

FSS SCHEME OF DELEGATION FROM THE BOARD

1. Purpose

1.1. To provide the Board with a draft revised Scheme of Delegation for discussion and agreement.

1.2. The Board is asked to:

- Discuss the draft Scheme of Delegation at Annex A; and
- Agree a final version for adoption and publication.

2. Background

2.1. The action plan which resulted from the Board's 2016 effectiveness review included the establishment of a short-life working group to review the Board's Scheme of Delegation. The working group comprised the Chair, the ARC Chair, the Director of Policy and Evidence, and the Head of Private Office.

3. Discussion

3.1. The working group considered examples of Schemes of Delegation used by the non-executive Boards of other public bodies, and benefited from advice from Scottish Government officials. The group also took into account the Scottish Government's 'On Board' guidance, the accountability section of the Scottish Public Finance Manual, and the terms of the FSS Framework Document.

3.2. The annexed draft Scheme of Delegation is the outcome of the Working Group's research and deliberation, and subsequent discussion between the Chair and the Chief Executive.

4. Recommendation

4.1. The Board is asked to:

- Discuss the draft Scheme of Delegation at Annex A; and
- Agree a final version for adoption and publication.

Karen McCallum-Smith
Food Standards Scotland
20 February 2017

Food Standards Scotland

Scheme of Delegation

1. Introduction and background

- 1.1. The objectives and functions of Food Standards Scotland (FSS) are set out in the Food (Scotland) Act 2015 (the Act).
- 1.2. FSS's functions lie with the Board which consists of Non-Executive members appointed by Scottish Ministers through the public appointments process. The Board is responsible for the strategic leadership and direction of the organisation, ensuring that it achieves its statutory objectives, carries out its functions effectively and efficiently and is a best value organisation. The Board must ensure that FSS has appropriate arrangements in place for corporate and business planning, risk and financial management, and reporting on its performance.
- 1.3. Board Members have collective responsibility for the actions and decisions of FSS and are accountable to the Scottish Parliament.
- 1.4. All matters set out in section two below are reserved for decisions by the Board. All other matters are delegated to the Chief Executive and the Chief Executive will be accountable to the Board for the exercise of these powers and will report to the Board on these as required. Without prejudice to the foregoing general delegation, the specific matters delegated to the Chief Executive are set out in section three.
- 1.5. The Chief Executive is authorised to delegate powers to the Senior Management Team of FSS within the limits of his own delegated authority, and to supervise the exercise of such delegated powers. All powers delegated by the Chief Executive can be re-assumed should the need arise.
- 1.6. Section four sets out the arrangements for the exercise of FSS's regulatory powers.

2. Matters reserved for the Board

Regulation and control

- 2.1. Appointment of a chief executive, as a member of staff, with the approval of the Scottish Ministers.
- 2.2. Receiving Board Members' declarations of interest and ensuring they are recorded in a public register.

- 2.3. Approval of the Code of Governance comprising;
- Terms of Reference for the Board;
 - Terms of Reference for the Audit and Risk Committee;
 - Scheme of Delegation;
 - Standing Orders; and
 - Code of Conduct.
- 2.4. Approval of the Framework Document setting out the terms of agreement between FSS and the Scottish Government, in relation to the governance, financing and operation of the functions of FSS.
- 2.5. Approval of the Terms of Reference, composition and reporting arrangements of all Committees, sub-committees and advisory working groups as required working on behalf of the Board.

Corporate strategy and performance

- 2.6. Approval of the Statement on Performance of Functions and the conduct of any review thereof.
- 2.7. Approval of the Memorandum of Understanding between FSS and the FSA.
- 2.8. Agreement of the Statement of Vision and Objectives and approval of the Strategy and Corporate Plan.
- 2.9. Approval of the form, content and timing of reports monitoring the delivery of the Strategy and Corporate Plan.
- 2.10. Approval of the strategic approaches and associated documents to support the Strategy and Corporate Plan.
- 2.11. Approval of the Annual Work Plan.
- 2.12. Approval of strategically significant policy developed to advise Ministers where there are potentially significant consequences that may impact on the delivery of FSS agreed objectives.

Accounts, budget and financial monitoring

- 2.13. Approval of the Revenue and Capital Budgets for each financial year.
- 2.14. Approval of the principles of delegation of the budget from the CE.
- 2.15. Approval of the form, content and timing of financial monitoring reports.
- 2.16. Approval of the Annual Report and Accounts to be laid before the Scottish Parliament

Management of risk

- 2.17. Approval of the Board's Statement of its Risk Appetite.
- 2.18. Adoption of responsibility for overseeing the Strategic Risk Register, ensuring strategic risks are suitably and sufficiently identified, and receiving assurance that they are monitored and controlled.
- 2.19. Appointment of the Audit and Risk Committee.
- 2.20. Approval of the Audit and Risk Committee's Terms of Reference and the delegations contained therein.
- 2.21. Receipt of an Annual Report from the Audit and Risk Committee

Application of Regulation

- 2.22. Approval of the principles of charging to be applied to a regulated sector.

Compliance with statutory and corporate requirements

- 2.23. Receipt of assurance that FSS is meeting its statutory and corporate obligations [as a Scottish public body and as an employer].

3. Specific matters delegated to the Chief Executive

General

- 3.1. The Board holds the Chief Executive responsible for the leadership, day to day running, and performance of FSS.

Finance and governance

- 3.2. The Chief Executive has been designated as FSS's Accountable Officer under section 15 of the Public Finance and Accountability (Scotland) Act 2000. As Accountable Officer, the Chief Executive is personally answerable to the Scottish Parliament for propriety and regularity in the management of public funds allocated to FSS by the Scottish Government and for which the Chief Executive has charge.
- 3.3. The Chief Executive should act in accordance with the terms of this document, within the instructions and guidance in the Scottish Public Finance Manual and other instructions and guidance issued from time to time by SG Finance, in particular, the Memorandum to Accountable Officers for Parts of the Scottish Administration, which the Chief Executive receives on appointment to that role.
- 3.4. Members of the Board (including the Chair) must not give the Chief Executive instructions that conflict with the latter's duties as FSS's Accountable Officer. Should instructions be issued in such terms, the Accountable Officer is required to send a copy to the Auditor General.

- 3.5. As Accountable Officer, the Chief Executive shall, in particular:
- 3.5.1. advise the Board on the discharge of its responsibilities as set out in the Framework Document and in any other relevant instructions and guidance that may be issued from time to time;
 - 3.5.2. ensure that all public funds made available to FSS are used for the purpose intended by the Scottish Parliament and that such funds, together with FSS's assets, equipment and staff, are used economically, efficiently and effectively;
 - 3.5.3. ensure that appropriate staff governance and staff management policies are maintained;
 - 3.5.4. ensure that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions and that standard financial appraisal techniques are followed as far as is practical;
 - 3.5.5. take action as set out in the Memorandum to Accountable Officers for Parts of the Scottish Administration and in the FSS Framework Document if the Board, or its Chair, is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity, or does not represent prudent or economical administration or efficiency or effectiveness; and
 - 3.5.6. give evidence when summoned before Committees of the Scottish Parliament on the use and stewardship of public funds by FSS.

Complaints

- 3.6. The Chief Executive ensures that effective complaints handling procedures, compliant with the Model Complaints Handling Procedure published by the Scottish Public Services Ombudsman (SPSO) are established and made widely known.
- 3.7. The Chief Executive may take a personal interest in some or all complaints, or may delegate responsibility for the complaints handling procedure to senior staff. Regular management reports assure the Chief Executive of the quality of complaints performance. The Chief Executive will inform the Board about any complaints accepted by the SPSO for investigation, and about FSS's proposed response to any subsequent recommendations from the Ombudsman.

Legal matters

- 3.8. The Chief Executive is authorised to institute, defend or appear (either personally or through an officer with particular expertise) in any legal proceedings or any inquiry, including proceedings before any statutory tribunal, board or authority, and following consideration of the advice of FSS's Legal Advisers to instruct Counsel, if appropriate through solicitors, where it is considered expedient to do so, for the promotion or protection of the Board's interests.

- 3.9. In circumstances where an award is made against the Board by a Court or Tribunal, and the decision is either not subject to appeal or the Chief Executive, on the advice of FSS's Legal Advisers, has decided not to appeal, the Chief Executive will implement the decision of the relevant body on behalf of the Board.
- 3.10. In circumstances where the advice of the FSS's Legal Advisers is to settle a dispute then the Chief Executive may settle such claims against the Board.

Compliance with statutory duties

- 3.11. All actions required to comply with legal or corporate duties placed on FSS or its staff are delegated to the Chief Executive.

4. Exercise of FSS's Statutory Regulatory Powers

- 4.1. The majority of food and feed safety and standards regulations, exercised by FSS, stem from EU legislation, and for EU matters the Scottish Ministers are the designated body in Scotland, on behalf of the UK member state, to discharge fully EU obligations. Through a number of statutes and Statutory Instruments, the Scottish Ministers have designated FSS and the local authorities as competent authorities and enforcement authorities, each with a specified range of functions, for the purposes of the organisation and delivery of food and feed official controls.
- 4.2. In addition, the Scottish Ministers have designated FSS, principally through the functions conferred on it by the Food (Scotland) Act 2015 and also through administrative arrangements, as having the competence to:
 - 4.2.1. discharge the Ministers' obligations to the EU to co-ordinate and audit the functions of all competent authorities and control bodies, and
 - 4.2.2. more widely monitor the performance and promote best practice by those authorities enforcing Scottish food and feed legislation, whether or not derived from the EU.
- 4.3. FSS develops, on behalf of Scottish Ministers, the Code of Practice under the Food Safety Act 1990, which Ministers have the power to issue and to which every food authority has a statutory obligation to have regard.
- 4.4. It is an EU requirement that all member states have a national control plan. The Multi-Annual National Control Plan (MANCP) for the UK provides, inter alia, details of how authorities and other bodies work together in monitoring compliance and enforcement of: feed and food law; animal health and welfare rules; and plant health requirements.
- 4.5. Full details of how FSS co-operates with other bodies in the exercise of its statutory regulatory powers can be found on the FSS website under - [Regulation and enforcement of food and feed law](#)

- 4.6. FSS's regulatory functions, including audit of other competent authorities, are delegated from the Board to the Executive, apart from authorisation of staff under statutory provisions where those provisions require such authorisations to be issued by the Board, including:
- 4.6.1. the function of giving authorisations under section 21(1) of the Food (Scotland) Act 2015 (powers for persons carrying out observations); and
 - 4.6.2. the function of giving authorisations under section 28(1) of the Food (Scotland) Act 2015 (powers for persons monitoring enforcement action).