

CONSULTATION BY THE DEPARTMENT OF TRADE AND INDUSTRY ON PROPOSALS FOR THE FORMATION AND FUNCTIONS OF A CONSUMER AND TRADING STANDARDS AGENCY

Executive Summary

1. This paper summarises and analyses the key proposals in the current public consultation by the Department of Trade and Industry (DTI) on the formation and functions of a Consumer and Trading Standards Agency – one of the key recommendations of the Hampton report on inspection and enforcement. It focuses on the three issues that have the potential to impact on the work of the Food Standards Agency:
 - consistency of inspection and enforcement by the Trading Standards Service;
 - a co-ordinated performance framework for the Trading Standards Service;
 - priority setting for Trading Standards.
2. For each of these areas, the paper provides a summary of the DTI proposals, and discusses the potential risks and benefits to consumer protection and consumer confidence.
3. The Board is asked to:
 - **consider** whether the Food Standards Agency should reply formally to the public consultation on the formation and functions of a new Consumer and Trading Standards Agency and, if so,
 - **provide a steer** on how the FSA should respond, to inform the drafting of a reply by the Executive for subsequent clearance by the Board in correspondence, and
 - **agree** that the FSA response should be published.

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Issue

1. To decide whether, and in what terms, to reply to the public consultation on the formation and functions of a new Consumer and Trading Standards Agency.

Strategic Aims

2. The statutory function of the Food Standards Agency is to protect public health and consumer interests in relation to food. We do this by providing information and advice for consumers, by advising Government on food and drink safety and standards, through regulation and the associated inspection and enforcement delivered by others on our behalf, and through developing and implementing alternatives to regulation. The Food Standards Agency Strategic Plan for 2005-2010 commits us to “play our part in wider initiatives to streamline enforcement and inspection regimes whilst maintaining excellent public protection outcomes”.

Background

Delivery of consumer protection and consumer confidence through regulation, inspection and enforcement

3. Food law enforcement functions are delivered in respect of all food businesses by environmental health and trading standards officers in local authorities across the UK¹. Food law is somewhat unusual in that distinct parts of the inspection and enforcement service are delivered locally in

¹ except in licensed meat premises (delivered in Great Britain by the Meat Hygiene Service, and in Northern Ireland by the Department of Agriculture and Rural Development (DARD)); dairy production holdings (delivered in England and Wales by the Dairy Hygiene Inspectorate, in Scotland by local authorities; and in Northern Ireland by DARD); and egg hatcheries, packers and wholesalers (delivered in England and Wales by the Egg Marketing Inspectorate, and by agriculture departments in Scotland and Northern Ireland).

England and Wales² by each of two professions – environmental health and trading standards – and these professions are in different tiers of local government in England. Trading Standards Officers in county and unitary authorities are currently qualified to enforce food standards issues, including composition and labelling, while Environmental Health Officers in district and unitary authorities are qualified to enforce both food standards and food safety/hygiene.

4. We aim in all our work, and through the inspection and enforcement activity undertaken by local authority officers in relation to food premises, processes and products, to deliver:

- consumer protection – through an appropriate combination of: advice and support to secure compliance with the law and further improve the performance of food businesses; food law enforcement in businesses with high and poorly-controlled risks; and effective penalties for rogue traders;
- consumer confidence – market stability and consumer confidence are enhanced by good regulatory systems that deliver consumer protection through consistent application of national (and international) standards.

5. Critical to delivering these outcomes has been:

- independence – improved consumer confidence has been dependent not only on our focus on effective consumer protection, but also on our legal status as a non-Ministerial Department, at arm's length from Ministers and the political process; and
- openness – our independence has, in turn, been underpinned by our power to publish information and advice without political influence,

² In Northern Ireland, environment health officers are responsible for all aspect of local authority food law enforcement and inspection, whereas trading standards officers are employed by central government and do not enforce food law. In Scotland, environmental health officers are responsible for all aspects of local authority food law enforcement and inspection, whereas trading standards officers are responsible for animal feed enforcement. References to the enforcement of food law or action relating to food premises, processes and products undertaken by local authority officers should therefore be read with regard to the different responsibilities of local authority officers in the different countries of the UK, and as including relevant animal feed law and associated premises, processes and products.

enabling us to develop an open and transparent approach to the assessment, management, and communication of risk.

The genesis of proposals for a Consumer and Trading Standards

6. In the 2004 Budget, the Chancellor asked Philip Hampton to consider the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes. The Hampton report, published in March 2005³, concluded that burdens could be reduced by streamlining the regulatory system so that there are fewer, larger regulators. It recommended, and the Government accepted, that a new Consumer and Trading Standards Agency (CTSA) should be formed at the centre of Government to co-ordinate work on consumer protection and the Trading Standards Service⁴. The Hampton report recommended that the CTSA should incorporate the functions of the Office of Fair Trading, the National Weights and Measures Laboratory, the British Hallmarking Council and the Hearing Aid Council.
7. The DTI published a consultation paper⁵ on 5 July that makes proposals for the formation, structure and functions of the CTSA. The consultation proposes that the CTSA take a central co-ordination role for all Trading Standards issues, except in areas that remain the interest of the FSA, Health and Safety Executive (HSE), or proposed Animal Health Agency (AHA). In summary the following functions are proposed for the CTSA:
 - Advice for business and consumer education – providing strategic leadership to the Trading Standards Service;
 - Management of Consumer Direct⁶;

³ www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

⁴ the direct remit of the CTSA will exclude the work of other existing or new “thematic regulators” – the Food Standards Agency, the Health and Safety Executive, and the proposed Animal Health Agency.

⁵ www.dti.gov.uk/ccp/ctsa/

⁶ Consumer Direct is a national consumer helpline service currently being rolled out across the UK by DTI. Although food is not its primary focus it receives some consumer queries and complaints regarding food products which generally are signposted to the FSA or referred to the relevant local authority.. All food complaint data is recorded and information sharing arrangements have been set up with the FSA so that relevant trends and concerns can be identified. The proposals regarding formation of CTSA are not expected to impact on the relationship between FSA and Consumer Direct.

- Consistency of inspection and enforcement – improving the consistency of regulation and enforcement faced by businesses, particularly those that trade in several local authority areas;
 - Co-ordinated performance framework for the Trading Standards Service – taking and using powers to set minimum performance levels and support further performance improvement; and
 - Priority setting for Trading Standards – working with other national regulators to provide consistent advice to local authorities on priorities.
8. The last three proposals in the consultation paper have the potential to impact on the work of the Food Standards Agency. They are the focus of the following discussion which, for each of these three proposals in turn:
- outlines the background to the proposals;
 - summarises the proposals;
 - identifies any devolved issues;
 - analyses the potential impact of the proposals on the work of the FSA, and the risks and benefits for consumer protection and consumer confidence; and
 - poses questions to help the Board identify those issues on which it wishes to reply formally to the public consultation.

9. The public consultation closes on 12 October.

Consistency of inspection and enforcement

Background to the proposals

10. The Hampton report recommended that the CTSA should have a role in improving the consistency of regulation faced by businesses that trade in several local authority areas. There was also a commitment in the Labour

Party Manifesto for Enterprise, Skills and Science⁷ that the CTSA would “lead in the inspections of the Trading Standards Service for national companies with outlets all over the country”.

11. The Trading Standards Service currently uses the Home Authority Principle⁸ to co-ordinate its enforcement activities relating to large businesses with a number of outlets. The Hampton report questioned the effectiveness of this principle, citing variations in resources and service provision around the country as a barrier to consistency. The report also recognised that the operation of this principle is unfunded and can lead to some local authorities having a disproportionately high Home Authority burden.

Summary of the proposals

12. The consultation proposes the following options for addressing the reported inconsistency in enforcement by the Trading Standards Service of those issues that fall within the remit of the CTSA:

- Option 1 – Local authorities continue to inspect and take enforcement action for larger businesses following the Home Authority Principle. However, this principle operates under a more directed regime, with the CTSA producing guidance or directions (for example, on risk assessment protocols for business premises) that local authorities would be required to follow.
- Option 2 – The Home Authority analyses the systems and processes in place in the business and undertakes a random sample of premises (both in its own area and elsewhere in the country) to inspect. Other local authorities would not inspect the premises of that business in their own area. There would be an alert system to ensure that if there were a large number of complaints about particular premises, these could be addressed. Consideration would need to be given to how the increased costs to the Home Authority should be met.

⁷ www.labour.org.uk/fileadmin/labour/user/attachedfiles/PDFS/Business_Manifesto.pdf

⁸ The Home Authority will usually be the local authority where the business has its headquarters. The Home Authority seeks to provide a central contact point and to provide consistency in enforcement and advice. The operation of the Home Authority Principle is voluntary and local authorities are often unable to provide a full Home Authority service due to resource constraints.

- Option 3 – The CTSA undertakes the same role as proposed for the Home Authority in Option 2, and therefore local authorities would not inspect the premises of those businesses covered by these arrangements. Alternatively, the CTSA could undertake the analysis of business processes and systems, but would contract with local authorities to inspect individual premises on its behalf.

13. The consultation proposes that all the options in paragraph 12 above include granting the CTSA powers to direct that a local authority should not inspect a business or take formal action against a business.

14. The consultation concludes that Option 3 would be most effective at delivering the Government's manifesto commitment (see paragraph 10 above).

Devolved issues

15. Whichever approach is agreed, it will only apply to CTSA Trading Standards issues in England and to reserved CTSA issues in Scotland and Wales. There is the potential, therefore, for different approaches to be developed in each of England, Scotland and Wales⁹ for the operation of the Home Authority Principle for Trading Standards issues other than food. This would be likely to impact on the Food Standards Agency, this might have implications for the ways in which the FSA interacts with local authorities in the different countries of the UK. Provided each approach was effective in delivering effective enforcement, impacts on consumers are unlikely to be significant. There might be adverse impacts on businesses trading in more than one country of the UK, if different approaches were adopted to the operation of the Home Authority Principle.

Potential impact, risks and benefits

16. The consultation makes it clear that its proposals only relate to issues within the CTSA remit. The proposals will therefore not impact directly on the inspection and enforcement of food law by local authority Trading Standards Officers. The proposals are however noteworthy as there is currently an analogous Home Authority Principle for both food standards

⁹ In Northern Ireland, trading standards officers are employed by central government and do not enforce food law.

and food safety/hygiene. If an alternative approach is successfully implemented for CTSA issues, the FSA may wish to consider and consult on changes to the Home Authority Principle for food law inspection and enforcement. Our aim in this eventuality would be to identify whether there were analogous opportunities for more effective delivery of food law enforcement in businesses that operate across local authority boundaries, that would in turn deliver benefits in both consumer protection and consumer confidence.

17. The proposed CTSA powers to direct that a local authority should not inspect a business or take formal action against a business are novel – the Food Standards Agency does not have analogous powers. The consultation suggests that these powers are necessary to ensure that national companies do not continue to face inconsistent approaches.

Questions

18. The DTI consultation asks specifically whether option 3 at paragraph 12 above would be the most effective means of achieving consistency of enforcement and efficiencies for business. Having taken account of the proposals and above analysis, the Board will wish to consider whether it wishes to reply formally to DTI on this question, or on other issues raised by the proposals.

19. In considering whether and how to respond, the Board will wish to be mindful of its response to the Hampton interim report¹⁰. This acknowledged the importance of effective, coherent and consistent enforcement across the UK – the objective of the DTI proposals – but suggested that proposals for changes to local authority responsibilities for law enforcement should also take into account other factors, including:

- delivery of improved consumer protection and consumer confidence;
- delivery of value for money, through efficiency of operations;
- better interfaces with businesses, for example for provision of advice;

¹⁰ www.food.gov.uk/multimedia/pdfs/philiphampton.pdf

- maintaining a critical mass of expertise at a sufficiently local level to deliver the functions of the Trading Standards Service in other areas (including, in this instance, enforcement functions not within the remit of CTSA – in food, health and safety, and animal health).

20. The Board will also wish to consider whether adoption of the DTI proposals would have longer-term benefits or risks for consumer protection and consumer confidence. On one hand, paragraph 16 above suggests that, if new approaches were successful, there might be analogous opportunities for more effective delivery of food law enforcement in businesses that operate across local authority boundaries. On the other hand, would there be significant risks to consumer confidence if the CTSA were to use any proposed powers of direction without being open about how its direction would lead to improved regulatory outcomes?

Co-ordinated performance framework for the Trading Standards Service

Summary of the proposals

21. The Trading Standards Service will remain a function of local government, accountable to local communities and resourced by the local authority.

22. The consultation proposes that, as part of its strategic leadership role for Trading Standards Services, the CTSA should develop a framework for minimum performance in local authority Trading Standards and support further improvements above minimum standards. This will incorporate existing DTI initiatives, such as the National Performance Framework for Trading Standards and the development of voluntary peer review of the Trading Standards Service. The consultation further proposes that, in order to allow it to develop and implement this framework, the CTSA should take analogous powers to the FSA in respect of Trading Standards issues within its remit:

- requiring and publishing information from local authorities;
- setting enforcement standards for local authorities;
- reporting to local authorities on their performance and guidance on how to improve, and directing that such reports are published;

- taking over enforcement in a local authority area if it believes that authority is failing in its duty.

23. An over-arching revised performance framework for local government has recently been set out¹¹, which includes a new Local Services Inspectorate from 2008 and a strengthened role for regional Government Offices in England in co-ordinating central Government's interaction with local authorities. The consultation acknowledges that the CTSA's co-ordinated performance framework will need to integrate with this cross-Government initiative, and also with the analogous work of the FSA, HSE and AHA on performance standards for local authority enforcement of national regulatory regimes.

Devolved issues

24. This co-ordination role for CTSA will extend to Trading Standards issues that are reserved in relation to Great Britain and, in England, some Trading Standards issues that are devolved. DTI is undertaking further work with the Scottish Executive and National Assembly for Wales on consistency for stakeholders in handling devolved issues.

Potential impact, risks and benefits

25. The FSA will need to liaise with CTSA and the other national thematic regulators (and with the devolved administrations in Scotland and Wales) in the further development and co-ordination of performance frameworks for local authority Trading Standards Services. These frameworks should aim to support delivery of priorities for Trading Standards Services (see below).

Questions

26. Having taken account of the proposals and above analysis, the Board will wish to consider whether it wishes to reply formally to DTI on its consultation questions, or on other issues raised by the proposals.

¹¹ Office of the Deputy Prime Minister and HM Treasury. *Securing better outcomes: developing a new performance framework*. March 2005.

27. The DTI consultation asks specifically whether the powers listed at paragraph 22 are necessary and sufficient for effective performance framework co-ordination. As these powers are designed to be analogous to those of the FSA, are there any particular issues the Board would wish to flag, given its experience to date? For example, to what extent are such powers only effective if they are underpinned by a collaborative and outcome-focused approach that is shared by the national regulator and local authorities?

28. The DTI consultation also asks whether the application of these powers will realise the reduction in administrative burdens on business envisaged by Hampton and/or increase burdens on local authorities. Are there risks, therefore, of increasing burdens on local authorities and jeopardising the delivery of other regulatory services? Although the focus of the question is on burdens on local authorities and industry, are there implications for consumers? How might these inform the decision on whether the proposed powers are appropriate for the CTSA?

Priority setting for Trading Standards

Background to the proposals

29. The Hampton report identified the lack of collective agreement between central Government departments and agencies on the priorities for local authority Trading Standards Services as one of the problems that increases uncertainty and administrative burdens for businesses. The consultation therefore proposes that the CTSA works jointly with FSA, HSE and AHA to give the Trading Standards Service consistent and co-ordinated advice on priorities.

Summary of the proposals

30. The consultation proposes a single central Government priority list for the Trading Standards Service, which will be updated on a three-year rolling basis. The consultation also proposes the following process for reaching collective agreement across central Government on a priority list:

- the Local Authority Better Regulation Group (LABREG) to provide a forum for initial discussion within and between central and local Government;
- CTSA, FSA, HSE and AHA to draft a priority list following discussion at LABREG;
- the priority list to then be agreed between these four national regulators and the relevant Ministerial Cabinet Sub-Committee; and
- any new initiative that changes priorities would require agreement from the Ministerial group.

Devolved issues

31. A separate list of priorities is envisaged for each of the English, Scottish and Welsh Trading Standards Services, and DTI/CTSA plans to consult the devolved administrations on the priorities for their countries. The FSA would presumably need to advise and negotiate with each decision-making body responsible for prioritisation in each of the countries. There is therefore the potential for enforcement of law relating to food and animal feed to have a different priority for the local authority Trading Standards Service in each of England, Scotland and Wales.

Summary of impact, risks and benefits

32. The process of prioritisation outlined at paragraph 30 above is a Ministerial process, although admittedly the national regulators will be party to the agreement. The result of such a process might be that, notwithstanding any belief by the FSA that enforcement of food law or specific parts of it should be priorities in any period, these priorities do not appear in the list agreed by the Ministerial group. The Board might consider that this poses significant risks, including:

- to consumer protection – critically, if regulations do not appear on the proposed priority list they would not be enforced effectively and the risks they are designed to address would not be mitigated;

- to the independence of the FSA – a priority-setting process under Ministerial direction might be perceived as undermining the FSA's ability to deal with food safety issues at arm's length from the political process; and
 - to consumer confidence – changes which raised doubts about the independence of the FSA might, in turn, jeopardise consumer confidence and trust in how food safety and standards are regulated.
33. The proposal is expected to provide benefits to the Trading Standards Services, as the need to balance the different demands of national regulator and agencies would be replaced by the certainty of a single national priority list.
34. The proposal is expected to provide benefits to businesses, particularly those that trade in more than one local authority area, through a consistent focus by all local authorities on a transparent set of enforcement priorities.

Questions

35. The DTI consultation asks specifically whether the process of prioritisation outlined at paragraph 30 above is the best process for identifying central Government priorities for the Trading Standards Service. Having taken account of the proposals and above analysis, the Board will wish to consider whether it wishes to reply formally to DTI on this question, or on other issues raised by the proposals.
36. In considering whether and how to respond, the Board will wish to be mindful of its response to the Hampton interim report, which touched on some of the risks identified in the above analysis to the effective delivery of consumer protection and consumer confidence, and to the independence of the Food Standards Agency from the political process. The response to Hampton included:

“We believe it is essential that any changes resulting from your review do not put at risk the renewed consumer confidence and trust in the way the safety and standards of food and drink are regulated. Changes which raised doubts about our independence from the political process... could all too easily undermine this trust...”

We do, however, have concerns about some of the ideas that we understand have been developed following publication of your interim report for formalising better co-ordination. In particular we would see real difficulties with the idea of setting up a National Regulatory Forum [the former working title of LABREG] under Ministerial direction, particularly if it were to take on a formal role in setting national priorities... It would be likely to be seen by consumers and consumer bodies as seriously undermining the FSA's ability to deal with food safety issues at arm's length from Ministers and the political process, even if our formal legal status was unchanged.”

37. The FSA response to the Hampton interim report also included:

“We also agree that while there may well be a general need to improve consistency in risk-based national standards, it is equally important to ensure that local delivery arrangements can make effective use of local knowledge and are able to be responsive to local circumstances...”

The Board may therefore also wish to comment on the potential impact of the proposals on the flexibility of local authorities to set priorities for local delivery of regulatory services, and make an assessment of the balance of risks and benefits to effective delivery of food law enforcement.

Board Action Required

38. The Board is asked to:

- **consider** whether the Food Standards Agency should reply formally to the public consultation on the formation and functions of a new Consumer and Trading Standards Agency and, if so,
- **provide a steer** on how the FSA should respond, to inform the drafting of a reply by the Executive for subsequent clearance by the Board in correspondence, and
- **agree** that the FSA response should be published.