

## THE FOOD STANDARDS AGENCY'S PREPARATIONS FOR THE UK'S EXIT FROM THE EUROPEAN UNION

### Report by Rod Ainsworth, Director of Regulatory and Legal Strategy

For further information contact Rod Ainsworth on 0207 2768500 (Tel)

Email: [rod.ainsworth@foodstandards.gsi.gov.uk](mailto:rod.ainsworth@foodstandards.gsi.gov.uk)

Or Rebecca Lamb, Head of EU Exit, 02072768294 (Tel)

Email: [Rebecca.lamb@foodstandards.gsi.gov.uk](mailto:Rebecca.lamb@foodstandards.gsi.gov.uk)

### Summary

1. This paper sets out the proposed approach of the Food Standards Agency (FSA), an independent non-ministerial department, to prepare for the UK's departure from the European Union (EU) in 2019. These proposed plans are not intended to pre-empt decisions which are yet to be taken by Government. Nor does this paper set out proposals for negotiating with the EU. The plans in this paper have been carefully developed to provide the flexibility to respond to a wide range of negotiated outcomes.

2. The purpose of the paper is to update and inform the board of the FSA executive's proposed plans. The Board is asked to consider and discuss the FSA's plans and in particular to comment on the proposed principles (in paragraph 17) by which the FSA should assess whether the future regulatory regime for food safety will protect public health and meet the FSA's statutory objective of protecting consumers' interests in relation to food.

### Introduction

3. On 29 March 2017 the UK gave notice, under Article 50 of the Treaty on European Union of its intention to leave the EU. Under the terms of Article 50, the UK will cease to be a member of the EU on 30 March 2019. The decision by the UK to leave the EU will have implications for the regulatory regime for food safety in the UK.

3.1 Food law throughout the EU largely consists of directly applicable EU legislation. The Withdrawal Bill will ensure that The FSA has a statute book that works on day one after exit and provides the maximum possible certainty for individuals and businesses.

3.2 Currently a number of regulatory functions are exercised at an EU level, by EU institutions:

- Much of the risk assessment is carried out by the European Food Safety Authority (EFSA)

- Many risk management decisions are taken by the European Commission and Council (acting on Commission proposals)
- Assurance both as to compliance with food safety regulation across Europe and in relation to the food safety regimes of countries seeking to export to the EU is largely gained from audit work conducted by the Commission
- Key systems for providing rapid warning of food safety threats, sharing information on food crime and for notifying and tracking food imported from outside the EU are maintained by the Commission.

3.3 The FSA's workforce, and the workforces of the agriculture, food and drink industries, draws heavily on nationals from other EU member states.

3.4 Within the current legislative and regulatory framework, which is harmonised at an EU level, most food safety regulation is within the devolved competence of the Devolved Administrations for Scotland, Wales and Northern Ireland.

3.5 A significant amount of the food currently consumed within the UK is imported from the EU and there is a substantial volume of export trade in food from the UK to other EU member states. The complexity of food supply chains is such that animals, food and food ingredients frequently pass back and forth between different countries on numerous occasions on the journey from primary production to retail sale. This is particularly the case in Ireland where, for example, milk might cross from the Republic of Ireland to Northern Ireland and back numerous times between cow and supermarket shelf.

4. The FSA is a non-ministerial department with a statutory purpose to protect public health and other interests of consumers in relation to food. This purpose has been uppermost throughout the FSA's approach and in the development of plans ahead of the UK's departure from the EU. Our priority is to ensure that as the UK prepares to leave the EU there remains a robust and effective regulatory regime for maintaining the safety of food, for the benefit of UK consumers and of the UK food industry. Maintaining public confidence in food, and the trust of UK trading partners in the effectiveness of UK food regulation, is essential.

5. This paper explains how the FSA, working with other Government Departments, has approached these challenges. In the context of the FSA's planning, this paper describes our proposed plans to date and the steps The FSA is proposing to take to implement those plans. It does not pre-empt the outcome of the negotiations and the plans in this paper have been carefully developed to provide the flexibility to respond to a wide range of negotiated outcomes.

6. The negotiations between the UK Government and the European Commission on the terms upon which the UK will leave the EU in March 2019 are ongoing. The FSA is planning to deliver a smooth exit under any scenario, which includes preparing the UK for the future economic partnership the UK hopes to negotiate with the EU as well as the very unlikely scenario in which no mutually satisfactory agreement can be reached and the UK exits without a deal. The FSA's plans have been carefully developed to provide the flexibility to respond to a wide range of negotiated outcomes in addition to preparing us for the unlikely eventuality of not securing a negotiated settlement. The FSA will be engaging with business to look at all aspects of preparing for future arrangements including contingency options.

### **The FSA's Approach To Date**

7. Immediately following the referendum in June 2016 the FSA's executive team worked to identify the key issues for the FSA and its stakeholders arising from the outcome of the referendum. That analysis has continued to inform our preparatory work and to shape our plans. It was apparent straightaway that because the FSA works within a regulatory regime almost wholly harmonised across the EU, the decision to leave the EU has an impact on every aspect of our organisation and its work.

8. The work is managed as a programme within the FSA's change portfolio. Reflecting its importance, the Programme Board, chaired by the Chief Executive, consists of the Executive Director team. The Chair, Heather Hancock sits on the Programme Board as non-executive member.

9. The FSA has been determined to ensure that our planning is informed as much as possible by the views of consumers, and of industry and other stakeholders. The FSA has, since autumn 2016, conducted consumer insight research to gather consumer views. The FSA has also held a number of round table discussions, chaired by Heather Hancock, to gather the views of industry representatives and the FSA attends a wider joint industry forum organised by Department of Environment Food and Rural Affairs (DEFRA) with the Food and Drink Federation. Attached at Annex A are summaries of the FSA's round table discussions and consumer insight work. Continuing engagement is a distinct workstream within our EU Exit Programme and its importance will increase over the coming months.

### **A Strategy-Lead Approach**

10. The FSA published its strategic plan for the period 2015 – 2020 in April 2015. That plan was produced following extensive consultation with consumers, with industry and other stakeholders and with other government departments. The plan led to a major programme of regulatory change (Regulating Our Future) through which the FSA is seeking to modernise, comprehensively, the delivery and

enforcement of its regulatory regime. The outcome of the EU referendum in 2016 does not undermine the analysis that led to the FSA's strategic plan and to the Regulating Our Future Programme. If anything, it lends sharper focus for the need for the FSA to move ahead with aspects of that programme before March 2019, and then to continue to modernise the way in which regulation is delivered so that the FSA can be, and be seen to be, an excellent, accountable, modern regulator when the UK leaves the EU. Specifically, the FSA will seek to ensure that the plan, within the Regulating Our Future Programme, for enhanced food business registration is operating by the time the UK leaves the EU, to provide greater confidence that businesses are visible to the regulatory regime. This is important both for consumer protection but also to be able to demonstrate the effectiveness of food safety regulation to current and potential UK trading partners.

### **Maintaining an effective regulatory regime**

11. As indicated above, at paragraph 3, the current regulatory regime for achieving food safety within the UK relies substantially on the EU framework. Not only is the legislation largely harmonised at an EU level; many regulatory functions are currently undertaken, across the EU, by European institutions. Our planning aims to:

- Ensure that there are effective regulations in place
- Ensure that upon exit there is an effective regulator.

### **The Regulations**

12. Food safety regulation consists at present very largely of directly applicable EU regulations. In order to ensure that immediately upon the UK's exit from the EU that body of law remains in force, the framework envisaged by the Withdrawal Bill currently before Parliament is being followed. Teams across the FSA's policy and legal divisions are working to prepare the necessary legislative instruments in line with the passage of the Withdrawal Bill process to incorporate EU Food Safety Law directly into UK law. In one sense this is a relatively straightforward task since the intention is initially to reproduce that body of law rather than to amend it. However, its scale, and the restricted timetable which must be followed if the work is to be completed in time for the legislation to take effect in March 2019, present challenges; the FSA has put in place plans to ensure that the FSA meets these challenges.

### **An Effective Regulator**

13. The decision that the UK should leave the EU in March 2019 has highlighted the need for an effective regulatory regime for food safety in the UK and that certain regulatory functions and systems currently undertaken at a European level may need to be replaced or maintained.

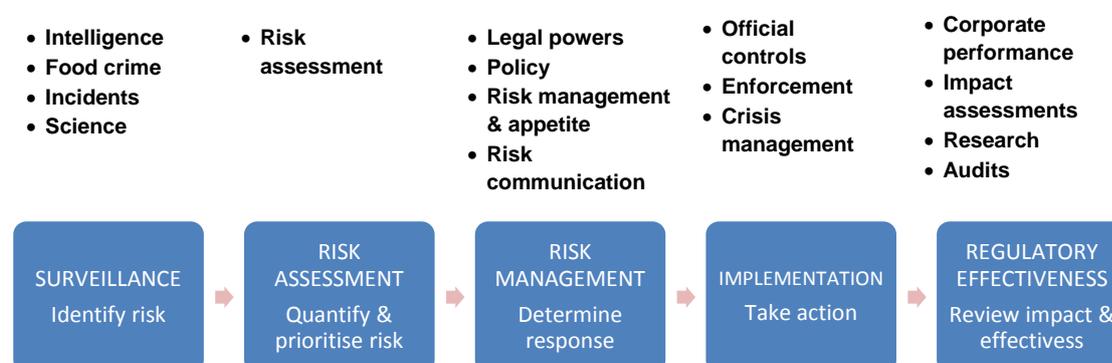
14. Reduced to the most basic elements, an effective regulatory regime should have the capacity:

- To identify issues that might pose a threat to food safety (**Surveillance**)
- To assess the scale of that threat (**Risk Assessment**)
- To inform others about that threat (**Risk Communication**)
- To decide what, if any, action should be taken (**Risk Management**)
- To implement that decision or ensure its implementation
- To assess whether those interventions are achieving the intended effect
- To amend or reform its regulations and their delivery in light of that assessment.

15. The FSA, together with Food Standards Scotland (FSS) and local authorities throughout the UK already carries out many of the above functions. However, at present much of the risk assessment for the EU is carried out by the European Food Safety Authority (EFSA), and most risk management decisions are taken within the European Institutions; depending on the nature of the decision either by a working party of the Commission or by the Council of Ministers. At present, the FSA represents HMG in matters relating to food and animal feed safety in any EU negotiations and negotiating positions are agreed collectively through the Cabinet Committee process in the usual way. Also, the European Commission at present maintains a number of systems used by member states for sharing food safety and food crime information and tracking the movement of food imported from third countries.

16. The illustration below shows in summary first the elements of the above regulatory functions currently performed by the FSA, FSS and other parts of UK Government, within the regulatory framework of the EU, and secondly key parts of those functions that, depending on the outcome of the negotiations, may need to be undertaken domestically once the UK has left the EU regulatory framework.

### Regulatory Functions taken by the FSA and others



## EU Functions

RISK ASSESSMENT & RISK MANAGEMENT	AUDITS	SYSTEMS
<ul style="list-style-type: none"><li>• Pre-market approvals/authorisations:<ul style="list-style-type: none"><li>• food and feed additives</li><li>• enzymes</li><li>• flavourings</li><li>• GM food and feed</li><li>• other novel foods</li></ul></li><li>• For risk-based standards and controls to make sure that food remains safe</li></ul>	<ul style="list-style-type: none"><li>• Services that provide assurance to trading partners that the UK has a robust legislation and official controls in place:<ul style="list-style-type: none"><li>• audits</li><li>• fact finding missions</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Information and intelligence sharing systems</li><li>• Rapid response to help stop potentially harmful food, from any country, from reaching UK consumers</li></ul>

16.1 The FSA has taken a responsible approach to EU Exit and prepared plans for all outcomes. Over the past year, the FSA has been working at pace to build a detailed understanding of how withdrawing from the EU will affect our existing policies and services in a wide range of outcomes.

16.2 The FSA will be proceeding in the only responsible way possible: planning to deliver a smooth exit under any scenario, which includes preparing the UK for the future economic partnership the UK hopes to negotiate with the EU as well as the very unlikely scenario in which no mutually satisfactory agreement can be reached and the UK exits without a deal.

16.3 The government will engage constructively with the European Union in the spirit of sincere cooperation throughout the negotiation period. Any implementation of contingency plans should not be interpreted as an expectation that talks with the EU will not be successful, but recognised instead as the actions of a responsible government determined to ensure a smooth exit under any eventuality.

17. The FSA's proposed plans seek to ensure that from the date the UK leaves the EU food safety is maintained and the interests of consumers, industry and other stakeholders are protected. Thus:

17.1 In relation to **Surveillance**, the FSA has already commenced a programme comprehensively to revise and upgrade our approach. The delivery of this programme, which aims to make far better use of data collected by others and to target more effectively our expenditure on sampling, will better enable potential risks and threats to be identified.

17.2 In relation to **Risk Assessment**, our EU Exit contingency planning allows for a significant increase in our existing scientific and other capacities in relation to public health and food safety risk assessment.

17.3 Linked to Risk Assessment, we will plan for a proportionate intensification in our **Risk Communication**. This area in particular is not one that will only arise when the UK has left the EU. There has already been considerable speculation as to potential food related import questions. The FSA has a key role to play in continuing to provide independent and timely advice on such questions.

17.4 **Risk Management** poses a particular challenge. The FSA was created, and its statutory functions conferred, within the context of most food safety risk management decision-taking occurring at an EU level. At present, the FSA provides objective advice to ministers in relation to decisions taken in Europe at ministerial level and represents HMG at European Commission Working Group level in discussions on food and feed. The FSA is in discussions with other Government Departments – DEFRA, Department of Health and the Department for Exiting the European Union (DExEU) - with a view to putting in place arrangements that, should they be needed upon EU Exit, allow such decisions to be taken within the UK. It will be for Ministers and Parliament to decide how the UK Government takes risk management decisions once the UK has left the EU. One of the options, which the FSA is exploring, is for the FSA to have the power to take Working Group level risk management decisions, within a governance framework that provides sufficient ministerial oversight and allows for specific issues to be handled differently as appropriate. This option would require additional powers<sup>1</sup> to be conferred upon the FSA.

17.5 The FSA is highlighting this issue and emphasising the need for an early decision to enable planning to proceed and for the necessary arrangements to be put in place ahead of March 2019. Whatever approach is taken it is proposed that the FSA should assess the outcome against the following **principles**:

- Effectiveness in protecting public health
- Maintaining confidence in food safety and the regulatory regime
- Minimising disruption for consumers and industry
- Alignment with the principles of the FSA's Regulatory Strategy

---

<sup>1</sup> The FSA is a statutory corporation and can only act within the terms of its constitutional legislation: the Food Standards Act 1999.

### **Other Priority Issues**

18. The preceding paragraphs have described some of the potential issues which the FSA is addressing in its proposed planning for the UK's departure from the EU. There are a number of other priorities for early planning and implementation, dealt with below.

### **Import Controls**

19. At present a significant amount of the food consumed in the UK comes from the EU. One of the FSA's priorities is to ensure food safety is not jeopardised as a result of the UK's exit. Subject to the outcome of negotiations, the FSA will strive to ensure that import controls to protect public health are properly risk-based and proportionate, take account of surveillance and risk assessment findings and wider government policy on trade. Our proposed plan reflects this objective.

### **Resilience and Incident Handling**

20. The recent incident concerning eggs potentially contaminated with Fipronil highlights the importance of having arrangements and systems for warning of potential food safety threats. The FSA's proposed planning recognises the importance of ensuring that at all times consumers are protected by effective arrangements for handling food safety incidents.

### **Food Crime**

21. At its meeting in November 2016 the FSA Board considered a report from an independent review of the operation of the FSA's Food Crime Unit. The Board accepted the principle recommendations from that review: that the effective protection of the public and food industry from the risks of food crime require there to be a robust capacity to identify, investigate and pursue instances of food-based criminal behaviour. It is the view of FSA officials that this becomes a more important priority in the context of the UK's departure from the EU. The UK must have the capacity to address threats to the integrity of its food, and weaknesses (as highlighted by the report from the review of the Food Crime Unit) will be more significant when the UK is looked at on its own, rather than as part of the EU. For this reason the FSA is working hard to ensure that powers and resources are available to ensure the Food Crime Unit can operate fully to investigate and pursue instances of food crime.

### **International Regulatory Engagement and Input to Export Trade**

22. The FSA already undertakes a considerable amount of international engagement beyond the EU, reflecting the increasingly global nature of food supply systems and of international regulatory standards. Our plans allow for an increase in this activity

and of our capacity to support export trade through advice and certification of exported produce.

### **A UK Framework for Food Safety Regulation**

23. EU law on food safety also intersects with devolved competence in Scotland, Wales and Northern Ireland. The FSA will work closely with the DAs to determine where a common approach might be needed in the future.

### **Resources, Capacity Building and Systems**

24. The FSA will need to consider its structure and size in light of the challenges outlined above. The FSA may need to alter and enhance its capacity to prepare for and implement a smooth exit from the EU. The FSA has already begun this process: The FSA is in continuing discussion with HM Treasury in relation to our anticipated funding requirements and the response to date has enabled our implementation to proceed as planned. Our track record as an organisation of driving efficiencies in our ways of working will, we believe, help to reassure our stakeholders that our proposals will continue to represent a cost-effective way of protecting consumers and ensuring the safety of UK food.

25. The FSA is comprehensively reviewing our requirements of our people, against the functions outlined above, and will be growing our capacity to ensure that the FSA can fulfil those functions where necessary.

26. As this paper has mentioned, the current food safety regulatory regime relies on a number of systems administered at present at an EU level. The FSA has recognised that some plans have sufficiently long lead times that the FSA needs to begin now for them to remain viable, even though we hope not to need all these provisions in a deal with the EU. Many of the plans have been carefully developed to provide the flexibility to respond to a wide range of negotiated outcomes. The FSA is working to ensure that, to the extent that our plans rely on alternative provision, the cost and necessary lead-in is allowed for.

### **Next Steps**

27. As indicated above, the proposals and plans outlined in this paper are those of the FSA. They are brought to the FSA Board to enable Board Members to fulfil their proper functions: to shape FSA policy and to assure themselves that the Board is discharging its statutory purpose. The paper does not in any way purport to put forward the views of other government departments and decisions on the matters described in this paper will be for ministers to take. This paper, as stated in its first paragraph, does not pre-empt those decisions. If the Board supports the direction outlined in this paper the next step for the FSA EU Exit team will be to engage on these proposals more fully with relevant departments leading to submissions for

Ministers to enable those key decisions to be taken. Depending on the decisions of HMG, we will be engaging with all stakeholders as we move forward.

### **Key risks**

28. The circumstances of the FSA's EU Exit Programme, which requires plans to be developed and implemented to very demanding timescales, carries a degree of inherent risk. At this stage, two specific risks are highlighted for the Board's attention:

28.1 In order to make proper plans to discharge effective regulatory functions from March 2019, and to have in force a comprehensive body of food safety regulation, early decisions must be taken on how to discharge key regulatory functions.

28.2 The FSA is highly affected by the decision that the UK will leave the EU. Securing the necessary resource to build the capability to implement the plans described in this paper is therefore a key risk for our programme.

### **Recommendations and conclusions**

29. This paper provides a summary of the very extensive amount of work currently being undertaken throughout the FSA in preparation for the UK's exit from the European Union. All of that work is focused on enabling the FSA to continue to discharge its statutory objective, of protecting public health, and consumers' other interests in relation to food, through ensuring that from the date of exit there is an effective body of food safety regulation and a fully effective regulator.

30. The Board is asked to consider and discuss the FSA's plans and in particular to comment on the proposed principles, outlined at paragraph 17 above by which the FSA should assess whether the future regulatory regime for food safety will meet the FSA's statutory objective of protecting consumers' interests in relation to food.