

Nutrition and health claims, composition and labelling
common framework proposals

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1. Summary

1.1 This paper updates the Board on the progress of the development of the Common Framework on Nutrition and Health Claims, Composition and Labelling (Nutrition Framework), which is within the FSA's remit in Northern Ireland (NI).

1.2 The Board is asked to:

- **Agree** that the proposals for the FSA's governance of the Nutrition Framework, supporting the FSA's policy responsibilities in Northern Ireland, align with the Board's objectives for EU Exit.
- **Agree** that the Nutrition Framework proposals appropriately account for the Board's role in taking decisions and providing policy advice to Ministers.
- **Note** the next steps for seeking agreement and preparing for implementation of the Nutrition Framework.

2. Introduction

2.1 As part of the preparations for the UK leaving the EU, the FSA has been working in partnership with officials from other Government departments on the nutrition health claims, labelling and composition policy area.

2.2 In developing the four-country Nutrition Framework, the FSA has taken account of and ensured alignment with the principles for the UK exiting the EU agreed by the FSA Board in September 2017:

- Effectiveness in protecting public health
- Maintaining confidence in food safety and the regulatory regime
- Minimising disruption for consumers and industry
- Give consumers as united a regulatory system as possible across the UK.

FSA policy remit in Northern Ireland

2.3 Within the current legislative and regulatory framework, which is harmonised at an EU level, most food safety, labelling and composition regulations are within

the competence of the Devolved Administrations (DAs) for Northern Ireland, Scotland and Wales.

2.4 In Northern Ireland, the FSA has policy responsibility for nutrition claims, composition and nutrition labelling. The Department of Health and Social Care (DHSC) is the lead UK Government Department and in other devolved administrations the Welsh Government (WG) and Food Standards Scotland (FSS) have responsibility. This policy area includes the following:

- Information to consumers.
- Nutrition labelling.
- Nutrition and health claims made on foods.
- Composition and labelling of food supplements.
- The addition of vitamins, minerals and certain other substances to foods.
- Composition and labelling of foods intended for infants and young children.
- Foods for special medical purposes.
- Total diet replacement for weight control.

2.5 Although the FSA has policy and legislative responsibility for nutrition and labelling in Northern Ireland, it has no legislation making powers. Powers to make legislation rest with the Department of Health (DoH) in Northern Ireland.

2.6 The FSA Board ensures that in Northern Ireland, the FSA fulfils these legal obligations and that all decision and actions relating to nutrition policy consider appropriate scientific advice and are in the interests of consumers.

Nutrition Framework Approach

2.7 The Joint Ministerial Committee (EU Negotiations) (JMC (EN)) on 16 October 2017 agreed a set of principles (see Annex 1) that would underpin the creation of common frameworks. The Joint Ministerial Committee (JMC) is a set of committees that comprises ministers from the UK and devolved governments.

2.8 Officials have adhered to the JMC (EN) principles in the development of the Nutrition Framework as well as established constitutional conventions and practices where relevant, to ensure the decision-making powers of the devolved Ministers are protected.

2.9 With the transfer of EU functions to the UK, a four-country Nutrition Framework is required to provide UK approaches to the authorisation of new nutrition and health claims, the amendment of lists and registers and the notification of infant formula and medical foods (it is proposed that all policy areas noted in paragraph 2.4 should be in scope of the Nutrition Framework). The Nutrition Framework will provide a number of benefits, including making it possible for businesses from different parts of the UK to trade with each other, helping the UK to fulfil its international obligations, protecting consumers, facilitating free trade agreement negotiations and enabling a functioning UK internal market.

- 2.10 There is four country agreement at official level that the Nutrition Framework should be a non-legislative agreement to allow for maximum flexibility to adapt the framework as necessary and maintain a degree of trust and goodwill between the four administrations.
- 2.11 Proposals have been developed collaboratively to agree approaches for undertaking risk assessment, making policy recommendations (for Ministerial decisions) and resolving disputes. Under the framework, Ministers in each country retain the right to take separate decisions. Each of the appropriate authorities may legislate for their territory, and, where DA Ministers give consent, the Secretary of State may make regulations on behalf of the Devolved Administrations to cover whole or part of the UK.
- 2.12 Officials from FSA and the NI Civil Service (NICS) have engaged in the development of the Nutrition Framework. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analysis and factual responses only. In Northern Ireland, provisional agreement will be sought to the framework until such times as a Northern Ireland Minister can have an opportunity to determine wider approaches taken to frameworks.

3. FSA Board Role in Common Frameworks

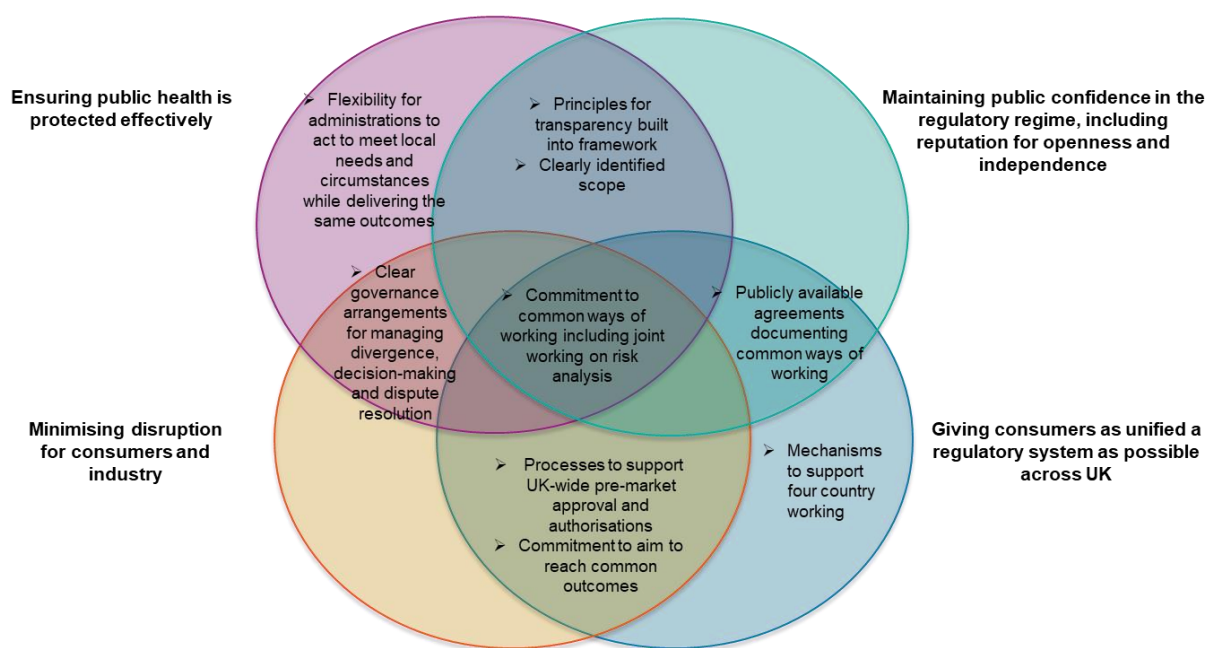
- 3.1 The FSA is involved in the development of three common frameworks – Food and Feed Safety and Hygiene; Food Compositional Standards and Labelling; and Nutrition Claims, Composition and Nutrition Labelling. The FSA is taking a consistent approach to the development of Frameworks. The FSA Board has a key role to play in ensuring that common frameworks are developed in line with the strategic objectives it set, and in the governance of the common frameworks once they are implemented.

Development of Common Frameworks

- 3.2 The FSA Board previously set the principles for the post EU Exit regulatory regime which underpin the FSA's work on frameworks and against which the FSA Board will assess all common framework proposals:
- Effectiveness in protecting public health.
 - Maintaining confidence in food safety and the regulatory regime.
 - Minimising disruption for consumers and industry.
 - Give consumers as unified a regulatory system as possible across the UK.
- 3.3 The FSA Board's input and agreement on the recommendations to Ministers on frameworks will be sought as the frameworks are developed.
- 3.4 Post Implementation:
- The Board will challenge the FSA to deliver for consumers (through Framework mechanisms) where appropriate a unified a regulatory system across the UK.

- The FSA will provide ARAC with an annual report on frameworks and will report to the Board on substantive issues arising.
- The FSA Board will play a role in governance processes, providing it with sufficient opportunity to provide input on recommendations to Ministers on substantial issues.

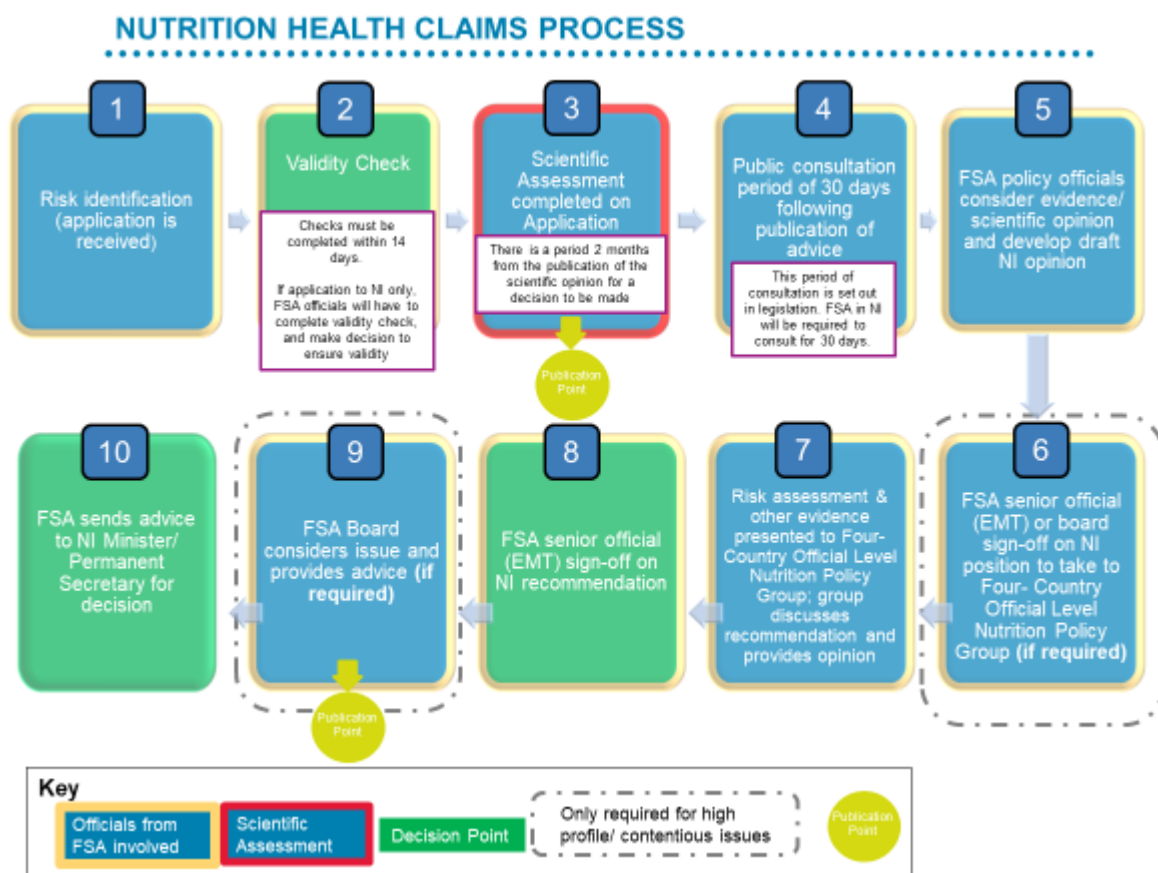
How the frameworks will meet our objectives



4. FSA Board Role in Nutrition Framework Governance

4.1 Nutrition policy can be technical in nature, for example where risk management decisions are required on applications for new health claims. The FSA's internal governance arrangements for the Nutrition Framework will mirror the arrangements in place for Food and Feed Safety and Hygiene Framework. FSA nutrition policy recommendations will go forward to the Four-Country Official Level Nutrition Policy Group comprising of lead officials from each country. The purpose of this group is to consider issues that arise in relation to nutrition policy as well as maintain collaborative working relationships between the four countries of the UK.

Health Claim Authorisation Process Map



- 4.2 It is proposed that the FSA Board will have the opportunity at two different stages to consider the advice and evidence available in order to provide appropriate recommendations on complex matters to Ministers/Permanent Secretary making decisions on behalf of NI.
- 4.3 The FSA Board will have the opportunity to inform the position that the FSA senior officials and policy leads will put forward to the Four-Country Official Level Nutrition Policy Group (Stage 6).
- 4.4 When recommendations for all parts of the UK have been agreed (whether for common or different approaches) at the Four-Country Official Level Nutrition Policy Group, senior FSA officials may require the independent consideration of the Board to agree recommendations to Ministers/ Permanent Secretary for decisions (Stage 9).
- 4.5 It is proposed that the Board’s role in governance will be common across all three common frameworks and will allow the board to ensure that recommendations made to Ministers align with the principles stated in paragraph 2.2.

5. Framework Proposals – Next Steps

- 5.1 It is anticipated that provisional agreement to the Nutrition Framework will be sought at JMC(EN) in early 2020, after which the framework can move into the preparation and implementation phase. This will include considering the implications of the Withdrawal Agreement, the Future Partnership with the EU, cross-cutting issues such as the internal market, and the revised Ireland/Northern Ireland Protocol, with further amendments possible prior to final agreement planned for December 2020.

Nutrition Framework Implementation

- 5.2 A non-legislative Concordat between DHSC, SG, WG and DoH in NI is proposed to underpin the nutrition framework, which will provide the basis for managing divergence across the four countries as well as managing surveillance and the sharing of information.
- 5.3 The Concordat would set out agreements including governance arrangements, decision making and dispute resolution processes. Working arrangements (both existing and new) would be established to support collaboration and coordination between all four administrations. Work to finalise the Concordat will continue during the preparation and implementation phase.

6. Conclusion

- 6.1 In NI the FSA has policy remit for nutrition health claims, labelling and composition. This paper provides a summary of the progress of the four-country collaborative working in the development of the Nutrition Framework with an appropriate governance structure which involves the FSA Board and will ensure the FSA continues to meet its stated objectives:
- Effectiveness in protecting public health
 - Maintaining confidence in food safety and the regulatory regime
 - Minimising disruption for consumers and industry
 - Give consumers as unified a regulatory system as possible across the UK.

7. Recommendations

- 7.1 The Board is asked to:
- **Agree** that the proposals for the FSA's governance of the Nutrition Framework, supporting the FSA's policy responsibilities in Northern Ireland, align with the Board's objectives for EU Exit
 - **Agree** that the Nutrition Framework proposals appropriately account for the Board's role in taking decisions and providing policy advice to Ministers.
 - **Note** the next steps for seeking agreement and preparing for implementation of the Nutrition Framework.

Annex 1

JMC(EN) Common Frameworks Principles: October 2017

Common frameworks will be established where they are necessary in order to:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations;
- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- enable the management of common resources;
- administer and provide access to justice in cases with a cross-border element;
- safeguard the security of the UK.

Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations.

Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.