CHIEF EXECUTIVE’S REPORT TO THE BOARD

General Activity Update

1. This is my first, and final, report to the Board as interim Chief Executive.

2. Over the summer the level of routine engagement with stakeholders and other Government Departments naturally diminished. However, that reduction was more than matched by an increase in the volume of meetings relating to EU Exit issues. The following section of this report addresses the steps the FSA has continued to take to prepare for Brexit. As Board Members are aware, the wider political environment has remained uncertain over recent weeks. I will supplement the text in this report orally at the Board Meeting as appropriate.

EU Exit

3. As reported to the Board’s June meeting, the FSA substantially completed its EU Exit Programme prior to the UK’s anticipated departure from the EU in March 2019. In light of the continuing delay to Brexit, all of the work carried out within the Programme was reviewed and either simply became ongoing business as usual, to be consolidated and continually improved in line with all aspects of the FSA’s work, or held in readiness, to be called upon if needed. In some cases, like the “no deal” Statutory Instruments, the work is done, should the UK leave the EU without an agreement; in others, such as our emergency response arrangements, it would have been unnecessary and counter-productive to maintain the end of March level of preparedness and those arrangements were “deescalated”.

4. Since the end of August all elements of the FSA’s Brexit preparations that were not already running as business as usual have been reactivated. In addition:

   • FSA Directors are reviewing Brexit preparedness on a weekly basis to ensure that our post-Brexit regulatory regime will operate smoothly. Our target for reaching full readiness, for most elements of that regime, is 1 October (in some areas – emergency response, for example – it is better to continue escalating incrementally and that has begun from the beginning of September).

   • Through that weekly Directors’ meeting we are scanning for any new developments or risks requiring additional action.

   • Our preparations brought us to a “minimum viable product” level of readiness at the end of March. Since that date we have continued to consolidate and build beyond that level. For example, planned recruitment
and training has continued, particularly in the National Food Crime Unit, and Science and Food Policy areas; we have built on our incidents and resilience arrangements, putting in place the planned investments in INFOSAN, the international food threat notification system, and we are continuing to enhance our model for surveillance.

5. It should be emphasised that the FSA’s EU Exit Programme has throughout been based on the creation of a regulatory regime for food safety in the UK in the event that the UK leaves the EU without an agreement. This is not because of an assumption that there will be no deal with the EU. It is because, given the importance to consumer protection and confidence - and therefore to the UK food industry - of maintaining effective food safety regulation, it was, and remains, prudent to plan for every eventuality. Most aspects of the FSA’s EU Exit preparations will be necessary regardless of whether or not the UK leaves the EU under an agreement, and our no deal preparations would also meet our minimum requirements under all other scenarios. The recent focus by the Government on no deal preparations has therefore not added significantly to the FSA’s ongoing work, (other than the need to respond to the increased volume of requests for information from the Department for Exiting the European Union and other Government Departments resulting from that focus).

6. As a result of the steps we have taken, and will continue to take, I remain confident that the FSA will meet its commitment to have put in place a regulatory regime that maintains the high level of food safety that UK consumers enjoy whatever the circumstances of the UK’s departure from the EU.

Pre-packed for direct sale (PPDS) food

7. In May, following a joint public consultation with Defra, the FSA Board recommended to Ministers improved labelling on foods prepacked for direct sale (PPDS) to allow people with food allergies and intolerances to make safe food choices. PPDS foods are those that are packed on the premises and sold direct to the consumer from that same premises. Currently such foods need only be accompanied by allergy information or such information provided through a conversation with the on-site staff. Defra laid a Statutory Instrument (SI) in Parliament on 5 September extending the mandatory labelling requirements. The new law, which comes into effect from October 2021, will require businesses to provide ingredient and allergen labelling on PPDS foods. Parallel legislation will be laid in Northern Ireland, Scotland and Wales with the aim of having the same coming into effect date as the Defra SI.
8. The FSA issued an accompanying information note with the SI that can be found on our web page. Given that the legislative requirements for this type of food have changed, we are continuing our work, started over the summer, with allergy, food and enforcement organisations to develop a revised and enhanced working interpretation of PPDS. The working interpretation will be published on 1 October to give food businesses a two-year transition period to prepare for the new requirements.

Online aggregators (digital food ordering platforms)

9. The increasing sale and offer of food, produced commercially and in domestic kitchens, via the internet and the complexities of the rapidly changing online market pose particular challenges for the delivery of regulatory controls. We are committed to tackling the issues to make sure that a risk-based and proportionate regulatory approach can be taken to ensuring that food supplied via this route is safe and what it says it is.

10. As part of this, we have started to work with the three main online ordering platforms (aggregators) in the UK – Just Eat, Uber Eats and Deliveroo. These organisations partner with large numbers of high street takeaways and restaurants etc providing online platforms/apps to connect them to consumers and linking them with couriers for delivery of orders. Over the summer I have had very informative and constructive discussions with senior representatives from each of these organisations. We have agreed that it will be of mutual benefit to work together and have an ongoing dialogue to explore our ask of them in relation to safeguarding public health and protecting consumers, and to identify and find ways to overcome the challenges and barriers they and other similar enterprises may have to meeting this.

11. The aggregators are only part of the online picture and we are developing a strategy to agree a regulatory approach for the sector more widely. Regulators in other countries are facing the same challenges and we will be mindful of developments across Europe and more internationally in agreeing this approach.

Cannabidiol (CBD)

12. As set out previously, there has been a recent change to the Novel Food Catalogue which affects some Cannabidiol (CBD) products. It’s been clarified that CBD extracts are ‘novel’ and must be authorised before they are permitted to be placed on the market.

13. New foods have to be evaluated and authorised before they can be sold unless there is evidence they have a history of consumption before May 1997. Food businesses have not shown evidence of this for CBD products and CBD
is therefore considered a novel food in the European Union.

14. The FSA agrees with the rest of the EU that CBD extracts are novel foods and we are working with local authorities, businesses and consumers to clarify how to achieve compliance in the marketplace in a proportionate manner.

15. We are progressing these discussions at pace and at a very senior level, but it is important that due consideration is given to assessing the many issues in play, and that a co-ordinated cross government approach is taken. The issues raised are relevant to the remits of the Department of Health and Social Care, and the Home Office, and not of the FSA. We will provide further clarification as soon as possible.

DNP (2,4-Dinitrophenol)

16. Members will be aware of the fatal consequences of ingesting DNP - a substance which has led to at least 29 fatalities in the United Kingdom since 2007, with a large proportion occurring since 2015. The NFCU has been developing the FSA response to frustrate the illegal sale and consumption of DNP and is working with other government departments and public bodies. Greater clarity is needed to confirm the different responsibilities across the public sector and we are seeking to encourage a more co-ordinated approach across government.

17. To-date, NFCU activity has involved the removal of listings, as well as awareness raising by direct engagement with purchasers/potential consumers. Our work has included supporting successful prosecutions by local authorities and law enforcement of those selling DNP for consumption. The NFCU has recently developed a renewed operational policy in response to DNP cases which has been approved by the Agency’s Executive Management Team. Given availability is almost exclusively on-line, and prospective purchasers will readily identify the dangers of consuming this product, which is far more readily apparent on web searches than its availability for purchase, the revised approach is more focused on sellers, whilst seeking to engage other departments in leading on awareness raising for both consumers and first responders. This is consistent with the approach already in place by Food Standards Scotland.

18. It is important to note that this revised approach does not mark any reduction in the efforts being devoted by the NFCU against DNP but rather a revision of how our resources can most effectively be deployed, working with partners.