

FSAW 18/11/06
For discussion

Regulating our Future – review of delivery of food standards official controls and next steps

Executive Summary

1. The attached paper, due to be considered by the Board on 5 December 2018, provides a summary of the findings of the Food Standards Delivery Review undertaken by the FSA, which has provided a baseline assessment of the delivery of food standards official controls across England, Wales, and Northern Ireland (E/W/NI). The evidence from this survey will help to inform the development of a new approach to these controls and the next steps to be taken within the Regulating Our Future (ROF) programme.
2. Michael Jackson, will present this paper to the Committee.
3. Members are invited to:
 - **consider** the Board paper
 - **consider** any advice the WFAC wishes the Board to consider as part of its deliberations.

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Regulating our Future – review of delivery of food standards official controls and next steps

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Summary

1. This paper provides a summary of the findings of the Food Standards Delivery Review undertaken by the FSA, which has provided a baseline assessment of the delivery of food standards official controls across England, Wales and Northern Ireland (E/W/NI). The evidence from this survey will help to inform the development of a new approach to these controls and the next steps to be taken within the Regulating Our Future (ROF) programme.
2. The Board is asked to:
 - **consider** the findings of the review; and
 - **endorse** the recommendations within the report of the review for addressing the issues identified and developing a new approach for food standards official controls.

Introduction

3. The effective delivery of food standards controls supports the ROF principles by helping to ensure that food is safe and what it says it is, and that consumers have the information they need to help them make informed choices about the food they buy. Food standards official controls relate to legislative requirements concerning the quality, composition, labelling, presentation, chemical contamination and advertising of food. Policy responsibilities for food standards legislation in England, Wales and Northern Ireland have varied considerably since 2010, as summarised in **Annex I**. Recent high-profile cases relating to food standards compliance, including fatalities caused by a lack of understanding of allergen labelling requirements and controls, have served to highlight the importance of this area of work.
4. The FSA, as the Central Competent Authority (CCA) for food, is required under EU legislation to put in place an appropriate regime of official controls to verify food business operator (FBO) compliance with food standards legislation. The FSA statutory [Food Law Code of Practice for England](#) (Code) and the equivalent Codes in Wales and Northern Ireland are the mechanisms by which the FSA has set the standards for LAs when delivering those controls. Crucially, it includes the Intervention Rating Scheme which specifies food standards risk assessment criteria to determine the appropriate frequency of interventions at food establishments. To fulfil its own obligations as CCA, the

FSA must ensure that these Codes remain fit for purpose.

5. Food standards legislation has traditionally been enforced by local authority Trading Standards Practitioners (TSPs) in most parts of England and Wales, with Environmental Health Practitioners (EHPs) enforcing it in Northern Ireland alongside food hygiene requirements. Officers delivering food standards controls are likely to have enforcement responsibilities in a range of other areas of regulation¹, resulting in competing priorities, with reduced capacity and resilience at a local level. An overview of the main functions that are covered by TSPs and EHPs is included in **Annex II** to this paper.
6. We prioritised work within the ROF programme to align the deliverables in the first phase with our needs in preparing for exiting the EU. We are now turning our attention to the regime for delivery of food standards controls. To enable us to better understand the changing approach to food standards enforcement, the Food Standards Delivery Review was commissioned. There has been a decline in the effectiveness of the current approach prescribed for delivery of these official controls for some years, and it is now under increasing pressure and no longer fit for purpose. This work will become a major part of our focus within ROF programme in the next 12 months.

Evidencing the need for change

7. Recent reports have highlighted issues with the current state of the trading standards profession, including the annual Chartered Trading Standards Institute (CTSI) Workforce Survey. The key issue concerns the level of resource being made available by local authorities for the overall trading standards (TS) enforcement model, with average budget reductions of 40% between 2010-5². Additionally, a lack of coordination between authorities and stakeholders, cuts to the Public Analyst service, and considerable difference in terms of enforcement capacity and capability have created unacceptable levels of variation and inconsistency. A summary of relevant findings from published reports is included at **Annex III** to this paper.
8. Data from the FSA's Local Authority Enforcement Monitoring System (LAEMS)³ also highlights the need for change in this area. Across E/W/NI only 42.3% of due food standards interventions were achieved in 2017/8, with the number of reported professional FTE food standards posts having been reduced by 24% between 2013/4 and 2017/8. The extent to which LAs are failing to meet the requirements of the Codes varies between the three countries, with England seeing the greatest shortfall whilst Northern Ireland reported the highest level of performance against the requirements in terms of due interventions being achieved. Instead of taking the planned premises-based inspection approach

¹ In 2014, the Trading Standards Institute (TSI) commissioned detailed research on the number of statutory functions enforced by trading standards. This highlighted an overall total of 263 functions.

² Local Government Association Trading Standards Review – Summary Report (January 2016)

³ https://signin.riams.org/files/display_inline/49567/LAEMS-Annual-report-2017-2018-final-version-17092018.pdf

laid down in the Codes, many LAs have moved to a more intelligence-led approach, further increasing inconsistency in the current delivery model.

9. A recent IPSOS MORI report⁴ examining risk intervention systems found that, for food standards, the Code scheme was 'no longer fit for purpose', and that LAs felt the premises-based approach, requiring a programme of routine inspection activity, did not enable them to target their limited resources where most needed to protect consumers.
10. Within the existing approach to interventions in the Codes, many catering establishments are rated as low risk for food standards. However, the provision of allergen information in catering establishments was the most commonly cited food standards priority in the LA survey. Given the life-threatening consequence of non-compliance with allergen requirements this highlights the need for the FSA to reconsider how it directs LAs to prioritise their food standards official controls, with a greater emphasis on an intelligence driven view of risk, rather than using the arbitrary intervention rating provided by the Code risk assessment process.
11. A shift in enforcement responsibility across England and Wales in recent years has led to many LAs transferring food standards work to EHPs. Engagement with EHPs indicates that they are not always given adequate training and support to undertake this function, which results in food standards possibly being given less attention than hygiene issues and they can be considered as an 'afterthought' during interventions at food businesses.

Food standards delivery review

12. The Food Standards Delivery Review survey was developed with the assistance of stakeholders, including operational LA officers and the CTSI, along with promotion through the Association of Chief Trading Standards Officers (ACTSO), and the national Food Standards and Labelling Focus Group (FSLFG). The survey ran for a four-week period between 12th March and 16th May 2018 and was completed by lead officers across E/W/NI with responsibility for food standards official controls, achieving an overall response rate of 62.2%.
13. A report into the findings of the survey, produced for wider publication, is provided at **Annex IV**. The key findings can be found at paragraph 1.4 of the report, categorised under 4 broad headings – *People, Reporting & Oversight, Intelligence-Led Working and Changing Business Behaviour*.
14. The findings of the Food Standards Delivery Review are consistent with the conclusions of the reports above, with resources identified as the key issue. The effective targeting of resources is currently hampered by a regulatory model for food standards which is rigid, outdated and fails to take account of

⁴ <https://www.food.gov.uk/sites/default/files/media/document/fs517009finrep.pdf>

the myriad of changes to the enforcement landscape and within the food industry over recent years, and there is also a need to consider whether current competence requirements are appropriate for the modern market.

15. It is highly unlikely that available resources to deliver these controls will increase in the near future without intervention by central government, so we must consider how we can maintain and maximise the value of the resources we currently have, and how this can be supplemented by the recruitment of personnel with relevant transferrable skills to help fill the current resource gap where appropriate. We must consider the options for a fresh approach to attracting the next generation of officers who will deliver this function in the future.
16. As Central Competent Authority (CCA), it is essential that the FSA has greater oversight of the food standards regulatory landscape to provide assurance of the effective delivery of official controls and improve our ability to identify potential issues which could have a detrimental effect on our ability to deliver our priorities. Further development of the new ROF assurance model and the Balanced Scorecard approach to LA performance measurement will offer a valuable opportunity to make real improvements, on the basis of reliable current data, in this area.
17. Within the new approach there needs to be greater recognition of the use of intelligence in the regulatory system, particularly in anticipation of the further development of the National Food Crime Unit (NFCU). Of utmost importance to the effectiveness of an intelligence-led approach is the flow of information, and it is essential that information can be shared easily and in a timely and secure manner. We must identify the impacts that any changes to the food standards delivery model could have on the gathering of intelligence and take steps to ensure that an effective dynamic exists between LAs and the FSA/NFCU, with a clear division of responsibilities and a formalised process for the gathering, analysis and tasking of intelligence.
18. There is also a need for the FSA to consider how best to influence business behaviour to encourage compliance and support ROF principles, including both advisory and enforcement considerations. By doing this we can maximise the efficiency of LA interventions to help attain compliance. The ongoing FSA research into the behavioural and decision science behind attitudes to regulatory compliance will help identify ways in which to best influence positive business behaviours.

Next steps

19. The Food Standards Delivery Review provides a robust evidence base and gives us the building blocks for reform in an area currently threatened by systemic weaknesses. Due to the fundamental issues identified, including changes to those charged with delivering food standards controls in England

and Wales, it is proposed that the ROF programme, as a matter of priority, takes a root and branch approach to the modernisation of the food standards regulatory delivery model, to ensure that we put in place a new regime that is flexible, fit for purpose and adequately targets risks wherever they arise. By doing this we will ensure that consumers are protected, and they can have confidence that the food they buy “is what it says it is”

20. A number of possible options for a new regime have been developed in conjunction with ACTSO, CTSI, the Chartered Institute of Environmental Health (CIEH) and the ROF Food Standards Working Group⁵. Within these options we still envisage a role for the more traditional aspects of delivery, such as inspection and a project-based approach to delivery at a local level. We also believe that there could be significant benefits in terms of economies of scale through the adoption of a national approach to surveillance activities, the prioritisation of work and the intelligence gathering process, in conjunction with the NFCU.
21. Given the scale of challenge, we will continue to engage with relevant stakeholders to provide the necessary input and critical challenge ensuring that we align our proposals with other parts of government that are also considering potential models for improving the delivery of other TS functions, such as the Department for Business, Energy and Industrial Strategy (BEIS).
22. By progressing the review recommendations through the ROF programme, with the Food Standards Working Group providing the necessary technical knowledge, expertise and experience to further develop these proposals and test their viability going forward, we can address the issues in a coherent and effective manner.

Conclusions

23. The Board is asked to:
 - **consider** the findings of the review; and
 - **endorse** the recommendations within the report of the review for addressing the issues identified and developing a new approach for food standards official controls

⁵ Members include representation from LA regulatory services (EH & TS), industry & the Public Analyst service.