

# Improving the Regulatory Framework

## 1 Purpose of the paper

- 1.1 This paper confirms the information previously provided to the Board as part of the ongoing discussions around managing the Local Authority (LA) delivery strategic risk. It highlights the current planned work of the Regulatory Strategy Programme (RSP) to demonstrate what FSS is already doing to improve the Food Law Regulatory Framework in Scotland and to support local authorities (LAs) in delivery of the current Official Control (OC) delivery model.
- 1.2 The Board is asked to:
- **Note** the activities within the existing regulatory strategy programme that are contributing to managing the strategic risk on LA Delivery;
  - **Agree that** this should be reviewed following the reprioritisation of work within FSS and in line with progression of the Scottish Authority Food Enforcement Rebuild (SAFER) project.

## 2 Strategic aims

- 2.1 The work of the RSP delivers across all five of FSS' Strategic Objectives: 1 – Food is Safe and Authentic; 2 – Consumers Have Healthier Diets; 3 – Responsible Food Businesses are enabled to thrive; 4 – Consumers are empowered to make positive choices about food; 5 – FSS is trusted and influential.

## 3 Background

- 3.1 The Regulatory Strategy agreed by the Board in 17 May 2017 is a transformational change programme of work designed to bring about improvement within the current regulatory environment as delivered by FSS and LAs across Scotland, focusing on effective, proportionate, targeted and risk based enforcement in line with the principles of better regulation<sup>1</sup> and working in line with the Scottish Regulators' Strategic Code of Practice.
- 3.2 The RSP has historically delivered on a number of change projects including the introduction of our food law rating scheme (FLRS) in 2019 and the introduction of a new feed delivery model for Scotland with FSS taking over as the competent authority on 01 April 2021.
- 3.3 The programme is currently split into eight work streams: digitalisation and technology, sustainable funding, regulatory assurance, sustainability of official

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<sup>1</sup> <https://www.gov.uk/government/publications/better-regulation-framework>

controls, consumer information scheme, penalties and sanctions, LA support and assurance and primary production.

- 3.4 The work of the RSP is a key component to addressing the FSS strategic risk *“Increasing pressures on Local Authorities and FSS result in a delivery model which lacks the resilience needed to meet future challenges”*.

## 4 Discussion

- 4.1 Within the programme, the current approach to project delivery is to deliver on discreet projects under our designated work streams.
- 4.2 The work we are currently progressing is summarised below:
- 4.3 **Digitalisation and technology:** This work stream focuses on development and support for digitalisation initiatives within FSS that link to our regulatory strategy, with significant focus on our Scottish National Database (SND). Current SND developments include visual dashboards for LAs to assist with analysing data trends and identification of errors, introduction of geo-tagging to improve food business location accuracy and data enrichment to enhance search facilities and improve standardisation of data across all LAs. The work stream also manages or takes oversight of the development of digital aspects of other Regulatory Strategy projects, along with the FSS Digital Transformation team and any external digital service providers e.g. development of data flows for Regulatory Assurance and digital capture and reporting of new compliance notices by LAs for Penalties and Sanctions.
- 4.4 **Regulatory Assurance:** Codex recently produced guidelines for regulators on the assessment and use of data from vTPA schemes and as Codex has international legitimacy, FSS has made a commitment via our strategy to explore the potential benefits of using this data. The focus of this work is to determine the potential benefits for both LAs and businesses in Scotland and currently this is focused around increasing regulatory assurance for low risk premises not currently receiving interventions due to LA resourcing issues. Access to data from these schemes, e.g. BRCGS, Red Tractor and Shield Safety Group, should increase the intelligence available to LAs when carrying out OCs which could result in benefits such as interventions focussed on areas of specific concern, and availability of evidence of sustained compliance, ensuring the FBO is on the optimum FLRS intervention frequency, making better use of LA resources.
- 4.5 **Penalties and Sanctions:** This work stream focuses on improving the range of penalties and sanctions available to Authorised Officers (AO) and the current project to introduce new compliance notices for food standards, addresses a known gap in the enforcement regime. At present, in the event of a food standards breach, there are limited powers for the AO to use other than use of a detention and seizure notice or reporting to the Procurator Fiscal. A Compliance Notice will enable the AO to take a graduated and proportionate approach to breaches of food standards law, with a focus on preventing reoccurrence of the offence. Work is well underway in

this area with the notices due to come into force in early 2023. Following successful delivery, consideration will be given to the introduction of Fixed Penalty Notices (FPNs) to support this area.

- 4.6 Consumer Information Scheme:** Following postponement due to other priorities and COVID, work has recommenced on phase 1 of the Consumer Information Scheme (CIS) project to conduct consumer and industry research to support options development for what a future CIS may look like and how this could best be achieved. Although largely consumer focussed, one of the main aims of the new CIS will be to improve business compliance, which in turn may reduce the resource burden for LAs.
- 4.7 Food Law Code of Practice (FLCoP) Phase 3 review:** This project aims to deliver an updated FLCoP that is portable and easy to navigate and to simplify the process for future updates. Focus is on re-publication of the code into a number of smaller, subject-specific volumes containing the Code, guidance and associated notices. There is also a concurrent project to explore options for a digital solution to host the code to improve ease of access and use for LAs.
- 4.8 Funding:** This project aims to develop a charging framework for regulatory controls of food law checks and inspections for LA-registered premises. These costs are presently borne by the taxpayer and not the regulated business. This is a long-term project requiring cross-portfolio working from FSS with the Scottish Government and LAs. This project addresses the issue that delivery of OCs remains one of the few regulatory functions for which charges are not recovered. LAs currently have a legal right to apply charges in whatever manner they choose, and our intention is to provide a framework that brings balance and consistency to ensure that charging is responsible and has benefits wider than simply recovery of costs resulting in an even playing field for businesses and LAs. Any charges would be applied via a model that would reward businesses with consistent compliance.
- 4.9 Primary Production:** This project involves development of a framework to ensure remote inspections for primary production meet the requirements to be considered as OC interventions. Accompanying this, we are developing a procedure for remote inspections of low risk dairy farms (farms which send milk out for processing only). This is to support LAs that are responsible for a significant proportion of the dairy herds within Scotland and highlighted difficulties with delivery of physical inspections on the milking facilities due to the geographical spread and resource required. A trial is currently underway and once complete and the procedure approved, this will be written into the FLCoP to enable this process to be undertaken across all LAs in Scotland.
- 4.10** The Board is asked to note the progress being made under the RSP to help manage the LA delivery risk but also to agree that this should be reviewed following the reprioritisation of work within FSS and in line with progression of the Scottish Authority Food Enforcement Rebuild (SAFER) project. Once this is done the Executive will consider whether this should lead to a review of the Regulatory Strategy agreed by the Board. These changes will be subject to the financial

settlement and available resourcing. In line with this, the FSS Executive will be reviewing overall programme management at FSS to ensure this is fit for purpose both to minimise the LA Delivery strategic risk and to support delivery of the SAFER project, ensuring the most effective sequencing of initiatives to maximise the use of limited resources and to maximise impact.

## 5 Identification of risks and issues

- 5.1 Resource availability is one of the main risks to delivery of the RSP. The team is small and by the very nature of programme working in FSS relies on resource, expertise and input from teams across FSS, particularly as the core programme team does not have LA food law delivery expertise. As a result, resource capability acts as a limiting factor for delivery of RSP projects.
- 5.2 The LA Delivery strategic risk in itself is a risk for RSP delivery as many of our projects require LA input at the development stage as well as capacity to provide expertise and attend working groups. As this has been limited throughout COVID and the LA restart, this has affected progress in a number of areas such as regulatory assurance where we originally had a feasibility study planned for 2021 which was postponed.
- 5.3 There is a risk of putting too much emphasis on LA support and not achieving the right balance between supporting LAs and supporting businesses and consumers. For example, charging for OCs will support LAs but many businesses, especially exporting businesses, will not welcome additional costs and may view that they already pay via business rates and taxes. The model developed would seek to mitigate this risk i.e. only non-compliance pays and charging is consistent and transparent.
- 5.4 Many of the projects delivered under the RSP will have a potential impact on FSA and likewise, a number of FSA projects e.g. the Large Retailers project under the Achieving Business Compliance programme, will require consideration of how this will impact Scotland. This risk is being managed by regular meetings between FSS and FSA and representation of both agencies on both the RSP Board and the ABC Board.

## 6 Equality Impact Assessment and Fairer Scotland Duty

- 6.1 Both the Equality Impact Assessment (EQIA) and the Fairer Scotland Duty requirements are considered and completed at the individual project level and therefore are not required for this paper.

## 7 Conclusion/Recommendations

- 7.1 Current LA delivery continues to be a significant strategic risk caused by the pressures of a significant lack of resources as well as the impact of COVID and EU Exit on existing requirements but FSS are already implementing improvements in a

number of key areas through the RSP to support local authorities, such as SND development, FLCoP digitalisation and use of data from vTPA schemes to provide regulatory assurance. Although these projects may not directly impact on LA resource, they will hopefully improve efficiency and ease of delivery in these areas.

**7.2** The Board is asked to:

- **Note** the activities within the existing regulatory strategy programme that are contributing to managing the strategic risk on LA Delivery;
- **Agree that** this should be reviewed following the reprioritisation of work within FSS and in line with progression of the Scottish Authority Food Enforcement Rebuild (SAFER) project.

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