

DEVELOPING THE FSS REGULATORY STRATEGY

1 Purpose of the paper

- 1.1 This paper is for **Discussion**.
- 1.2 The purpose of this paper is to outline our proposed future regulatory strategy and approach, which is a key part of the approach to how we deliver FSS' strategy.
- 1.3 The Board is asked to:
 - **Consider** the draft outline regulatory strategy set out in Annex A.
 - **Agree** the regulatory outcomes and approaches proposed for FSS at paragraphs 2.5, 2.7 and 2.10.
 - **Agree** the principles for regulatory decision making and national compliance spectrum proposed at paragraphs 5.8 and 5.9.
 - **Agree** proposals for external stakeholder engagement to further inform development of our regulatory approach.

2 Background

- 2.1 As a national regulator FSS has a clear statutory responsibility to protect consumers from food safety risks, to improve dietary health, and to protect other consumer interests in relation to food. Therefore how and where we regulate the food and drink industry in Scotland and the approaches we adopt are of crucial importance in achieving these objectives to help deliver FSS's overall vision *to create a food and drink environment in Scotland that benefits, protects and is trusted by consumers*.
- 2.2 Development of a regulatory strategy is a key activity under Outcome 4 in the FSS Strategy and Corporate Plan – *responsible food businesses flourish* – and it will set out our vision and future direction for how we will fulfil our role as a national regulator in Scotland.

3 Discussion

- 3.1 An important driver for this work is to provide a strategic framework for ensuring our regulatory activities are carried out in accordance with Scottish Government better regulation and external scrutiny principles, and are aligned with the wider Scottish Government aim of sustainable economic growth, where this does not conflict with our primary consumer protection objectives. This is a statutory duty placed on FSS under the Regulatory Reform (Scotland) Act 2014, and includes the need to have 'due regard' to the approaches to regulation set out in the Scottish Regulators' Strategic Code of Practice and the five principles of better

regulation – to be transparent, proportionate, accountable, consistent and targeted.¹

- 3.2 This means FSS has a key enabling role to play in supporting responsible and compliant food businesses and to minimise regulatory burdens and ‘red tape’ where possible. Encouraging increased self-regulation and a greater role for commercial and third party assurance where it is appropriate and practical may be an important factor in helping to achieve this. It also means tackling effectively those businesses that wilfully neglect their legal obligations through targeted, risk based enforcement and proportionate and dissuasive sanctions.
- 3.3 However, as important as this is, our role as a national regulator is broader than ensuring industry compliance with European and domestic food and feed law, whether directly by FSS or through our Local Authority and other delivery partners. Unlike many other national regulators subject to the Scottish Regulators’ Code, FSS has a wider policy remit requiring us to influence food and feed policy development at all levels – EU, UK and Scottish. Therefore our future regulatory approach will apply equally to these functions of legislative standard setting and interpretation of EU law. This will mean working in close collaboration with Scottish Government, the Food Standards Agency (FSA), and other UK departments, whether in developing domestic legislation or in contributing to UK negotiation positions on emerging EU law, where we will advocate the principles of better regulation to support proportionate and risk based regulation.
- 3.4 When implementing or giving effect to EU law, FSS has considerable flexibility within the existing legal framework to shape the future delivery landscape in Scotland so that it remains proportionate, risk-based and cost-effective. Our draft regulatory strategy is intended to provide an overarching framework for our future delivery work to ensure that official control delivery in Scotland is aligned with our wider strategic aims as a national regulator, and that we continue to meet our EU competent authority obligations, but in a way that positions us as a body that influences businesses and others for consumers benefit.

4 Regulatory Strategy Programme

- 4.1 At the last Board meeting on 20 January, as part of the update on developing the FSS Strategy, the Board were advised that the executive had established a Programme Board to oversee development of the FSS regulatory strategy.² The purpose of the Programme Board is to provide strategic direction to our regulatory strategy and associated workstreams, and coordination with other FSS strategies and programmes.

¹ <http://www.gov.scot/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/CodeofPractice>

² <http://www.foodstandards.gov.scot/sites/default/files/Board%20meeting%20-%202016%20January%20-%20Developing%20the%20FSS%20Strategy%20-%20160105.pdf>

- 4.2 Both the Scottish Government and the FSA are represented on our Programme Board. This will ensure our regulatory strategy aligns with wider better regulation policy in Scotland, and supports collaborative working with the FSA as they develop their own regulatory approach.

5 Identification of risks and issues

- 5.1 The current pressures on food and feed law enforcement services in Scotland – particularly at Local Authority level – presents a key area of risk for FSS. These services are critical to maintaining a robust and sustainable official control regime, essential for consumer protection, and the successful delivery of the FSS strategy. With fewer frontline staff, and reducing budgets, Local Authorities are keen to work in close partnership with FSS to contribute to the development of better, more cost-effective future delivery models that support achievement of our broader regulatory goals and vision to create a food and drink environment in Scotland that benefits, protects and is trusted by consumers.
- 5.2 In terms of the integration of better regulation principles, much work has already been done by FSS, and the FSA in Scotland before it, to ensure we are fully engaged and play an active part in the Scottish better regulation agenda and associated national forums. The challenge will be to embed these approaches into the culture and practice of FSS, and our delivery and contract partners, to bring real and meaningful benefit to consumers and responsible food businesses. The draft strategy outlined in Annex A aims to provide a platform for this to happen.

6 External Engagement

- 6.1 Initial stakeholder engagement on our future regulatory approach formed part of wider engagement on the FSS Strategy and Strategic Plan. It is clear from initial feedback that this is an area of particular interest to stakeholders, and if the Board is content with the overall approach outlined in our draft regulatory strategy this will form the basis for more detailed discussions with consumers, industry, Local Authorities, and other interested parties to help shape our future regulatory direction.
- 6.2 This will be followed by a formal public consultation on our draft regulatory strategy later in 2016.

7 Measuring Success

- 7.1 As outlined in the draft strategy document, the key measure of success of our future regulatory approach will be the real and positive benefits we bring to consumers and responsible food businesses alongside evidence that we are tackling poorly performing businesses too. The proposed five regulatory outcomes offer an initial framework for gauging success, and more detailed

performance indicators will be developed to allow the Board to monitor progress as the programme of associated workstreams and activities is further developed and refined over the coming months.

8 Conclusion

8.1 The draft FSS regulatory strategy presented here is a starting point. It is intended to provide an initial framework to give strategic direction and coherence for our regulatory activity, and to lay the groundwork for future thinking about how we want to shape the food and feed regulatory landscape in Scotland, in partnership with our regulatory and delivery partners, for the benefit of consumers.

8.2 The Board is asked to:

- **Consider** the draft outline regulatory strategy set out in Annex A.
- **Agree** the regulatory outcomes and approaches proposed for FSS at paragraphs 2.5, 2.7 and 2.10.
- **Agree** the principles for regulatory decision making and national compliance spectrum proposed at paragraphs 5.8 and 5.9.
- **Agree** proposals for external stakeholder engagement to further inform development of our regulatory approach.

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