

LEAVING THE EUROPEAN UNION

1 Purpose of the paper

1.1 The Board has received a number of papers¹ (in [March 2017](#); [November 2017](#); [March 2018](#); and [May 2018](#)) on the implications of leaving the EU, and this is the latest in that series. As EU exit date approaches – 29th March 2019 - this paper updates the Board on our readiness preparations for different scenarios.

1.2 This paper links to all six of FSS's Strategic Outcomes.

1.3 The Board is asked to:

- **Note** that consumer perceptions in Scotland continue to be negative on how leaving the EU may affect their interests in relation to food;
- **Note** progress being made in UK Frameworks discussions with Food Standards Agency (FSA), Department of Health and Social Care (DHSC) and Defra;
- **Note** the work to secure the Scottish Parliament's consent to the UK fixing SIs in FSS's policy areas;
- **Note** the range of work underway across FSS, working with others, on operational readiness.

2 Protecting Consumers' Interests

2.1 Regardless of the terms by which the UK leaves the EU, the European Union (Withdrawal) Act will be the mechanism by which the body of European food and feed law that currently provides a high level of public health and consumer protection will be repatriated onto the domestic statute book.

2.2 FSS's position on leaving the EU is to ensure 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, and 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. Similarly, whatever the terms of the UK's exit, whether there is a future relationship with the EU or not, we will need to be vigilant in terms of ensuring that consumers continue to be protected.

2.3 Wave 6 of FSS's consumer tracker survey was published in October this year². Consumer perceptions in Scotland of the impact of Brexit remain overwhelmingly negative, particularly in relation to food prices, but food availability appears to be

¹ [Initial consideration of consumer interests associated with exiting the European Union - March 2017](#); [Leaving the European Union - progress report, including strategic and practical challenges - November 2017](#); [An update on delivery of FSS Strategy, including the impact of EU exit - March 2018](#); [Single market principles and how these relate to the development of UK frameworks in the area of food law - May 2018](#)

² <https://www.foodstandards.gov.scot/publications-and-research/publications/food-in-scotland-consumer-tracking-survey-wave-6>

increasingly on the mind of consumers, and only a minority believe Brexit will have a positive impact on food issues.

2.3 Which? published a report in October³ of their consumer research into the impact of a no-deal Brexit, based on consumer reactions to the UK Government's technical notices published over the summer. With respect to issues around food the overall key concerns were the possibility that food supplies could become disrupted, food prices could increase and there could be a greater food safety and fraud risk.

2.4 Participants in this work felt that those on low or fixed incomes would be particularly affected by a no-deal exit. Additionally, over 90% of participants in Which?'s Brexit Consumer Tracker think it is important to maintain food standards after Brexit.

3. Development of UK-wide Frameworks

3.1 FSS has invested considerable time and resources into working with UK Government (UKG), Wales and Northern Ireland in developing proposals for frameworks that could apply across the UK in future. In our area of responsibility, there are three separate policy areas where the UK Government considers legislative frameworks may be required in future – food and feed safety and hygiene (FSA lead at UKG level), nutrition health claims, labelling and composition (Department of Health and Social Care lead in UKG) and food compositional standards and labelling (Defra lead in UKG).

3.2 The Scottish Government has made clear that common approaches across the UK in some areas may be necessary or desirable in future, and that these must be agreed, not imposed. Whenever they are agreed, frameworks must be based upon the principles agreed by the four UK administrations at Joint Ministerial Committee (EU Negotiations) (JMC (EN)) in October 2017⁴, that is, in a way which respects the devolution settlements and the democratic accountability of the devolved legislatures.

3.3 The UK Government published an update report on 13 November, outlining the progress being made and refers to the work in the areas of food and feed safety and hygiene, and nutrition health claims, labelling and composition⁵. The report states that on the basis of the significant joint progress made on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any regulations made under section 12 of the EU Withdrawal Act at this juncture. On this basis the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussions continue. The Scottish Government remains opposed to the use section 12 regulations, which would temporarily freeze devolved competence, and prevent devolved administrations from legislating in areas that are devolved.

³ <https://www.which.co.uk/policy/eu-exit/3356/brexitnodealWhich-report-Oct-2018>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

⁵ <https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

3.4 The work with FSA on food and feed safety and hygiene framework is the furthest progressed. At official level, we are close to reaching agreement on a draft framework for this area. Whilst this has been very resource intensive for us, it has been a highly collaborative and constructive piece of work. It is anticipated that reviewing the Memorandum of Understanding (MoU) between FSS and FSA will be an important part of setting out our future working arrangements in relation to areas that are impacted by the UK leaving the EU.

3.5 On nutrition health claims, composition and labelling, we have made progress with DHSC, though are not at the same stage as we are with FSA on safety and hygiene. Another intensive 'deep dive' session on this area is due to take place imminently, so we hope to make good progress there. Once again, it is expected that a MoU will be developed to support working arrangements in future.

3.6 On food compositional standards and labelling, the four countries have had a number of useful meetings to progress how we will work together in future on these areas. The focus has been on agreeing the Statutory Instrument (SI) work (see paragraphs 4.3 – 4.8 below), and discussions on the proposed framework are expected to recommence shortly. Again, this work will be progressed in line with the JMC (EN) principles referred to above.

3.7 All the outline agreements developed so far remain subject to the clarification of the UK's future economic partnership with the EU, the resolution of the position of Northern Ireland and are without prejudice to Ministerial decisions.

3.8 It's important to note that the development of UK-wide frameworks is intended to support how we will work across the UK in future in the event of a negotiated settlement – a deal – being agreed between the UK and EU, but there are elements of the frameworks that are also relevant to the contingency planning for the event of there being no deal reached.

4. Legislative Preparations

4.1 If a deal is reached between the UK and EU, the UK Government's expectation is that there will be a transitional period, during which EU food and feed law will continue to apply until the end of that period. Should no such agreement be reached and the UK leaves at the end of March 2019 with no deal, then it is imperative that there is a functioning statute book in place to ensure that consumers continue to be protected, and that food businesses and enforcement bodies have certainty and continuity about the regulatory requirements.

4.2 The Scottish Government's position is that staying in the EU is the best option for the whole of the UK and Scotland, and failing that, that UK and Scotland must remain inside the Single Market and Customs Union. Notwithstanding that position, the Scottish Government recognises the need to make contingency plans for the event of no deal being reached. To this end, FSS has been working closely with our UK Government counterparts, as well as with colleagues in Wales and Northern Ireland, on the legislative work needed to repatriate the body of EU food law that will exist on exit day onto the domestic statute book in the UK, using powers under the European Union (Withdrawal) Act 2018. This is an important part of no deal contingency

planning, to ensure that there is a functioning regulatory system for food and feed should no deal be agreed.

4.3 In our areas of policy, which are fully devolved in Scotland, Scottish Ministers have agreed that on condition that we can reach agreement on the detail, that the 'fixing' SIs to correct inoperabilities in EU law on exit can be made on a UK basis.

4.4 Examples of inoperabilities include making domestic provision for functions that are currently carried out by the European Food Safety Authority (EFSA) and the European Commission, and removing or amending references that will become obsolete on exit, for example, Community Reference Laboratories.

4.5 In agreeing for the fixing SIs in devolved areas to be made on a UK basis, the Scottish Government has agreed a protocol for seeking the consent of the Scottish Parliament, as the legislature in Scotland that would otherwise be responsible for legislating in this area. This ensures that the relevant subject Committee of the Scottish Parliament, the Health and Sport Committee in the case of the fixing SIs on food and feed safety and hygiene, has the opportunity to scrutinise the intended approach before making a decision on consent and before the SIs are laid in Westminster.

4.6 The majority of the fixing SIs on food and feed safety and hygiene are scheduled to be laid in Westminster between now and mid-December which is relatively early in the overall timetable, and FSS has notified 15 fixing SIs to the Health and Sport Committee for their consideration during that period, and a final safety and hygiene fixing SI is expected in March next year. The Committee has up to 28 days to consider each notification and to reach a decision on consent. At the time of writing the Committee has given its consent to five of the SIs that have been notified, and are considering the others notified thus far.

4.7 FSS will also lead on notifying fixing SIs relating to nutrition legislation, and to food compositional standards and labelling. These are scheduled for slightly later in the process, during December and January. It is expected that there will be in the region of another five fixing SIs between these two areas. Furthermore, we are required to make some technical amendments to a number of Scottish Statutory Instruments (SSIs) to ensure operability to domestic food law in the event of a no deal exit, and that work has commenced. These amendments, expected to be between five and ten SSIs, will be made through the Scottish Parliament, as they only apply to Scotland.

4.8 It is important to note that the repatriation of EU food law as it exists on exit day means that for businesses and for enforcers, the same rules that applied before exit will continue to apply, albeit there will have been the transfer of certain functions and powers to domestic bodies that would otherwise be inoperable on exit.

5. Operational Readiness

5.1 There are a number of other workstreams underway to ensure that FSS is ready for leaving the EU, whatever the nature of that departure is. In all of these areas, FSS

is working with colleagues across SG and in UK Government Departments, as well as with local authorities in Scotland through the Scottish Food Enforcement Liaison Group (SFELC).

5.2 There is work underway in relation to setting up new arrangements in the UK for the aspects of risk assessment and risk management that are currently undertaken by the EU institutions, and we are working closely with FSA in this regard. In addition to assessing our own capacity and capability needs for the future, FSA has received additional funding from HM Treasury to increase its capacity and capability for scientific risk assessment. As at present, FSS will have access to and will be able to commission risk assessments from FSA to inform the advice that FSS provides to Ministers and others in relation to Scotland. Additionally however, if FSS is to maintain its ability to protect the interests of consumers in Scotland then capacity and capability needs within FSS also to be addressed. It will be necessary, for example, to consider what additional scientific resource and expertise will be needed within FSS to support the new risk assessment capability being developed in FSA and ensure the outputs take full account of Scottish interests.

5.3 FSS is also working with others on developing solutions should the UK lose access to information systems such as the Rapid Alert System for Food and Feed (RASFF) and the Administrative Assistance and Cooperation (AAC) system. These are EU-wide systems that allow the timely and effective exchange of information between Member States and the Commission on food and feed incidents and in relation to food fraud, so we are working with FSA on developing alternatives to help ensure that there are information flows after exit to provide continued high standards of public health and consumer protection.

5.4 In terms of additional burdens on competent authorities, i.e. FSS in meat premises and local authorities in other premises, whether in a deal or no deal situation, the principles of and standards required in food law remain essentially unchanged on exit. So whilst there will be some new burdens, for example in terms of updating documentation and notices, the requirements of EU food law as they stand at exit, will be retained on exit.

5.5 In a no deal scenario, it is expected that there will be additional capacity and capability requirements of local authorities in particular, in relation to food imports and exports and that any new requirements will vary depending on the amount of related activity within different local authority territories. We are working with Scottish Government as well as with FSA and Defra to assess as best we can the scale of any new burdens, and assisting Scottish Government, which has lead responsibility for exports in Scotland, by facilitating discussions through the Scottish Food Enforcement Liaison Committee (SFELC).

5.6 Clearly, in the event of a no deal, if exports to the EU27 were to require export health certification, then this would create a very considerable new burden for businesses and for bodies involved in certification, including local authorities

6 No Deal Contingency Planning

6.1 The Which? report makes clear that a no deal exit would not protect consumers interests in relation to food. The Scottish Government has also made clear that it

considers that a no deal exit would be extremely damaging to Scotland, but that there must be plans in place for that scenario, should it arise. Consequently, FSS, working with others, is making responsible preparations to ensure that in the event of a no deal, that our priorities would be focused on protecting public health and consumers interests.

6.2 Should we find ourselves in this scenario, the clearly we would need to assess the impacts on other areas of FSS business and be ready to prioritise our resources.

7. Key Issues and Challenges

7.1 Uncertainty remains about the nature of the UK's exit from the EU. Whilst recognising that the consumers in Scotland trust the current EU regulatory system for food and the high level of protection it affords them⁶, along with the other public bodies and parts of government, it is imperative that FSS is prepared for a range of different scenarios. This has meant that no deal contingency planning has been running alongside the work, particularly on common frameworks, that is being developed primarily for there being a deal with the EU and a future relationship. Until there is clarity and certainty about the type of exit, then this will continue to be the case.

7.2 Whatever the nature of the UK's exit, there will be new burdens on FSS. The policy and administrative resources needed to support work through three different frameworks, should these be agreed, may be considerable. Whilst it isn't possible yet to quantify accurately, there is expected to be significant additional work in relation to risk assessment and risk management, and also in areas related to the UK's future trading relationships, including providing assurance about controls and standards within Scotland.

7.3 We will continue to work with FSA and others in this regard to find solutions that are both efficient and effective. This is an important part of our planning and budgeting for 2019-20 and beyond.

7.4 The Board should note however that new or increased requirements as a consequence of leaving the EU will not be able to be delivered within existing resources, unless other activities are reduced, re-prioritised or stopped. We will be seeking consequential funding to address the new demands on the organisation, and will report back to the Board in this regard.

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⁶ https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_Papers_08_March_-_Brexit_1.pdf;