

## Modernising regulation - progress update and forward plan

### Report by Emily Miles, Chief Executive, and Maria Jennings, Director of Regulatory Compliance, People and NI

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#### 1. Summary

- 1.1 In 2016, the FSA launched an ambitious long-term intention to modernise how we work with local authorities in delivering official controls. Our goal is to design an effective, proportionate, risk-based, robust and resilient regulatory system to ensure that businesses meet their responsibility to produce food that is safe and what it says it is. It is a programme to reform the regulatory delivery model and intended to bring the regulatory system for food hygiene and standards in England, Wales and Northern Ireland into line with a globalised, industrialised, technologically advanced, highly convenient food industry.
- 1.2 Shortly after the launch of this reform plan the UK voted to leave the European Union. In response the FSA built, and has now implemented, entirely new processes for risk analysis decision making post EU Exit across our full remit. This includes significant changes in governance, capacity, capability and role. These changes are fully aligned with the modernisation principles set by the Board.
- 1.3 The two major change programmes, Regulating Our Future and EU Exit, have run in tandem for the last three years, although inevitably the EU Exit programme has consumed the lion's share of resources and time. As we approach the UK's EU exit date, we are now able to conclude the first phase of our wider modernisation programme (Regulating Our Future) building on the progress made in both programmes and establish the next stage of reform. Therefore, this paper asks the Board to:
  - **Agree** the priority drivers for change (online sales and the need to target resource to areas of highest risk)
  - **Agree** the priority areas for activity (set out at 5.1)
  - **Agree** the constraints that should direct our detailed work programme are correctly described
  - **Agree** that the next phase of work should be named the Official Control Modernisation Programme
  - **Note** that, in the light of the steers to Board provides, that we will come back with a more detailed work plan at the next Board.

## 2. The Continuing Need for Modernisation

2.1 The case for modernisation remains and, if anything, has grown stronger since the reform programmes began. The regulatory regime of official controls is operated on a devolved system of control by the FSA and over 400 local authorities. While this best served largely localised food businesses at the time the controls were established, developments in the operating environment, consumer behaviour and the configuration of the food industry mean this operating model is increasingly unfit for purpose. Particular issues that the Regulating Our Future Programme has sought to address include:

- **Insufficient flexibility in the system:** poor information sharing, and risk identification means effort is not always directed where it is most needed.
- **Significant changes in the operating environment:** strategic shifts including new ways to order food (on-line intermediaries/digital platforms), globalised food chains, new technologies in food production **means the localised, establishment-based approach is no longer always appropriate.**
- **Lack of visibility of the system:** the complexity of the devolved system across LAs, the FSA and LAs means we have lacked joined-up real time view of what is happening across food chains.
- **Declining local authority resource (particularly in England):** the estimated 19% less resource and declining numbers of officers working on hygiene (13%) and food standards (45%) and issues around recruiting suitably skilled officers **means increasing challenge in maintaining current levels of service in delivering official controls.**
- **Official controls applied inconsistently:** there is an inconsistent approach to implementing food hygiene and food standards official controls across local authorities, accountabilities are different in different countries **means there is inefficiency in the system and, particularly on food standards, with the potential to impact on the consumer and drive costs into businesses as they have to deal with multiple different engagements within the regulatory regime.**

2.2 While the Regulating Our Future Programme has improved the ability of official controls to respond to these drivers many of these issues remain and the need to modernise further persists. We also now need to seize the opportunities presented by the UK exiting the EU to reconsider how the FSA discharges its responsibility as the Central Competent Authority (CCA) for food and feed safety.

2.3 The first set of questions for the Board is to consider:

- whether these remain the key strategic drivers for change?
- which of these challenges are the most pressing?

2.4 Our suggestion is that it is:

- the need to give the FSA and local authorities the means to focus effort on the parts of the food system based on risks identified.

- to develop the means to finding solutions to the challenges created by the growth of online intermediaries as part of a new, more agile response capability.

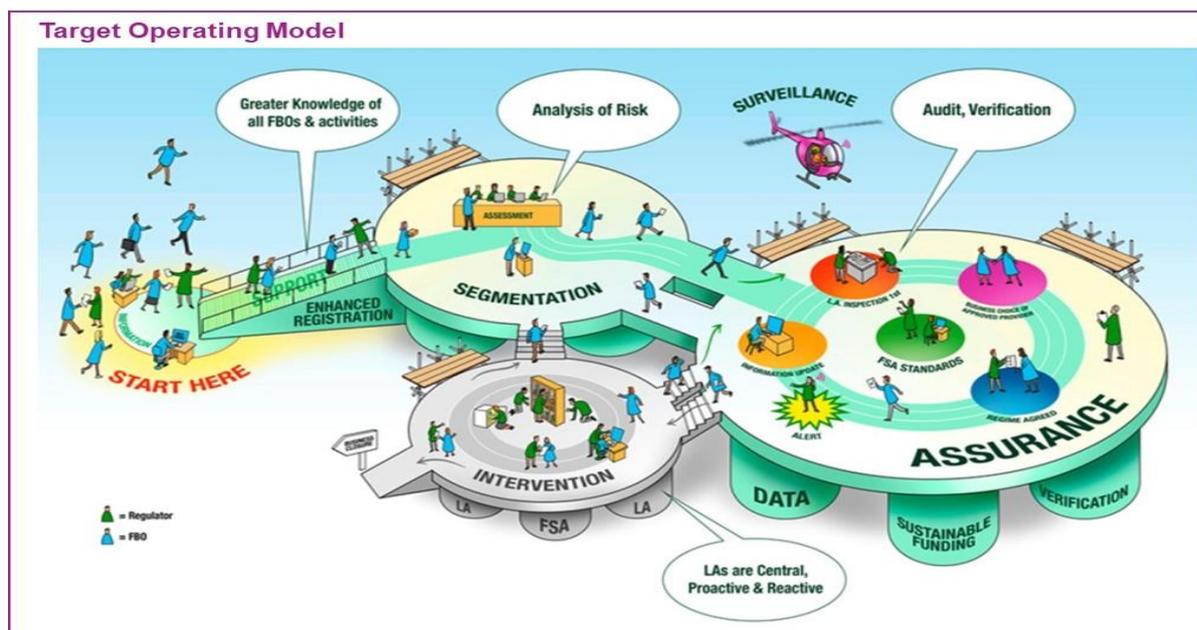
### 3. What Have We Achieved to Date?

3.1 In 2016 we worked with industry and local authorities to agree the principles that guide the programme:

#### ROF principles

- Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so. Consumers have the right to information to help them to make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information.
- FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses.
- The regulator should take account of all available sources of information.
- Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not.
- Businesses should meet the costs of regulation, which should be no more than they need to be.

3.2 In support of these principles we constructed a Target Operating Model (set out below) and programme of work to deliver both of those.



3.3 A number of workstreams were established to modernise the system and address the inadequacies of the current delivery model. The table at Annex A describes each component of the programme at a high level, summarises the progress that has been made, and offers a snapshot of the status of each

workstream. We have made progress across most of the workstreams and the outputs from many are now in the delivery phase. The work on unified view, registering a food business, the creation of a risk engine for segmentation, and work to enhance surveillance of the food industry that has been progressed under the banner of the FSA's EU Exit work, particularly on imports, have set a very strong set of foundations for the next phase. These are all critical to giving competent authorities the means to tailor their official control work to risk.

#### 4. What Next?

4.1 Our vision was to design a delivery model by 2020 that was capable of effectively and efficiently regulating an increasingly globalised, complex, diverse food industry and flexible and agile enough to respond to future challenges to ensure that food is safe and what it says it is. As noted above many of the building blocks of this model are now in place. There are several lessons we have learnt from the first phase of our reform to ensure that model can now progress to the next phase. In particular:

- **We have demonstrated** through the Regulating Our Future programme and our work to prepare for exiting the EU that we can create digital tools that help us understand the food sector. Risk analysis and strategic surveillance give us a data-informed way of responding to risks that we have proved worked within the FSA which gives us an opportunity to seed this into the wider regulatory system.
- **Change in a multi-agency landscape takes time** - rolling out business change to nearly 400 varied organisations (local authorities) is a complex activity which requires significant engagement. We must use the 'levers' we have, ambitiously and effectively, like the Food Law Code of Practice, data standards, and electronic tools. The increasing uptake up of the tools we have created show there is an appetite within local government to engage with us in the reform programme.
- **The ability to task activity to tackle risk is immature in relation to multi-site businesses and online platforms** - the current delivery model is based on interventions at individual establishments and so is still not fit for purpose for today's challenges such as multi-site business with a common management system and businesses that place food on the market on-line, sometimes on global digital platforms. The food business sector and changes in customer expectations are increasingly volatile increasing the need for agility in the system. We must be prepared to look at what roles local authorities, the FSA and other actors should take in relation to these parts of the food industry. This is particularly true because of the way that leaving the EU puts a spotlight on the FSA's role as a Central Competent Authority.

- **Data sharing is a key enabler** - the Primary Authority National Inspection Strategy approach, the unified view, the strategic surveillance system, and the local authority balanced scorecard all rely on excellent, relatively real-time data to identify risk and direct proportionate action. Our work has put these fundamental building blocks in place. Data standards, data governance and data sharing therefore become critical underpinning infrastructure behind the entire regulatory system.

## 5. Refreshed Work Programme

5.1 Having looked at the strategic drivers for change (including the conclusion of our work to prepare for exiting the EU and now focusing on creating a role of a CCA outside the EU), reviewed the progress made to date and the lessons learned we propose concluding the first phase of our modernisation and moving to construct a work programme around the following priorities:

- **Target operating model** - Defining roles of the central competent authority and competent authorities in relation to regulating relevant food businesses
- **Surveillance, data** - Collecting and disseminating data on food sector (e.g. imports) and food businesses to competent authorities so that they can assess risk in a more real-time basis.
- **Sophisticated risk assessment** - Continuing work to take all sources of information on food businesses to enable sophisticated segmentation by risk so that competent authorities can target their resources effectively, supported by refreshed guidance to local authorities on risk assessment and a digitally-enabled, sophisticated risk engine that all can use.
- **Skills for the job** - Altering expectations around professional skill levels so that competent authorities can deploy skilled resources effectively in food businesses and offer appropriate assurance. This would also include continuing to complete the work on food standards.

5.2 If the Board agrees these priorities, we propose to return to the Board in March with a detailed work programme. To reflect the shift into this new phase we propose to rename this programme the 'Official Control Modernisation Programme'. We suggest that we adopt an approach based on an ongoing targeted approach to modernising the system based on a clear idea of our ultimate ambition (our 'True North', of an effective, proportionate, risk-based, robust and resilient regulatory system) and apply the criteria of whether the activities proposed are:

- Clearly linked to delivering our ambition and the resolution of the most pressing problems faced by the FSA and local authorities
- Affordable
- Have a strong cost-benefit case to support it

- Deliverable – there is sufficient resource in FSA to deliver them, it is in the gift of FSA to deliver and if they rely on local authorities and Food Business Operators do we have the levers to encourage or require involvement and they will have the capability and capacity to deliver the change we need

5.3 As we do, we will work based on two key assumptions around the constraints on us:

- **Constraint 1:** No major structural reform. The regulatory landscape of local authorities, the FSA and other bodies will largely be retained. The FSA is committed to retaining the distinction between its role as a Central Competent Authority, and local authorities' roles as competent authorities. Wholesale structural reform would be lengthy, costly, and distracting. Rather, some small adjustments might be needed to the FSA's role (for example, it may need to take on a bigger role in setting data standards to support information sharing); and further thinking will be needed on how to support competent authorities to act nationally or non-geographically
- **Constraint 2:** Resourcing local authorities is a matter the FSA might be able to influence but is it not wholly within the FSA's gift. Decisions on increasing which services can be charged for, and increasing resourcing to local authorities, are matters for Ministers. The FSA will do all it can to a) help local authorities target their limited resources to risk; b) shine a light on whether the resources in the regulatory system are sufficient; c) explore different funding models so that Ministers have options to consider if they are keen to pursue this.

## 6. Conclusion

6.1 The Board is asked to:

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TOM	Description of activity	Progress to date	Status: 1 – in discovery; 2 – in development 3 – pilots in flight; 4 MVP in operation; 5 fully operational/benefits realised
Greater Knowledge of all FBOs and activities	<p><b>Enhanced registration</b> for new food businesses, a digital service for registration of new food businesses that facilitates an easy way to register and provides local authorities with better quality and consistent data. The service also gives the registering business links to tailored advice on the FSA website to help them comply with the law and get it right from the start.</p>	<ul style="list-style-type: none"> <li>developed a range of options for local authorities to adopt Register a Food Business, to suit their local management information systems, and 89 local authorities (69 in England, 10 in Wales and 10 in Northern Ireland) have made the service available within their areas.</li> <li>hope to have 150 local authorities on board by end Q4 2019/20 and 300 by end Q4 2020/21. (The original aspiration for this was that 50 local authorities would be using the registration service by end Q4 2018/19, with full roll out by end Q4 2019/20.)</li> </ul>	<p>1 2 3 4 5</p>
	<p>A <b>unified view</b> of all food and feed businesses developing a data hub which provides a managed list of all establishments and premises known to the FSA together with a growing collection of datasets about those establishments.</p>	<ul style="list-style-type: none"> <li>released a minimum viable product (MVP) in March 2019 – the data hub included FHRS data, feed data and approved premises data. have continued to iterate and shape the service in light of user feedback and have been rolling the service out to key internal users</li> </ul>	<p>1 2 3 4 5</p>

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Analysis of risk	<b>Segmentation</b> so that regulators can respond in a proportionate way to risk.	<ul style="list-style-type: none"> <li>developed the first iteration of a risk engine (a software system that employs a series of business rules to make a judgement on the potential risk of a business).</li> <li>Originally the programme hoped to have the new digital system for the current risk model being operated by all local authorities by end Q3 2019/20, a deadline which underestimated the complexity of this work.</li> </ul>	1 2 3 4 5
	<p><b>Primary Authority national inspection strategies</b> for food that put an increased focus on business level controls rather than those at individual outlets.</p> <p>Setting standards to allow businesses' own <b>assurance data and information</b> be considered within the risk management framework.</p>	<ul style="list-style-type: none"> <li>developed draft standards</li> <li>completed a pathfinder trial to establish how these could work in practice. anticipate that 2 partnerships will start to implement live trials in early 2020.</li> </ul>	1 2 3 4 5
Audit, Assurance and proactive and reactive intervention		<ul style="list-style-type: none"> <li>have explored a number of options initially considered in detail the concept of a <b>Certified Regulatory Auditor</b> and the implications of introducing such an approach into the existing regulatory landscape, however, the Board agreed in December 2017 that developing this concept further should not be a priority</li> </ul> <p>have scoped a project to examine how evidence from <b>3<sup>rd</sup> party assurance</b> schemes may be used</p>	1 2 3 4 5

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		to inform hygiene official controls in meat establishments as recommended in the FSA and FSS Review of Meat Cutting Plants and Coldstores) where FSA is the competent authority, with a view to applying the findings to controls delivered by local authorities.						
	A consideration of how to integrate <b>food hygiene and standards controls</b> to provide a more holistic approach to monitoring compliance with all food law requirements, for some businesses.	undertaken a baseline survey of delivery of <b>food standards</b> controls and established the case for a fundamental re-design of the approach, have developed a plan to transform how these controls are delivered (see FSA Board paper FSA19-06-06).	<table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table>	1	2	3	4	5
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	Exploring options for introducing a <b>new sustainable funding model</b> to support the regulatory system where businesses bore the costs.	Delivered research to understand the costs to local authorities of the current delivery model for food controls and conducted a survey of local authorities to establish the current charging landscape for activities that are not official controls e.g. providing advice and guidance to businesses, Food Hygiene Rating Scheme re-rating inspections. Currently paused until such time as there is wider government action and ministerial support for	<table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table>	1	2	3	4	5
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		taking forward the legislation that would be required to make this happen.	
	<b>Competency framework</b> – developing framework for all persons engaged in official food control in the FSA, local authorities, and for those persons working in the private sector who will provide assurance will be used to inform official controls	have established a Competency Reference Group, comprising relevant stakeholders to help us develop the framework and priority has been given to establishing the competencies that will be required to operate the new food standards model and for delivery of controls in cutting plants and coldstores. Progress in developing the framework has been slower than planned due to a lack of resources in the team. We are now on track to have developed, consulted on and agreed the specification of competency for routine and specialised official controls by March 2021.	1 2 3 4 5
	<b>Food safety culture</b> to explore how and if an assessment of this could be used to inform official controls.	<ul style="list-style-type: none"> <li>We produced an ‘As Is’ document setting out the key definitions of ‘food safety culture’ and global initiatives on food safety culture and regulation in November 2018</li> <li>We established links with key global advocates and experts on food safety culture and with food safety regulators in other countries, notably Australia and Canada.</li> </ul>	1 2 3 4 5

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		<ul style="list-style-type: none"> <li>• We co-hosted with the London School of Economics an organisational culture workshop for regulators (including HSE and the Office for Product Safety and Standards) and academics in Nov 2019.</li> <li>• We held initial discussions with a leading global food safety culture expert on a potential FSA food safety culture project.</li> </ul>	