly.wales/laid%20documents/gen-ld11433/gen-ld11433-e.pdf>

continues to rise with 89% recognising images of the ratings in 2016 compared with 76% in 2014 and 43% in 2012. Research commissioned by the FSA provides sound evidence that mandatory display has driven improved and sustained food safety compliance by food businesses and provided greater transparency for consumers in Wales. The report provides evidence that changes to the Scheme, introduced within the last three years, have delivered improvements in consumer access to ratings at the point of ordering food. These changes have enabled businesses involved in the procurement of foods and other organisations to use, and benefit from, published ratings information. This has ensured the continuing success of the Scheme.

- 5.4. The report acknowledges the need to consider the impact of both policy and regulatory landscapes on the Scheme and identifies areas for further work to ensure accessibility to meaningful information for consumers. Local authorities are highly committed to delivering the Scheme and play a significant role in ensuring it remains credible, current and equitable for all food businesses in Wales. The sustainability of the Scheme in the face of diminishing local authority resources needs careful consideration, and the FSA will work with all relevant stakeholders to explore how the future of the Scheme can be assured. This review has identified 14 recommendations about the ongoing implementation and operation of the Scheme in Wales and these recommendations are currently in the process of being implemented.

6. PERFORMANCE IN DELIVERING FOOD HYGIENE INTERVENTIONS

- 6.1. In November 2017, the FSA undertook a detailed analysis of LAEMS food hygiene intervention data for Wales for the periods 2014-2017. The data showed overall improvements in the delivery of planned interventions by local authorities and that a risk based approach had been adopted. The analysis identified that five local authorities had reported more than 200 lower-risk food establishments that were overdue an intervention in the 2016/17 reporting period. The FSA wrote to the Chief Executives of the five authorities to remind them of the requirement for the timely delivery of food hygiene interventions and to request they set-out their plans for improving performance. These authorities each provided a commitment to making necessary improvements. The FSA subsequently offered funding on a one-off basis to some local authorities to support their delivery of food hygiene inspections to 31 March 2018. The funding was targeted at authorities that had reported the highest numbers of overdue interventions in 2016/17. Funding was allocated to 10 local authorities for the delivery of almost 700 full scope food hygiene inspections. New food hygiene ratings were issued to all of these establishments for the benefit of consumers.

6.2. In 2018, Local Authorities in Wales have contributed to the following ROF related activities:

- research on the ‘flow of food business establishments into the regulatory system’;
- an all Wales event to consider food standards in the context of ROF;
- food standards delivery review survey;
- two workshops on ROF segmentation proposals
- the provision of information on their IT systems with two authorities contributing to the development and testing of the new food business registration digital service;
- consultation on proposals for Primary Authority National Inspection Strategies for food; and
- a survey on Local Authority charging for discretionary services.

7. FOOD LAW CODE OF PRACTICE

7.1. In 2017, FSAW issued amendments to Food Law Code of Practice (the Code) for Wales³. The Code was amended to clarify arrangements for food business registration and the inspection of mobile food establishments, ships and aircrafts. It revised the competency and qualification requirements for authorised officers involved in delivering official controls and other enforcement activities. The Code was recently updated in Wales to align the guidance with the Codes for England and Northern Ireland.⁴ Further amendments are proposed. A 12-week public consultation exercise in Wales commenced in August 2018, to amend the Code in Wales to introduce operational changes identified through the Regulating Our Future (ROF) programme. This consultation focuses on proposed changes that will come into effect after April 2019. to make changes to the process of food business registration, the application of the food establishment intervention rating scheme and to recognise NIS. The consultation process will also take the opportunity to elicit early views from stakeholders on other co-dependent aspects of the ROF programme which are still in development. Consultations on these proposals are also being carried out in England and Northern Ireland.

³ <https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice>

⁴ <https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice>

8. CONSUMER PROTECTION

8.1. FSAW continues to develop its capability to tackle food fraud and crime in Wales particularly through the role carried out by the Welsh Food Fraud Coordination Unit (WFFCU). Our primary focus has been to develop and foster collaborative working relationships between the operations of the WFFCU and the National Food Crime Unit (NFCU) to share food crime intelligence to assist in the detection of, and response to, food crime. Following decisions made at the FSA Board meeting in June 2018 in relation to developing the NFCU towards having end to end operational capabilities, we will now continue our discussions about the nature of any Welsh Unit of the NFCU in terms of ensuring the legacy of the current WFFCU and how it might be aligned to the NFCU.

9. FOOD SUPPLEMENTS

9.1. Food supplements are a rapidly growing industry, with overlapping areas of responsibility between government departments. A number of high profile deaths in recent years highlighted the need for more effective enforcement action by the FSA.

9.2. FSAW was tasked with leading the FSA's policy on supplements, moving us to a more proactive footing by identifying the key risks to consumers and the effective action needed to tackle these.

9.3. Following a programme of stakeholder engagement FSAW developed the FSA's first supplements strategy, setting out what the challenges were, what actions were needed and what success looked like. The strategy draws together existing work across the FSA, for example that led by the Novel Foods team and NFCU, and identified new outputs. These outputs include:

- consumer insight, which was commissioned to inform the development of the FSA's work on food supplements over the next few years including identifying any emerging risks, and to support more targeted and effective enforcement by local authorities and the NFCU. The insight consisted of a short consumer survey, focus groups and in-depth interviews. Overall the research found that consumers are taking food supplements safely and buy from credible mainstream retailers. However, it also revealed more 'niche' food supplement usage, particularly for specific purposes such as losing weight or sports nutrition.

As more niche products are less widely available, many are pushed to purchase online. It can be easy to then move to the more extreme end of the market;

- an enforcement toolkit for local authorities to assist them with planning and undertaking inspections of FBOs selling food supplements. The toolkit sets out issues to consider, relevant powers and offences, and action to take if non-compliant products are found. Different versions have been produced for Wales, England and Northern Ireland to reflect different legislation and enforcement bodies, in addition to a Welsh language version;
- a short leaflet aimed at non-traditional retailers of food supplements, such as gyms, beauty spas or tanning salons, reminding them of their legal responsibilities when selling food supplements;
- a cross-government working group bringing together relevant officials to share data, prioritise action, develop tools and provide advice as appropriate. The group meets quarterly and enables cross cutting issues and emerging risks to be shared between the different departments;
- co-regulation of the industry, bringing trade bodies, LA's and other regulators together to tackle persistent non-compliance collaboratively; and
- a Memorandum of Understanding with the Medical and Healthcare products Regulatory Agency (see below for details).

10. MEMORANDUMS OF UNDERSTANDING (MoUs)

10.1. Since the previous report the FSAW has developed and implemented MoUs with organisations to formalise its working arrangements and relationships. The MoU between the FSA and the [Welsh Lamb and Beef Producers Ltd \(WLBP\)](#) sets-out the general principles of collaboration, cooperation, roles and responsibilities, which support the earned recognition process involving the FSA and WLBP. In particular, it provides a specific framework for the delivery of earned recognition for compliant businesses that are members of the [Farm Assured Welsh Livestock \(FAWL\) scheme](#).

10.2. FSA has also signed an MOU with the Medicines and Healthcare products Regulatory Agency (MHRA). MHRA is an Executive Agency of the Department of Health and is the UK Competent Authority under relevant EU Directives for medicinal products, medical devices and for blood and blood components. This is particularly relevant to the FSA's work on food supplements and novel foods for example, where we work closely with the MHRA on the status of products on the borderline between foods and medicines. The new MoU sets out the framework to support our joint working relationship.

11. ENGAGEMENT

11.1. FSAW has continued a programme of engagement activities focussed around schools, and key public events, and also with key stakeholders. Two major programmes of activity delivering food safety workshops to primary schools in Wales has continued. FSAW has been present at key public events including the eisteddfodau and major agricultural shows held during 2017 and 2018. A new corporate FSAW stand was launched at the Royal Welsh Show this year with good attendance figures providing the opportunity for meaningful discussions with consumers.



11.2. Additionally, having undertaken research amongst Assembly Members that showed their awareness and knowledge of the FSA in Wales and its remit was low, we have prioritised a programme of engagement with them. In June 2018 FSAW wrote to all AMs giving them an overview of our remit. We plan to follow this with updates to keep them informed on key issues, and propose an AM reception before the end of the year. This will benefit the Agency by building an improved awareness amongst AMs, and provide dialogue on constituents' enquiries.

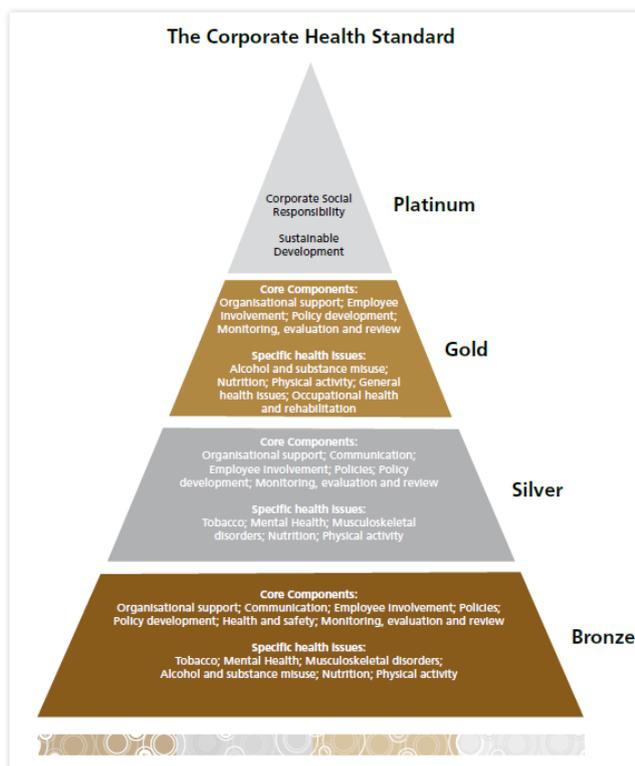
12. WALES SPECIFIC MATTERS

12.1. On 16 May 2017 the Public Health (Wales) Act 2017⁵ came into force. The Act introduces a raft of new measures designed to improve the health and wellbeing of the people of Wales. Of particular interest to the FSA is that the Act enables a 'food authority' under the Food Hygiene Rating (Wales) Act 2013 to retain fixed penalty receipts resulting from offences under that Act, for the purpose of enforcing FHRs. This new measure will assist local authorities in recovering the costs associated with addressing cases of non-compliance. The measure will have a positive impact in helping to maintain the ongoing success of the FHRs in Wales. A further aspect of the Act, which the FSA will need to be mindful of, is its requirement for mandatory health impact assessments (HIAs) in specific circumstances. The section regarding HIA's has not yet been

⁵ <http://www.legislation.gov.uk/anaw/2017/2/contents/enacted>

commenced so the requirements do not currently apply. Once commenced, the section will require the Welsh Ministers to make regulations about the carrying out of health impact assessments by public bodies in Wales. The Welsh Ministers' regulations are expected to provide further detail on the type of 'action' to which the HIAs will apply.

12.2. Although not a named body in the Act the FSA has agreed to contribute to the requirements of WG as detailed in The Well-being of Future Generations Act (Wales) 2015⁶ to improve the social, economic, environmental and cultural well-being of Wales. FSAW has mapped and aligned its activities to the goals and principles of the legislation. It recognises the importance of being able to demonstrate how the FSA is contributing to the national indicators which have been set for the purpose of measuring progress towards the achievement of the Well-being goals⁷. All submissions to Welsh Ministers from the FSA identify any contributions and we will continue to support an approach which directs FSA business to make a quantifiable contribution to the requirements of the Act.



12.3. In the spirit of the The Well-being of Future Generations Act (Wales) 2015, over the period of the report FSAW has been developing its portfolio of evidence in support of an award by Public Health Wales under The Corporate Health Standard⁸ as part of the WG's 'Healthy Working Wales' programme. FSAW has been embedding health and well-being within the culture of the workplace and have developed a health and well-being action plan which demonstrates a planned approach to improving health and well-being.

⁶ <https://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>

⁷ <http://gov.wales/docs/desh/publications/160316-national-indicators-to-be-laid-before-nafw-en.pdf>

⁸ <https://gov.wales/docs/phhs/publications/141015corporateen.pdf>

12.4. Following an independent assessment, FSAW is delighted to report that in August 2018 it has been recognised with a bronze workplace health and well-being award. The report produced following the assessment provides suggestions for further action, which can be used as a stimulus for future development and progression to the next level. The assessors concluded that FSAW should be encouraged to aspire to a silver award in the coming year. This award recognises an ongoing and demonstrable commitment to workplace health and planned approach to improving the health and well-being of FSAW employees.

13. FORWARD LOOK

13.1. FSAW is proposing to continue with the approach to target our key priorities of regulatory reform, EU exit and doing the day job exceptionally well. Key activities for FSAW for the coming two years include to:

- continue to engage with stakeholders, work closely with colleagues in Wales and participate in appropriate FSA and Welsh Government workstreams in relation to EU exit;
- ensure that Welsh stakeholders are fully involved in the development of the Regulating Our Future (ROF) programme with input from industry and the enforcement community taken into consideration as appropriate;
- input into Welsh Government's work that is underway with the Food and Drink Wales Industry Board to develop a successor Food and Drink Action plan 'Towards Sustainable Growth', which ends in December 2019;
- continue to review allocation of expenditure to ensure approved limits are observed and detrimental effects on the delivery of FSA Wales' strategic objectives in Wales are avoided;
- keep a watching brief on Local Government Reform in Wales;
- enhance our engagement activities with Assembly Members in particular;
- review the FSA's Welsh Language Scheme;
- aspire to a silver Corporate Health Standards Award; and
- delivery of FSAW's business plan for 18/19.

14. CONCLUSION AND RECOMMENDATIONS

14.1. The Board is invited to:

- **comment** on the work to date on the delivery of key objectives for the FSA in Wales since 2016.
- **endorse** the efforts of the FSA in Wales to deliver the reprioritised strategic outcomes and corporate priorities.
- **agree** the priorities identified in the forward look (paragraph 13) for forthcoming work.