

EU TRANSITION UPDATE

Report by Paul Morrison and Swati Singh

For further information contact paul.morrison@food.gov.uk or swati.singh@food.gov.uk

1 Summary

1.1 The Board is invited to consider this report into the EU transition and trade deal.

2 Introduction

2.1 The Withdrawal Agreement, as negotiated by the UK Government and ratified by the UK Parliament, by means of the European Union (Withdrawal Agreement) Act 2020, sets out in law the terms of the UK's withdrawal from the EU. The UK has now left the European Union and is in a period of transition until 31 December 2020. If the UK and EU agree a trade deal by this date, our future relationship with the EU will be governed by the terms of that deal.

2.2 In 2017, the Board set out that any future regulatory system should:

- be safe, effective and unified;
- protect public health;
- maintain consumer confidence; and
- allow for any future trade system to operate smoothly within and outside UK borders.

2.3 At the start of the FSA's EU Exit programme, the Board identified four principles to guide the FSA's planning and advise on future arrangements. These set out that the arrangements, and the FSA's approach to them, should:

- be at least as effective, or more effective, in protecting public health
- maintain or increase confidence in food safety, and in the regulatory regime
- minimise disruption for consumers and industry
- seek to achieve as unified a system as possible, in the consumer interest, whilst respecting devolution arrangements.

2.4 The Board committed to speaking out if it concluded that any of these circumstances arose:

- our commitment to transparency and independence was being undermined, materially reducing public trust;
- the regulatory regime's ability to deliver consumer protection and assurance was likely to be materially undermined; or
- we ran out of time or money to deliver necessary steps, our mitigating asks were rejected and, consequently, the demands on the FSA were unachievable.

3 Evidence and Discussion

- 3.1 We are working with delivery partners across government to support the UK Government's negotiations with the EU on a free trade agreement. We continue to work with the devolved administrations through our devolved offices and, on the EU negotiations, through our participation in UKG-DA engagement.
- 3.2 Three formal rounds of negotiations have taken place between the UK and EU to date. The first two rounds focused on the respective legal texts^{1 2 3} and the FSA has played a role in preparation for them.
- 3.3 UK-US trade negotiations launched on 5th May. The first round focused on the high-level scope and objectives. We can expect that legal text sharing will start to happen swiftly following round one. The FSA has contributed to the preparations.
- 3.4 The UK published its negotiating objectives for the UK-Japan FTA on 13th May with negotiations launching shortly. The UK's negotiating objectives for FTAs with Australia and New Zealand are expected to be published shortly, with both negotiations anticipated to launch in June.
- 3.5 Whilst accepting the profound impacts of COVID-19, ensuring FSA's readiness for the end of the EU transition period, including implementation of the Northern Ireland Protocol, remains a high priority.
- 3.6 To mitigate the impact of COVID-19, we have reviewed and prioritised our activities within the EU Transition Programme to ensure projects with the most activity remaining and with the highest relative impact of outstanding work retain necessary resources. Areas fully within the FSA's responsibility remain broadly on track. Since the last update to the Board, the EU has published its readiness notices to stakeholders.
- 3.7 However, the continued impact of COVID-19 on factors outside the FSA's control (e.g. timescales for negotiation, development of physical infrastructure at borders) will make delivery increasingly challenging, particularly where we are reliant on others for delivery.
- 3.8 COVID-19 has occupied much of the government's legal resource, including at the FSA. This may have an impact on the future legislative framework as we may need to rely on existing legal powers. This does not change our commitment to ensuring high standards of food safety and consumer protection

¹Letter from David Frost to Michel Barnier regarding UK draft legal texts (19 May 2020)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886168/Letter_to_Michel_Barnier_19.05.20.pdf

² Draft UK legal texts: <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

³ Written Ministerial Statement from the Chancellor of the Duchy of Lancaster on the third round of negotiations:
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-05-19/HCWS245/>

are maintained. We will ensure any high priority legislation is prioritised accordingly.

- 3.9 The Government has reiterated its position that the transition period will not be extended. We will continue to work with stakeholders to address any issues.
- 3.10 Risk analysis is a key delivery project in the EU Transition Programme. The Board received an update on implementation of the process at its January 2020 meeting. Since then we have identified the priority deliverables required to support operational readiness by the end of the transition period. In line with this we will bring detailed proposals on some key elements to the Board for discussion in September, including proposed approaches to publication and consultation, to prioritisation and triage, and an updated flowchart graphic.

4 Northern Ireland Protocol

- 4.1 The UK Government agreed the Northern Ireland Protocol in October 2019 and published a command paper outlining the UK's approach to the Protocol on 20th May 2020⁴. The command paper includes the following proposals:
- Agri-food goods traded from GB into NI will face proportionate additional controls requiring expanding some existing entry points in NI.
 - NI qualifying goods (NIQG) being traded with the rest of the UK will have unfettered market access to the GB market meaning no change to how NI goods arrive in GB ports and are placed on the GB market compared to today.
 - The Government will engage with businesses and the NI Executive on the means of defining NIQG, ensuring the needs of NI businesses are met.
 - Manufactured goods such as food and feed placed on the NI market will need to align with EU regulation enforced by UK regulators such as the FSA.
 - NI will have the opportunity to review this regulatory arrangement since democratic consent.
 - NI businesses and consumers together with the rest of the UK will benefit from the UK's new international trade agreements with third countries.
 - The UK Government is committed to cooperating closely with the NI Executive to maximise the opportunities of the new regulatory freedoms for the UK as a whole.
- 4.2 The Protocol requires controls of imported food and feed from GB upon entry into NI. The FSA has responsibility for checks on high risk food not of animal origin and for ensuring ports have the necessary capabilities to perform food and feed safety checks on that food. We are working with other government departments to ensure that appropriate requirements are in place at NI points of entry such as Belfast Port and Larne Port.

⁴ <https://www.gov.uk/government/publications/the-uks-approach-to-the-northern-ireland-protocol>

- 4.3 Where NI traders gain product approvals and certification for the NI market from EU authorities and bodies, the UK will recognise those for the purpose of facilitating unfettered access to the GB market. The FSA is working closely with other government departments to develop further guidance for NI traders placing certain highly regulated goods on the GB market.
- 4.4 Implementing the Protocol will require the FSA to continue to work closely with other UK government departments and the devolved administrations, maintaining the cooperative and positive contacts to date.
- 4.5 The Withdrawal Agreement, as agreed in 2019, means that for food and feed, some different regulatory arrangements will apply in Northern Ireland. This is enshrined in the Protocol, which ensures that the Good Friday Agreement is upheld and customs and regulatory checks at the land border between Northern Ireland and Ireland are avoided.
- 4.6 The Protocol changes the arrangements for Northern Ireland and for England, Scotland and Wales. It impacts on the Board's ambition that the regulatory regime should be as unified as possible, in the interests of consumer confidence and so that business could operate as effectively as possible to meet wider consumer interests across the UK.
- 4.7 As we work through the implications, and the impacts become clearer, the Board will need to decide how to adjust the principles and conditions that guide FSA officials in implementing transition and trade deal planning in relation to food and feed safety and standards, for England, Wales and Northern Ireland. As this develops, key considerations for the Board will include the following:
 - a) The FSA is a single department for England, Wales and Northern Ireland. The UK government does not maintain separate food safety authorities for each country, and the FSA treats all three nations in which it has a presence in a uniform manner.
 - b) We have always assumed that we would reach a common position on food and feed safety and standards, based on which we will advise Ministers on risk management measures. We have created a forum where we hope that differences can be resolved as part of our work to seek to achieve as unified a system as possible.
 - c) Under the Northern Ireland Protocol, the FSA will be required to support and implement EU risk management measures and product approvals in Northern Ireland, even though we may offer ministers different advice on the best approach for England and Wales. This divergence may cause confusion or a loss of consumer confidence. It may also create a risk of legal challenge of the FSA's advice to ministers, and of ministers' decisions as to the risk management measures which should apply in England and Wales.

- d) The FSA has no active plans to diverge from the regulations we will repatriate from the EU on 31 December 2020. But after that date, when we are running our own risk analysis process focusing on the interests of domestic consumers, and ministers reach decisions in the light of those interests, divergence will naturally emerge.

4.8 For now, until the impact of the Protocol is understood more fully, the Board is requested to reaffirm its position that the FSA should preserve our approach to the analysis of risk, that we should continue to be open and sharing with our science and evidence, and that we should weigh Protocol issues in the context of consumers' wider interests.

4.9 Furthermore, to facilitate a unified regulatory regime, we are continuing working closely with Food Standards Scotland on the development of the post-transition regulatory regime functions in the UK, including building in a four-country approach to risk analysis as part of proposals for a UK-wide framework for food and feed safety and hygiene. As part of this programme of work the UK Government and the Devolved Administrations are considering how to take account of the Protocol within Common Frameworks.

5 Conclusion

5.1 The Board is asked to note:

- that delivery plans fully within the FSA's control remain broadly on track;
- the impact of COVID-19 on the FSA's legal resource; and
- the ongoing impact of COVID-19 on areas where the FSA is reliant on others for delivery.

5.2 The Board is asked to reaffirm its position that:

- we should preserve our approach to the analysis of risk;
- we should continue to be open and sharing with our science and evidence; and
- we should weigh Protocol issues in the context of consumers' wider interests.

5.3 The Board is asked to:

- reflect on the position it has taken to guide officials on EU Transition; and
- identify any changes to the principles and triggers it set for EU Exit in 2017.