

AN UPDATE ON THE FOOD STANDARDS AGENCY'S PREPARATIONS FOR THE UK'S EXIT FROM THE EUROPEAN UNION

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SUMMARY

1. The Board last received a report on the Food Standards Agency's preparations for the UK's exit from the European Union at its open meeting in September 2017. This paper provides an update of progress with those preparations, and seeks Board Members' views on one of the key aspects of those preparations: the way in which food safety risk management decisions should be taken once the UK is no longer part of the EU. The paper also brings before the Board the outcome of the FSA's latest round of consumer insight research into consumers' concerns in relation to EU Exit.
2. As with the earlier paper in September of last year, the preparations described in this paper relate only to the Food Standards Agency (FSA), an independent non-ministerial department created by the Food Standards Act 1999. Any concerns or issues referred to are those of the FSA, in pursuit its statutory objective: "*to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food.*" Nothing in this paper is intended to pre-empt decisions yet to be taken by Government or to set out proposals for negotiating with the EU.
3. The Board is asked to **Consider and comment** on the options described in the paper (paragraphs 13 and 14) for taking food safety risk management decision, in the context of the criteria agreed at the September 2017 meeting (paragraph 5).

INTRODUCTION

4. The Board received a report covering the FSA's preparations for the UK's departure from the European Union (EU), and held a full discussion, at its meeting in September 2017¹.
5. The report described the work underway to maintain a robust and effective regulatory regime for the safety of food, for the benefit of consumers and industry, as

¹ <https://www.food.gov.uk/sites/default/files/media/document/fsa170904%20%281%29.pdf>

the UK prepares to leave the EU. The Board noted the steps that were being taken to ensure that there are both effective regulations, and an effective regulator or regulators in place, and agreed that the FSA should assess the post-EU Exit regulatory regime against four criteria:

- Effectiveness in protecting public health;
- Effectiveness in maintaining confidence in food safety and the regulatory regime; and
- Minimising disruption for consumers and industry.

ONGOING PREPARATIONS

6. Preparatory work has continued since September 2017, managed through the FSA's EU Exit Programme. That work aims to ensure that by the necessary date, all existing EU food safety regulations will have been brought into UK law and all regulatory functions can continue to be discharged. The Board is provided with briefings on FSA preparatory work before each Board meeting and as Board members are aware, the Programme contains numerous workstreams, drawing in officials from across the whole FSA. The workstreams cover all the areas outlined to the Board in September 2017. They include teams focused on the drafting of regulatory instruments, on enhancing the FSA's surveillance and risk assessment capabilities, on maintaining and where necessary developing new measures and risk-based controls to assure the safety of food and on ensuring we maintain strong, effective arrangements for responding to any food safety-related incident.
7. We work closely with other departments, particularly the Department for Exiting the European Union (DExEU), the Department of Health and Social Care (DHSC) and the Department for the Environment, Food and Rural Affairs (Defra). We are also working with officials in Wales and Northern Ireland, through our offices in those Devolved Administrations, and in Scotland, with Food Standards Scotland.
8. In some areas, preparedness involves enlarging existing resources and skills. Risk assessment is an example of this. In others, the FSA is looking to develop new functions itself. For example, it has recently been agreed across government that the functions of the FSA's Food Crime Unit should be extended beyond intelligence gathering and analysis, to enable the Unit fully to investigate and pursue instances of food crime. This will involve a very significant increase in the size and range of functions of the Unit. For this, and for other areas where the FSA's preparations involve growth and change, the FSA has been given additional funding from HM Treasury.
9. The complexity of the work, involving many interrelated strands, considerable time pressures and continuing uncertainty, has required a very agile and flexible approach to the management of the EU Exit Programme and its governance. As the workstreams have moved – where necessary - from planning, through detailed

design and into delivery, we have had to maintain an ability always to change course, or speed, to reflect changing circumstances or priorities. However, these challenges have brought benefits. All the workstreams are demonstrating cross-directorate working, at pace, and with a rigorous focus on delivering outcomes.

RISK MANAGEMENT AND DECISIONS

10. As the paper to the Board in September 2017 explained, the UK's departure from the EU will create gaps in the food safety regulatory regime for the UK. Some of the institutions which currently carry out regulatory activities Europe-wide will no longer carry out those activities on behalf of the UK and some systems used for administering the regulatory regime will not be available.
11. In particular, most food safety risk management decisions are currently taken in Europe, either collectively by ministers of EU member states or within the Commission at a Commission Working Group level. For ministerial decisions the FSA provides objective advice to ministers, and the FSA represents the UK on Commission Working Groups where decisions relating to food and feed are taken at that level. In practice, because most of the issues requiring decision are technical, and not particularly controversial or sensitive, the FSA has carried out these functions largely independently, but always ensuring that the views of other departments and of the Devolved Administrations are taken into account.
12. The decision as to how food and animal feed safety risk management decisions should be taken after the UK has left the EU is one for ministers. That decision is important, to bring clarity to the future role of the FSA, to enable any necessary enhancement of the FSA's powers to be put in place and so that Regulatory Instruments can be drafted having in mind the overall framework for regulatory decision-taking. It is also important to provide clarity to consumers and businesses on how these decisions will be taken in the future.
13. In essence the options are:
 - A. all decisions, whether routine and technical or sensitive and controversial, should be taken by ministers, or
 - B. those decisions that would currently be taken at Commission Working Group level should be delegated to the FSA within England, Wales and Northern Ireland and to FSS in Scotland, within a governance framework that provides ministerial oversight and allows specific decisions to be removed from the scope of the delegation. In the event that the competence of the FSA is extended to enable decisions to be delegated, the territorial scope of that delegation will depend on the outcome of discussions with the Devolved Administrations on UK frameworks and risk

management, and on the outcome of the devolution clause of the EU Withdrawal Bill.

A decision on these issues is expected imminently and the Board's views are requested in order to inform that decision.

14. To provide context for the issue, an analysis of six months of decisions taken within the EU over the period between November 2017 and April 2018 showed that there was a total of 79 food safety risk management decisions taken in the Commission-chaired Standing Committee on Plants, Animals, Food and Feed (PAFF Committees). In addition, EU Working Groups considered 434 agenda items each requiring evaluation and a decision taken as to the UK position by the FSA. They were all technical in nature and included, for example, amending Annex II to Regulation (EC) No 1333/2008 as regards the use of polyglycerol polyricinoleate (E 476) in emulsified sauces, and authorising the placing on the market of feed additives for a group of iron compounds (trace elements). All were handled by the FSA without escalation except one which was a joint policy area with Defra. There is no reason to think that the period analysed was in any way atypical.
15. **The Board is asked to consider and comment on the options, in the context of the criteria agreed at the September 2017 meeting (set out in paragraph 5 above).**

CONSUMER INSIGHT

16. The FSA has now conducted three rounds of consumer insight research into the views of consumers in relation to food and EU Exit. The outcome of the most recent round is appended to this report for Board members' information and will be posted on the FSA's website.