

BREXIT

1 Purpose of the paper

- 1.1 For Information – To provide the Board with background information on ‘single market’ principles and how these relate to the development of UK frameworks in the area of food law, in line with the agreement at the Joint Ministerial Committee on EU Negotiations JMC (EN).
- 1.2 These ‘frameworks principles’ agreed by the four UK administrations at JMC (EN) in October 2017, include reference to common frameworks being established where these are necessary to “enable the functioning of the UK internal market, while acknowledging policy divergence”. (see Annex B for full details).
- 1.3 The attached discussion paper, Annex A and associated Annex C describe the principles of single market rules and discuss the balance between the principles of harmonisation and mutual recognition which underpin those rules. It draws on examples from our policy area to help illustrate the importance of ensuring flexibility is available in Scotland to apply different rules in Scotland, when this is necessary and proportionate, to ensure the protection of the health of the Scottish population, whilst generally supporting the retention of EU rules across the whole of the UK post Brexit.
- 1.4 The key points are that; internal markets are not merely about “trade”. They are also about fundamental policy choices concerning how to structure your economy and society; as well as basic constitutional questions about the institutions, processes and values that underpin this. As such there is always a balance between ensuring the functioning of the market and having appropriate market interventions, where necessary, to support wider public policy such as public health protection. In addition those interventions may be different where risk assessment demonstrates the need for different risk management solutions.
- 1.5 Although the JMC (EN) agreement talks about enabling the functioning of the UK internal market, there is currently a lack of clarity around the basic principles that should govern the UK’s future internal market. In the absence of such underpinning principles, there is a concern that proposed restrictions in our policy areas may prevent the deployment of appropriate interventions, when these are necessary and proportionate, against the backdrop of a simplified UKG model and pressure from certain industry groups promulgating the need for always adopting fully harmonised rules.
- 1.6 In his recent letter to Mike Russell (the Scottish Government’s Minister for Negotiations on Scotland’s Place in Europe) the Chair highlighted some of FSS’s concerns. In particular he outlined some specific areas where it may be necessary to have the ability to deviate from generally harmonised rules, where risk assessment shows this is both necessary and proportionate, to protect Scottish consumers. As outlined in the discussion paper and associated Annex C, this type of deviation from fully harmonised rules on the grounds of overriding reasons of public interest is a long established practice and is

enshrined in most trade deals. This flexibility may be essential to ensure Scottish consumers continue to have at least the same level of protection currently afforded by the current EU rules, in line with the Board's position outlined in November¹.

1.7 The Board is asked to:

- **Note** The information contained in the attached discussion paper and to discuss this to help inform our ongoing work in preparation for the UK exit from the EU.

2 Strategic Aims

2.1 *This work supports all six of FSS Strategic Outcomes.*

3 Background

- 3.1 There is agreement between UKG and the Devolved Administrations that new arrangements may be needed to ensure the proper functioning of the UK internal market in the absence of the common frameworks provided by EU law, and in light of the repatriation of powers currently determined at EU level. There is not yet agreement between the UKG and Scottish Government about how this would work in practise.
- 3.2 From our research, it appears that the rules governing the functioning of the UK internal market derive from the articles of the Treaty of Union, the division of competence in Schedule 5 of the Scotland Act 1998 and aspects of the 2016 Fiscal Framework: beyond these, there appears to exist no barriers to the exercise of devolved competence.
- 3.3 A key feature of devolution is to enable policy divergence, where appropriate, and the UK's constitutional arrangements allow for a range of what could be deemed 'market distortions', e.g. from the requirement for distinct professional qualifications in some areas, to different public sector procurement rules, to legislation permitting market interventions to protect public health, such as those relating to food safety and standards

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¹ That whatever legislation is introduced as a consequence of the UK's exit from the EU, this should not result in any reduction in the level of protection afforded to consumers in Scotland. Also, that FSS, with its current remit and powers, is best placed to ensure the continued protection of public health, improvement in diet and protection of the other interests of consumers in Scotland in relation to food.