

LEAVING THE EUROPEAN UNION

1 Purpose of the paper

1.1 This paper reports progress to the Board since February with regard to FSS's work related to the decision by the UK Government (UKG) to give effect to the outcome of the UK-wide referendum on EU membership in June 2016, and that the UK should leave the EU by the end of March 2019.

1.2 This paper first addresses the strategic and practical challenges of leaving the EU, and considers the constitutional landscape (paragraphs 3.1-6.5), domestic readiness (paragraphs 7.1-7.3), and the views of consumers and stakeholders (paragraphs 8.1-8.2.7). Finally, the paper discusses some of the strengths, risks and challenges relevant to our work.

1.3 The Board is asked to:

- a) **Agree** that leaving the EU should not result in detriment to or constraints upon FSS's remit and powers to protect public health, improve diet and protect the other interests of consumers in relation to food.
- b) **Agree** that FSS's strategic direction remains as agreed in 2016, focussed on delivering our six strategic outcomes to protect consumers and support responsible food businesses.
- c) **Agree** that the executive should bring a paper to the Board early in 2018 setting out, as far as we can foresee at that point, how the work necessary to prepare for leaving the EU might affect delivery of the FSS strategy.
- d) **Note** that clarity about the future decision making for matters currently determined at EU level will be dependent on the end point of negotiations on the European Union (Withdrawal) Bill ("the Bill"), UK Frameworks and negotiations on repatriation of powers, noting the Scottish Government's (SG) position that repatriation of powers from Europe on devolved matters should be to Scotland and not centralised at the UK level.
- e) **Note** that there are currently many decisions made locally and nationally in relation to the execution and enforcement of EU food law, and **agree** that this position should be maintained.
- f) **Note** that Food Standards Agency (FSA) may seek new powers with regard to certain decision making functions which may engage the issues raised at d) and e) above. We will keep the Board updated on any implications this could have for FSS, and how we might address any related issues.
- g) **Note** that we are engaged with both SG and UKG (primarily FSA and Defra) on matters concerning technical and operational readiness.
- h) **Note** the views of consumers and stakeholders about how leaving the EU may effect on their interests in relation to food.

2 Leaving the EU - strategic and practical challenges

2.1 There are a number of strategic and practical challenges that leaving the EU presents to FSS. The paper discusses the potential legislative and constitutional impacts on FSS, and how these could affect our statutory duties to protect public health in relation to food, help ensure that people in Scotland have diets that are conducive to good health, and to protect the other interests of consumers in relation to food.

2.2 Whilst there is still considerable uncertainty about the nature of the UK's exit from the EU and the future relationship between the UK and the EU, the paper outlines views from consumers in relation to how leaving the EU might affect their interests around food, and also reports views from key stakeholders.

2.3 The paper also outlines some of the key 'operational readiness' issues that we will be addressing, to ensure that FSS can continue to deliver its national regulatory role in relation to food in Scotland.

2.4 There are a number of challenges that leaving the EU may pose in relation to food and feed, and while we have identified key risks, FSS may not have all the levers needed to mitigate them. To a large extent, this is because the risks themselves, as well as the means to mitigate them will depend on the outcome of negotiations between the UKG and the EU, and between the UKG and SG, for example, the nature of the UK's future relationship with the European single market and the Customs Union, future arrangements for UK borders and the nature of any transitional agreements between the UK and EU. Many of these issues are not within FSS's power or remit to resolve – and indeed are not specific to food - but the outcomes of these negotiations will impact both consumers' and businesses' interests in relation to food, and we are working to influence and advise, both with SG and UKG counterparts, regarding the possible implications for the food supply chain, for businesses and for consumers.

3 The Constitutional Landscape

3.1 The Current Regulatory System for Food and Feed

3.1.1 The vast majority of food and feed law that applies currently in Scotland (and the rest of the UK) is harmonised at EU level. This facilitates effective functioning of the EU single market, and provides a high degree of consumer protection in relation to food and feed.

3.1.2 Whilst EU law in relation to food is largely directly applicable, some EU regulations provide scope for Member State subsidiarity – i.e. they recognise areas where it is considered unnecessary or inappropriate for law to be harmonised at Community level, and thus allows Member States to determine rules at national level. As food is currently a devolved function under the devolution settlement, this allows Scotland to make national rules and requirements in some areas, as long as these national rules are compliant with EU law. Examples of this are the provision within EU food hygiene law that allows Scotland to maintain its longstanding ban on sales of raw drinking milk on the grounds of public health protection, following a number of cases of serious illness associated with the consumption of unpasteurised milk; and provisions within hygiene law that allows us to set various national measures for the regulation of sales of small quantities of certain foods (e.g. wild game meat) at local level, to reflect traditional short supply chains between producers and the final consumer.

3.1.3 In addition, whilst the EU sets out a framework for how it expects the EU provisions to be executed and enforced by Member States, discretion is given to Member States in how they administer this, and to whom they decide to delegate legal competence for the enforcement of these functions – described generically as official controls.

3.2 Devolution

3.2.1 Food and feed safety and consumer protection are for the most part fully devolved through the Scotland Act 1998. The 1998 Act confers competence on the Scottish Parliament to legislate in devolved areas, and gives devolved competence for legislation to the Scottish Government, with the proviso that Scottish Ministers cannot legislate in ways that are not compatible with EU law. Therefore, so long as Scottish Ministers and the Scottish Parliament are meeting their obligations to implement EU law fully, it is within their competence to legislate in this area. Indeed, the ability for Scotland to have separate provisions for food safety law is long established and even before devolution, food safety law was the province of the Secretary of State for Scotland, and not the Ministers at Westminster with responsibility for health or agriculture policy.

3.2.2 Therefore, although the EU law with respect to required technical standards for businesses, and the principles underpinning the administrative frameworks required to verify compliance with these, is for the most part fully harmonised, significant member state subsidiarity exists with respect to how and by whom the EU provisions are executed and enforced within individual member states. This includes how verification, audit and assurance are established within the UK. Within Scotland this area of policy is an entirely devolved matter under the provisions of the 1998 Act and therefore, some sixty Scottish Statutory Instruments exist to implement and give effect and enforcement to the EU law and to provide for national rules where these are permitted.

3.3 The European Union (Withdrawal) Bill – implications for devolved competence

3.3.1 To enable the UK to leave the EU, legislation will be required to make that happen. The UK Government has introduced its European Union (Withdrawal) Bill to the UK Parliament, and the Bill is due to start the Committee stage this autumn.

3.3.2 The consequences for Scotland of the Bill, as originally drafted, are significant. The Bill has the potential to very significantly constrain the competence and powers of the Scottish Parliament and Scottish Ministers, and constrain the extent to which FSS can act to deliver its statutory objectives and functions to protect consumers in Scotland.

3.3.3 As drafted, the Bill introduces the new constraint of ‘retained EU law’ on the legislative competence of the Scottish Parliament. Clause 11 of the Bill introduces a provision that in effect, gives the UK Parliament and UK Government the unilateral power to make decisions in devolved areas previously affected by EU law. Analogous provisions are made in the Bill to constrain the powers of the Scottish Ministers.

3.3.4 This new legislative constraint cuts across the scheme of legislative competence that is set out in the Scotland Act. It would give the UK Parliament and the UK Government power to legislate in relation to policy areas which are the

responsibility of the Scottish Parliament and the Scottish Ministers. It is a constraint which is no longer based (as the current limit by reference to EU law is based) on the status of the UK as a member of the EU. In its place is a new, artificial and over time, increasingly complex constraint of EU law as it will be on departure, and subsequently amended by UK Ministers.

3.3.5 The UKG has commented that these restrictions are transitional; intended to allow discussion and consultation with devolved administrations on the need for successors to EU legal frameworks, but the Bill does not contain any time limits on them. The Bill does contain provision for matters to be released to existing devolved competence, following agreement by both Houses at Westminster and the Scottish Parliament. The SG's position is that this creates further complexity in the devolution settlement, and to date, the UKG has not yet indicated any areas in which it would propose to use this procedure, how it would specify such areas, nor how the procedure would be used in practice. Effectively, any changes to existing EU law would be determined by the UKG, even where the issue is devolved.

3.3.6 The Bill also makes provision for the Scottish Ministers to deal with deficiencies in the law in devolved areas that are a consequence of leaving the EU, but these powers are considerably less extensive than those conferred on UK Ministers, including in devolved areas. Where Scottish Ministers are given powers to deal with deficiencies, the Bill constrains these powers in a number of ways, for example by preventing Scottish Ministers from making amendments that are inconsistent with actions of the UKG, or in some cases requiring consent from UKG. The Scottish powers are only available to modify the domestic legislation that transposes and gives effect to the EU law; the directly applicable EU provisions themselves can only be modified by the UK Ministers.

3.3.7 Under the Bill, UK Ministers would have the power to make changes to law in devolved areas without any formal mechanism for accountability to the Scottish Parliament or consent from the Scottish Ministers. As outlined above, in relation to directly effective EU legislation, including EU Regulations, UK Ministers would have the sole power to make necessary corrections to law in devolved areas. So if the UKG decided to de-regulate in some area of EU law, the law in Scotland would be required to align with UK law, even if it was considered that was not in Scotland's interests to do so.

3.4 Scottish Government's Position on the Bill

3.4.1 The Scottish Government rejects, in principle, the proposition that devolved competence should be constrained in the ways that the Bill proposes on withdrawal from the EU. Policy responsibility and expertise for matters within devolved competence lie with the Scottish Government, which is accountable to the Scottish Parliament.

3.4.2 In the case of matters within the remit of FSS, we are directly accountable to the Scottish Parliament for the functions that we are charged with delivering in Scotland. The SG is also clear in its view that the result of withdrawal from the EU should not be centralisation of power in Whitehall and Westminster, but that is what the Bill proposes for an indeterminate period following withdrawal from the EU. On the basis of these objections, the SG has made clear that it cannot recommend to the Scottish Parliament that it should give legislative consent, even conditionally, to the Bill in its current form.

3.4.3 The Scottish Government and Welsh Government have worked jointly and proposed amendments to the Bill, reflecting their mutual concerns about its effect on devolved competence and the respective devolution settlements.

4 Impacts of the Bill on FSS

4.1 The potential consequences for FSS are essentially the same as for other areas of policy that are devolved to Scotland and are currently subject to a European legal framework. As the Bill is currently drafted, for an undetermined period of time, Scottish Ministers and ourselves as their advisors will not be able to propose amendments to the law in Scotland in ways that would render it incompatible with any changes made by the UK Government. Only the UK Government will have powers to amend 'retained EU law' i.e. the European rules, brought into domestic statute on exit.

4.2 Scotland will be able to amend our domestic regulation that gives effect to EU law, but only in ways that are compatible with the UK Government's approach. So in practice, whilst FSS would still be the competent national food body for Scotland, still at arm's length from Ministerial control in Scotland, the Bill would constrain our ability to determine the content of food law and may influence our ability to decide how it is executed and enforced in Scotland. We would also not have the ability for the law in Scotland to keep pace with developments and advances in EU food law, unless the UK Government elected to do this.

5 UK Frameworks

5.1 The UKG developed its proposals for the Bill in two white papers published in February and May this year. The second of these contained a chapter called "Interaction with the devolution settlements", which said, inter alia, "*the [UK] Government intends to replicate the current frameworks provided by EU rules through UK legislation*", followed by "*intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future*". It also said that "*It is the expectation of the [UK] Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration*".

5.2 The Scottish Government has said on several occasions that it would be willing to negotiate UK frameworks in certain areas previously covered by EU law, on the basis that the process of identifying where frameworks are required and what they should contain, must be by agreement, not imposition and, if it is considered that legislation is required for any frameworks, that this legislation should either be for the Scottish Parliament, or consented to by the Scottish Parliament. In October, the devolved administrations and the UKG, through the Joint Ministerial Committee on EU Negotiations, agreed a definition, context and set of principles¹ to underpin the consideration of areas of common frameworks. These are set out in Annex 1.

5.3 The UKG has identified 111 areas where it considers that EU law intersects with devolved competence in Scotland, and where it believes that UK frameworks will be required. Four of these 111 areas relate to matters for which FSS has responsibility. These cover food and feed safety, food labelling, information and advertising, food composition and standards and nutrition and health claims – thereby encompassing a significant extent of FSS's legislative and policy remit.

¹ <https://beta.gov.scot/publications/joint-ministerial-committee-communique-october-2017/>

5.4 Since reaching the agreement outlined in paragraph 5.2 above, the SG and UKG are now considering how the definition, context and principles could be applied in practice, and will undertake activity to assess and refine the UK Government's list of 111 areas, and joint UKG-devolved administration 'deep dives' in specific policy areas to provide 'proof of concept' for the principles. Work is underway between Scottish Government officials and their counterparts in the UK Government and the other devolved administrations to scope and shape this activity.

6 Arrangements across the UK

6.1 The Food Standards Act 1999 established the FSA as a UK-wide non-Ministerial organisation, accountable equally to all four administrations across the UK, until 2015, when the Food (Scotland) Act 2015 established Food Standards Scotland as an Office of the Scottish Administration and made it responsible on behalf of Scottish Ministers for oversight and delivery of their functions with respect to food and feed. The 2015 Act removed from the Food Standards Agency and transferred to Food Standards Scotland the functions of competent authority at the central government (national) level in Scotland for the organisation of official controls in Scotland, as well as their delivery in some areas, and more generally designated FSS as the body to perform the functions previously carried out by FSA.

6.2 Clearly the FSA is also considering what arrangements it has to make with regard to leaving the EU, and the FSA Board held a discussion in September,^{2,3} setting out the FSA's approach and updating their Board on plans and progress. The FSA paper identified a particular challenge concerning risk management, describing a context of "...most food safety risk management decision-taking occurring at an EU level." It went on to outline that FSA is exploring options, including one "...for the FSA to take Working Group level risk management decisions, within a governance framework that provides sufficient ministerial oversight and allows for specific issues to be handled differently as appropriate. This option would require additional powers to be conferred upon the FSA." As these matters appear to be captured in the 111 areas where the UKG has proposed that UK Frameworks may be required, our work with FSA in this regard must align with the principles recently agreed between SG and UKG, and be informed by the proof of concept work that is now underway as described in paragraph 5.4 above. It is our view that it is premature at this stage to determine how decisions that are currently taken at EU level in relation to food law will in future be taken in the UK.

6.3 It is important to note that the current position within EU law is that there are many risk management decisions that are currently taken nationally and locally, i.e. not at EU level. As there is subsidiarity for Member States with respect to certain elements of EU law, and recognition in EU law of the role of Member States in determining certain rules and requirements at national or local level, the independence of Scottish Ministers to determine these should be maintained, as should oversight, audit and assurance to Ministers in these matters.

6.4 Whilst the FSA paper makes only limited reference to the complexities that devolution brings to this area, this was clearly highlighted in their discussion of the paper⁴, and it is clear that future arrangements will be dependent on wider negotiations between the UKG and SG on the repatriation of powers from the EU to the UK, amendments to the EU

² <https://www.food.gov.uk/sites/default/files/fsa170904.pdf>

³ <https://www.food.gov.uk/sites/default/files/fsa170904a.pdf>

⁴ <https://registration.livegroup.co.uk/fsaboardmeetings/downloads/embed.aspx?dfid=31587&ctid=0&cat=2391>

Withdrawal Bill and any agreement reached between the UK and the devolved administrations on UK-wide frameworks.

7 Domestic Readiness

7.1 Until the discussions between SG and UKG with regard to the Bill and its consequences have either progressed satisfactorily or have concluded, it is unlikely that there will be significant progress on UK-wide frameworks. Notwithstanding that however, FSS is in discussions with SG and with UKG counterparts, particularly in FSA and Defra, to discuss operational and technical matters relevant to domestic readiness. These discussions are focussing on what will need to be in place to ensure effective and functioning systems for regulating the food and feed sectors upon exit, without at this stage any negotiation or commitment about how functions will be discharged and by whom. This approach is consistent with that being taken across the Scottish administration, recognising the need to be prepared, pending the outcome of the political negotiations between the SG and UKG.

7.2 We are currently engaged in technical discussions with UK counterparts on a number of subjects including capability and capacity for risk assessment and risk management, how information could be shared with other countries to ensure that the UK will continue to have effective systems in place to manage food incidents and tackle food fraud, and how food and feed imports and exports will continue to operate after exit, when the UK will not be part of the EU and there may be significant additional requirements for import checks and export certification.

7.3 We are also part-way through a major exercise to assess the scale and complexity of the task that will be needed to ensure that we have a functioning statute book for food and feed law on exit. This involves a detailed analysis of all current food and feed law to identify where 'fixes' will be needed to ensure that food and feed law can continue to function after EU exit e.g. identifying where the law refers to European institutions, infrastructure or procedures. Some of the 'fixes' will be relatively straightforward, but the solutions to others may require more complex policy analysis, and will also be intertwined with outcomes of the negotiations between the UKG and SG on the Bill, and the wider scrutiny and debate on the Bill in the UK Parliament, in terms of how the powers to amend both retained EU law and the domestic law giving effect to EU law are finally determined.

8 Consumer and Stakeholder Engagement

8.1 Consumers

8.1.1 In all the activity that is already underway and that will be needed as work to leave the EU accelerates, it is crucial that we continue to understand what consumers are thinking in relation to how leaving the EU affects their interests in relation to food, and that we are also talking regularly to businesses and industry stakeholders to understand their perspectives.

8.1.2 Earlier this year, we carried out some consumer engagement on this subject, and in March, we reported to the Board⁵ that the initial assessment of consumer opinion suggested a high level of satisfaction with current food safety and food standards

⁵ http://www.foodstandards.gov.scot/downloads/Board_Meeting_-_Papers_08_March_-_Brexit_1.pdf

requirements and very little appetite for change. We said then that this was not an argument for the *status quo* necessarily, but suggested a need for us to consider how best to prepare for consumer engagement on issues affecting the regulation of food related to leaving the EU. We also noted that it was important for businesses to ensure that any opportunities to reduce burdens were not realised at the expense of consumer acceptance and trust.

8.1.3 The Board agreed then that FSS has a key role to play in ensuring that consumers' concerns and views are represented and considered as part of any proposals for change, and that we would also need to engage with the food industry as plans developed.

8.1.4 We have been listening to the views of consumers through a number of different channels:

- Waves 3 and 4 of our Tracker survey (and we will continue to include Brexit related questions in the tracker, so we can see if and how consumers views change over time).
- Further consumer focus groups – building on the work that we carried out at the start of this year, the picture emerging is one of little change from that reported previously, where consumers continue to have high levels of trust in the current food system, and don't wish to see any reduction in the protection that it provides.
- YouGov online poll
- Social media listening

A summary of key outputs from these channels is attached at Annex 2.

8.2. Industry Views

8.2.1 In terms of businesses, the food and feed sectors currently operates seamlessly across the UK - and beyond, into the EU - and generally wishes to avoid regulatory divergence where possible. Since FSS was formed in April 2015, we have worked hard to build confidence with industry that we do not seek divergence for its own sake, and that any divergence that we do propose is on the basis that there is evidence that this is necessary to protect public health or consumers' interests in Scotland.

8.2.2 Some larger trade bodies have generally favoured an approach for consistency of standards across the UK, but past experience has also shown us that the need for different 'national' standards have also been advocated from other stakeholder groups to provide proportionality where risks and cost burdens differ.

8.2.3 After the referendum in 2016 there was some commentary that the food system could revert to the previous (pre early 2000s) two-tier approach – one standard for the domestic market, with different – generally higher - standards applying for exports. There is no call from key Scottish stakeholders or industry organisations for this, though it is possible that some companies that only supply the domestic market might favour what they consider could be a less burdensome regulatory regime in future. In general, key industry representatives and major stakeholders in the food and feed industry appear supportive of continued application of the EU approach, which provides regulatory equivalence, a high degree of public health protection with market access, and continuity and clarity for businesses.

8.2.4 Our consumer engagement has not suggested that consumers favour a two-tier approach, views being expressed emphatically that consumers should benefit from a high level of protection, regardless of where they live. Furthermore, regulatory equivalence is a key “non-tariff barrier” issue, and regulatory equivalence will need to be negotiated if the UK wishes to continue to trade with the EU, so the further the UK diverges from the EU system, a greater degree of negotiation may be needed to agree that different systems are mutually acceptable. It is also important that longer-term strategic views are taken rather than shorter-term measures. For example, any pressure to dilute or remove the statutory functions of Official Veterinarians in meat production would in all likelihood remove the ability to export to the EU and third countries, and also critically remove a key protection for animal health.

8.2.5 Unsurprisingly, businesses are seeking clarity about the future arrangements for imports and exports, and are pressing for the greatest degree of frictionless trade as is possible, to ensure minimal disruption to the supply chains that currently facilitate effective functioning of the UK food systems, both in terms of food and ingredients entering the UK, and to support those businesses that rely either wholly or partially reliant on export trade. Given the volume of food imports to the UK (around 30% of the food bought in the UK is imported, of which 80% comes from the EU), there are potential risks around food availability if there are problems with border controls. Delays at borders, in particular for perishable goods, may have an impact on food availability and therefore on food prices. And as the majority of food imported to the UK arrives through the south-east of England, the industry distribution and logistics network is currently geared around that. Any disruption to distribution chains for perishable products as a consequence of delays at borders could have a disproportionate effect in Scotland, due to distance to market.

8.2.6 While increasing domestic production is one possible solution, there are many products that consumers currently enjoy that cannot be grown in the UK, or have a very limited season, whilst for products that can be grown or produced domestically, there may be considerable lead-in times e.g. increasing beef production within the UK would take several years from decision to increase production to product coming onto the market. Further, if retailers decided to increase domestic sourcing, there would be capacity issues to consider, which could have short term impacts on availability and pricing while the production sector adjusted.

8.2.7 There are also significant concerns about the availability of labour where businesses are reliant on non-UK EU nationals in their workforce. Two of the three key issues currently subject to negotiations between the UKG and EU – non-UK EU nationals working in the UK and future of the Irish Border – are relevant to the food industry. Whilst the future arrangements for both of these are clearly not matters for FSS to resolve, we know that the food industry has a high degree of reliance on non-UK EU workers right across UK supply chains, from primary production to the hospitality sector. This is as true in Scotland as it is in the rest of the UK. And indeed FSS is also reliant on non-UK EU nationals in some aspects of our work, most notably in the cadre of Official Veterinarians (OVs) carrying out statutory functions in meat plants both on our behalf and on behalf of other Government Departments. In relation to the Irish border, there are both direct and indirect impacts for businesses in Scotland which trade with either the Republic of Ireland or Northern Ireland. Businesses will welcome resolution of these matters as quickly as possible so that they can plan for the future.

9 Impact of leaving the EU for FSS Priorities

9.1 Challenges and Strengths

9.1.1 There are two distinct challenges presented by how leaving the EU could impact on FSS. The first is described above in some detail in paragraphs 3.3.1-3.3.7, in terms of how the UKG decides to repatriate powers from the EU, and the impact this has on the devolution settlement, and thereby on our functions. FSS has limited scope to influence this, but is fully engaged with SG in analysing proposals, scenarios and considering the different impacts. The other way in which leaving the EU may impact on FSS is that the workload needed to give effect to the legal and practical changes that will be needed may divert us from the priorities set out in the Corporate Plan and agreed by the Board as those on which we should focus until 2019 as the right ones to help us achieve our longer term strategic outcomes.

9.1.2 It is difficult at this stage, when so much uncertainty remains, to make an accurate assessment about the resource that will be needed to carry out the work related to leaving the EU, but the workload has increased noticeably since the summer break, and is increasingly requiring a wider range of staff to become involved. We are currently just over mid-way through the period covered by the Corporate Plan, and it was always the executive's intention to report progress thus far to the Board around now, and consider the priorities for the remaining period. We propose to bring a paper to the Board early in 2018 setting out progress, and identifying, as far as we can, the new and additional work that will be needed by way of preparation for leaving the EU. This timing will align with our budgetary and business planning for 2018-19, and taken in the round, should enable us to assess at that point whether we may need to reconsider or reschedule any of our Corporate Plan priorities as a consequence of the work needed to prepare for leaving the EU. It is also important to note that some of the work that we have set out in the plan will be shaped by decisions taken in relation to leaving the EU.

9.1.3 However, as Board members are aware, one of the key determining factors in Scottish Ministers decision to create FSS as the single body responsible for all consumer protection elements of food law in Scotland, was the strength in ensuring that all interconnecting consumer protection aspects of food policy, namely food and feed safety, labelling, consumer information, compositional standards and diet and nutrition sat with one body. This allowed for improved strategic oversight of the interdependencies of these different policy areas and also helped ensure consistency of approach. A recent example of this was the FSS consideration of the issue of proposed fortification of foods with folic acid, where our remit and experience allowed us to fully consider food safety, food labelling and nutritional health aspects of the policy proposal in Scotland, where this intersected interests of three separate departments at Whitehall namely, FSA, Defra and Department of Health.

9.1.4 This 'single body' role in Scotland should provide us with certain strengths of consistency of approach as we move forward, contrasting with the different approaches and stages of preparedness we have encountered from the different Whitehall departments that we have engaged with on leaving the EU thus far. This strength is something which we believe we should continue to draw on in the challenges ahead and in our negotiations with our colleagues at Whitehall.

10 Risks

10.1 This paper has considered the constitutional and legal risks in some detail above, but there are a number of practical risks that also need to be considered and managed.

10.2 Businesses have stressed that the uncertainty around the nature of the UK's exit from the EU significantly hampers their ability to plan for the future. Similarly, the longer it takes to clarify and confirm the policy intent, the less time there is for implementation of any new legal requirements and developing and implementing the necessary practical arrangements.

10.3 Resources needed to deliver the scale of change that may be needed are expected to be significant. As well as making the necessary legislative changes, there will be time needed for businesses and enforcing authorities (including FSS and local authorities) to familiarise themselves with any new or changed legal requirements and practical arrangements as a result of the final exit negotiation.

10.4 We have also outlined in this paper the need to look at the resource requirements for leaving the EU in the context of FSS's Strategy and Corporate Plan, and we will bring a further paper to the Board early in 2018 in this regard.

11 Conclusion

11.1 Officials are working within and beyond FSS as we endeavour to analyse the scale, scope and complexity of both the legal implications and practical consequences of leaving the EU. Clearly much is yet to be determined on the nature of the UK's exit and future relationship with the EU, and we will keep the Board informed as this work progresses.

11.2 The Board is asked to comment on the points raised in paragraph 1.3 at the start of this paper.

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Annex 1

Agreement reached between UKG and SG concerning UK-wide Frameworks – October 2017

1 Definition

1.1 As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures.

1.2 A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

2 Context

2.1 The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities.

2.2 Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them. The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.

3 Principles

3.1. 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.

3.2. 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.

3.3 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.

Annex 2

1 Consumer Engagement

1.1 FSS has undertaken four strands of qualitative and quantitative consumer engagement to gauge consumers' views about the impact of leaving the EU in relation to food. This work is being collated for publication, and the key themes emerging are described below. The four strands of work were:

- **FSS Consumer Tracker report (Kantar TNS)**
- **YouGov Poll**
- **Consumer Focus Groups (Kantar TNS)**
- **Social media listening (The Union)**

1.2 In the quantitative work (the tracker survey and YouGov poll) the issue that consumers expressed most concern about as a consequence of leaving the EU was the impact on food prices, with a majority of consumers thinking that food prices are likely to increase as a consequence of leaving the EU. The consumer tracker showed that this increased from 62% in wave 3 to 65% in wave 4, showing a slight increase in concern about food prices in the six months between wave 3 and wave 4. There was a consistent finding in the YouGov poll, carried out in late October, with 64% of respondents expressing the view that food prices would increase as a result of leaving the EU.

1.3 Consumers were less concerned about impacts of leaving the EU on food safety, with 55% of the respondents in the YouGov poll feeling that food safety is not likely to be any more or less safe as result of leaving the EU. 6% of respondents reported feeling that food will be safer and 22% felt it would be less safe.

1.4 The qualitative consumer focus groups allowed us to explore these and other issues in more detail, and the top lines from that work are reported below.

2 Consumer Focus Groups (Kantar TNS)

2.1 Through Kantar TNS, FSS conducted a second wave of Brexit and Food in Scotland qualitative research. (The first wave was carried out in January/February 2017.) Six focus groups questioned consumer views on threats and opportunities arising from leaving the EU, and consumer perceptions of post-Brexit food safety and regulation and production and food labelling.

Scotland's consumers' relationships with food and top line associations with Brexit

2.1.1 Across the whole sample the dominant response to the relationship between Brexit and food was one of uncertainty, but there were noticeably different levels of concern and willingness to envisage potential ramifications amongst those voting to remain. There was an overall expectation that prices would be affected, with the majority expecting prices to rise.

2.1.2 Farmers and the fishing industry were top of mind for most, with a range of potential positive or negative scenarios being suggested. Trade with other countries was another key

concern about Brexit, however trading with non-EU countries may present opportunities or risks in relation to food and this felt like an unknown quantity for many.

2.1.3 Significantly, participants felt unable to influence the outcomes of Brexit. They generally felt that they would need to adapt to whatever the impacts were. The prevailing attitude amongst Leavers however was that things would largely remain as they currently are with change expected to be minimal.

2.1.4 It should be noted, food was not a high priority in relation to Brexit, with the likely impact on the UK economy and jobs market being of most concern.

Food prices and availability

2.2.1 Of the core topics under examination, price and availability were the most accessible for consumers to discuss. This was the easiest subject for consumers to relate to as it discussed their direct interface with the food industry. This was also the topic where, generally, some degree of impact and change was expected across the sample (unlike the other two core topics – food safety and food labelling - which were predicted largely to remain the same).

2.2.2 The majority of participants predicted that food prices would increase, but although a number of potential scenarios were offered by consumers, there was little confidence in their own ability to predict what would actually happen. Some claimed to have already observed price rises since the Brexit referendum.

2.2.3 In addition to price changes, the opportunity for greater UK production and self-sufficiency was the other top of mind response to this general topic. This was recognised as a clear potential opportunity for the UK and Scotland, but it was not predicted to be guaranteed or straightforward.

2.2.4 Most consumers agreed that the UK is currently very well served, all year round, with fruit and vegetables and that constant availability had become the 'norm'. However, there was a broad consensus that availability of fresh produce would be impacted – most notably fruit (and some vegetables). All agreed that this was difficult to predict.

2.2.5 The possibility of a positive outcome relating to price and availability was well debated and, on balance, considered to be less likely than a negative outcome. The minority view was that prices may reduce as a result of relying less heavily on imported food due to increased production by UK farmers and fisheries which in turn was predicted to contribute to greater seasonal consumption, fresher, higher quality, tastier food and increased consumption of healthier foods. It was felt this would in turn improve the general health of Scotland as a nation. Additionally, the UK and Scottish economies would flourish as a result of lower prices, higher employment in food production sectors and less of consumers' money 'leaving the country'. It was felt by a minority that even if prices increased, this would represent a way of consumers investing in UK/Scottish production.

2.2.6 Finally, the minority view also considered the benefits of new – non EU – trading partners and the potential for cheaper food imports and new food options for the UK. The

majority view was broadly negative in its predictions, most consumers foresaw that prices would increase and many commented that they had already seen prices increase.

2.2.7 A figure of 8% rise in prices was presented to the focus groups. Unsurprisingly, for those from higher SEGs the prospect of this degree of increase was potentially manageable, though not desired and for others on lower incomes (and as a general concern for people on benefits or low incomes) 8% was regarded as a significant rise and one which might have major negative impact on Scotland.

2.2.8 The pressure on availability of food was felt to be manageable on its own, but in combination with increased prices there was felt to be higher risks of Scotland and the UK eating a less healthy diet overall (availability was felt to most likely affect fruit and vegetables). The key risks were pushing consumers to trade off price vs quality and healthiness. There was some concern due to the lack of awareness and knowledge around how other countries produce food.

Food safety and regulation

2.3.1 As with wave 1 of this study earlier in 2017, food regulation and safety was not top of mind when considering the implications of Brexit. There was also very low awareness of what current regulations involve and how they protect consumers.

2.3.2 The prevailing assumption was that the UK food sector was generally well regulated by the current authorities and most consumers felt that food retailers would not be prepared to sell sub-standard or unsafe food. In line with the previous wave, the majority felt that the UK would have very high standards in comparison with the rest of the world, including some EU countries. Some suggested that the EU food safety regulations were probably derived from high UK standards originally. Some also felt that whilst standards may be uniform across the EU, the UK was likely to be the strictest at actually enforcing the standards and was therefore the 'safest' market in the EU. Overall, there were no negatives associated with having EU standards, as it seemed like a sensible and obvious approach to food safety in the UK and Europe.

2.3.3 Expectations for food safety after Brexit were that the regulations would either stay the same (majority view) or slightly improve (minority view). There was actually some recognition that higher standards may not necessarily be better for the UK as it may impact ability to trade with other nations and it may translate into higher prices for UK consumers.

2.3.4 There was a strong desire and consensus that food regulation and safety will and should stay as they are today. There was a strong rejection from most to the notion of trading off lower prices with lower safety standards.

2.3.5 The potential for a two-tier system of regulation was presented to the focus groups and this was roundly rejected as it was in wave 1, and for similar reasons. With regards to Scotland and the UK post-Brexit, there was a strong desire for Scotland to maintain control over environmentally specific cases relating to food production, as described in the scenario relating to shellfish beds in Scotland and England.

2.3.6 The ability to react to local conditions and events was regarded as an important part of protecting Scotland's consumers and was also felt to be a sensible approach to ensuring maximum safety and protection. The majority of consumers felt that it was appropriate for Scotland to have its own food standards body and the existence of FSS – although not widely known, was regarded as working well. (NB – This was also reflected in the YouGov poll, where 68% of respondents said they feel that it is important to have an independent food body for Scotland.)

Food Labelling

2.4.1 Labelling was not a topic that was spontaneously associated with Brexit and there were no expectations that this would change and no desire for any change. When prompted on the topic consumers were generally positive towards the current labelling regime.

2.4.2 Consumers found it almost unimaginable that Brexit would present significant opportunities for labelling and there was absolutely no appetite for a reduction in information.

2.4.3 Country of origin information was regarded as lower priority than other health-related information. It was generally a 'nice to have' – a source of interesting information rather than an essential element of labels some consumers did claim that if 'all things were equal' (price, quality, taste, safety) they would generally prefer to buy Scottish/local and some were often keen to buy food with a Saltire or other Scottish mark.

FSS and its role

2.5.1 Awareness of FSS was, at times, quite limited, however consumers assumed that much of FSS's work is conducted 'in the background'.

2.5.2 There was a desire from some consumers for FSS to be more visible post Brexit to provide additional reassurances around food safety. This would be particularly necessary if circumstances were changing in any way as a result of Brexit.

2.5.3 There was also a more general desire to hear more from FSS about the work it does, through public information and communications campaigns.

3 Social Media Listening (The Union)

3.1 To gain insight into current discussion and opinion on Brexit on social media and news channels, FSS commissioned The Union to conduct a social media listening exercise in October 2017 covering the past 10 months.

3.2 Topics concerning food after the UK leaves the European Union have been a notable source of conversation on social media and in the UK news between January and October 2017.

3.3 Overall, the quantity of conversation is quite low on social channels - with broadest searches yielding less than 20,000 results across the 10 month time period. The daily peak across the time period was 938 mentions, although this is for UK, rather than just Scotland.

3.4 There was no consistent increase or decrease in average levels of conversation across the 10-month period on either social or news. Instead, conversation peaked at various points across the time period - notably in January, July and October. Conversation levels have been high over the last month, but it's not clear whether it is indicative of a trend towards increased conversation around the topic.

3.5 Quantity of news stories and social commentary were mildly correlated on average. This means that although they did often peak at the same time around significant stories or events, a peak in news stories on the topic did not necessarily lead to a spike in conversation on social channels. Additionally, it was found that the largest individual spikes could be largely attributed to multiple posts of specific links or stories.

3.6 The January spike was caused by Twitter users posting an automatic tweet saying that they had signed a petition calling on Theresa May to "protect our food and animal protections post Brexit". Similarly, the July peak is largely attributable to an article in The Guardian and a number of other sources reporting on an academic report claiming that "The UK is 'sleepwalking' into food insecurity after Brexit". References to these individual stories, and a small number of others, made up a significant quantity of the conversation across the entire 10-month period. For example, 'sleepwalking' appeared as one of the overall top phrases in Brexit mentions.

3.7 This could suggest that this particular debate may still be in a fairly early phase, with most conversation reporting or replying to a small number of news stories. It is expected that conversation will become more spread out as more information comes to light about the effect of Brexit on food in Scotland and the UK.

3.8 Social conversation on the topic took place overwhelmingly on Twitter (88%), followed by forums, Facebook and news site comments.

3.9 Overall sentiment as measured by a social listening tool is approximately 42% negative, 47% neutral and 11% positive. However, when the data was examined more closely it was found that a significant amount of the content marked neutral was in fact often quite negative. The subjective view is that many of the posts expressed anger, frustration or disagreement with the food situation post Brexit. There are, of course, exceptions to this, such as reporting of Chris Grayling's recent comments that farmers can grow more food if there is no Brexit deal and reports that food prices would fall post-Brexit, but this really is the exception.

3.10 Price was the most significant sub-topic of conversation within the research. Most was commentary on the effect of the Brexit vote on current food prices and inflation. A more limited amount of conversation was concerned with food prices post-Brexit. There was a significant amount of disagreement on what the effect of leaving the EU would have on food prices. Phrases such as 'tricky discussion' were not uncommon within this sub-topic.

3.11 Availability, and issues around standards were also common topics of conversation, in particular concerns around the potential loss of an effective Farm to Fork policy and how a reduction in migrant workers may impact upon the UK's own ability to produce a high quantity of food.