

## Local Authority (LA) Delivery

### 1 Purpose of the Paper

1.1 To advise the Board on the intended approach to address the strategic risk related to LA Delivery and to seek the Board's views on a range of issues related to this risk.

1.2 The Board is asked to:

- **Confirm** they are content with the proposed timescales for the papers identified
- **Confirm** whether they are content with the current risk rating or to re-rate the risk.
- **Agree** any changes to the risk appetite in respect of this strategic risk

**Decide** whether the Board wish to bring this risk to the attention of Ministers given the level of resource constraint on LAs to even support implementation of the mitigation measures, or raise the capacity issues with SOLACE first.

- **Indicate** whether the Executive should also consider the degree to which structural reform might mitigate, remove or hinder the management of the existing risk.

### 2 Strategic Risk

2.1 The current Strategic risk is identified under Public Sector Resourcing and the risk is defined as:

*“Increasing pressures on Local Authorities and FSS result in a delivery model which lacks the resilience needed to meet future challenges”*

2.2 The “risk event” is: LAs are unable to deliver food law requirements as prescribed in the Food Law Code of practice caused by the failure to invest in the training and supply of professional resource, mainly due to funding cuts. The effect being that the demand for professionally qualified staff within LA Environmental Health and Public Analyst Services far outstrips supply risking the ability to meet statutory food law intervention requirements and EU Exit requirements to support trade.

2.3 The likelihood is rated at 4 while the impact is rated at 50 giving a risk score of 200 meaning it is a high risk. It has been static for some time and has not moved primarily because the support we have provided has prevented a worsening of the situation while the lack of resources continues to limit the scope for further improvement.

### 3 Background

- 3.1 There are 32 LAs in Scotland who are all Competent Authorities in their own right and therefore responsible for meeting the statutory requirements under food law. Services are delivered primarily through Environmental Health Officer (EHO) resources, but food is not their only area of focus which also includes functions such as noise pollution and health and safety. The Food Law Code of Practice is statutory guidance which supports LAs in their application of food law.
- 3.2 There is a three-fold challenge in LA Food Law Service Delivery with professional staff resource:
- (i) a lack of a sustainable supply of qualified Environmental Health and Food Safety Officers;
  - (ii) local differences and challenges; and,
  - (iii) shortages. LAs currently have 202 FTEs in post with 60 FTE vacancies against a resource requirement to fulfil all food law and EU exit requirements of 380 (actual vs required deficit of 78 FTEs). The total number of EH students/graduates in training is less than 20 and while plans have been put in place to increase recruitment the planned EHO numbers still equate to less than 1 new EHO per LA and doesn't match expected natural turnover through retirement and Officers choosing to leave the profession for higher paid private sector positions. The FTE resource calculation undertaken by all LAs shows a deficit of 87% i.e. current FTE is 202 and the requirement is 380. While it is certainly the case that further improvements can be made to the existing system, the current level of resource deficit is unsustainable. We are effectively putting a "sticking plaster" on a 1990's based model which needs both modernisation and at least some additional resource.

### 4 Action Taken to Date to Manage the Strategic Risk

- 4.1 Prior to this year the major changes have been the introduction of the Food Law Rating Scheme (FLRS) that has brought together hygiene and standards under one Food Law inspection and also applied a risk-based approach according to the type of business. Alongside FLRS, we have developed and introduced the Scottish National Database (SND) which is populated with food law intervention data from all LAs enabling a national representation of the food law enforcement landscape. It is however reliant on data being fed from LAs via their own management information software (MIS) systems so the quality of data and our ability to make subsequent interpretation of this depends on data accuracy and on the LAs having effective and up to date MIS .
- 4.2 We have also introduced Official Control Verification (OCV) as a more thorough approach to the assessment in relation to approved establishments. This is a scientific based approach to the assessment of such establishments and provides a methodical approach to ensuring compliance with the regulatory requirements, secures a high level of public health protection and protects the reputation of Scottish food businesses. It was introduced following concerns that the previous regime did not provide a sufficient degree

of confidence in the controls implemented across the sector. Once fully implemented across all Scottish LAs in 2022/23, it will ensure a high level of consistency in the standards applied. It does require a greater level of resource than was previously applied, but delivers an assurance of effective controls that underpins both consumer confidence domestically as well as confidence in the Scottish food sector for export markets supporting future growth. The system was developed due to criticism from The EU Commission Sante F Directorate and Third Country auditors who were not content with the level of scrutiny applied. LAs are in various stages of implementation dependent upon the number of establishments they have and the inspection cycle. It is being applied as inspections are due and when new approval applications are received. We continue to train officers in the method (our Ops staff as well as LA), with a further 5 training courses delivered this financial year.

- 4.3 The Food Law Code of Practice has been updated and we have adapted the ways in which we undertake LA performance monitoring with more desk-top assessments of all LAs supported by physical audits too. In addition FSS continues to support competence of LA officers via a scheduled training programme which includes courses on OCV, HACCP, Microbiology, use of penalties and Sanctions etc.
- 4.4 For the Corporate Plan for this year (21/22) we identified a further range of measures to help manage the risks. These include:
- (i) Imports and Exports – develop a new strategy for providing assurance over the safety and standards of food and feed imported into and exported from Scotland. This will help to ensure understanding of resource requirements that are additional to pre EU Exit and allow better targeting of resources towards risks and priorities identified;
  - (ii) Domestic Assurance – re-commencing LA Audit programme of work;
  - (iii) Public Analyst Laboratory Service – commenced a review of the current model;
  - (iv) LA Delivery – we are working with LA to:
    - a) monitor the reinstatement of official control delivery at food establishments across Scotland including the gathering of re start data via regular temperature check questionnaires and data on estimated future resource requirements;
    - b) develop and pilot a new regulatory assurance model to support targeting of enforcement on food standards. This will help to ensure best use of resources and reduce additional burdens placed on LAs due to impacts of COVID 19;
    - c) modernise the Primary Production enforcement regime delivered by LAs to target resource at high risk areas and allow remote intervention where appropriate;
    - d) provide an effective Food Law Business Portal to assist business compliance and assist LAS in management of new businesses and in the provision of business support and education; and
    - e) consider areas of re-balance to the current delivery model developing a system that targets resources more effectively.

- (v) Regulatory Strategy – looking to implement transformational change in the following areas:
- a) consideration of long term funding mechanisms for LAs;
  - b) exploration of the potential benefits of using data from third party assurance schemes to inform LA official controls;
  - c) Making improvements in relation to Primary Production including development of a framework to recognise remote inspections as official controls and undertaking a feasibility study for low risk dairy premises;
  - d) Introduction of Compliance Notices for Food Standards to ensure consistent and proportionate enforcement options are available for LAs;
  - e) Development and introduction of new sustainable sampling strategy for Scotland.
- (vi) Data and Digital Strategy - Developing a new data/ digital strategy for FSS which aims to improve the linkage and use of data sets across all areas of FSS business. An effective data/digital strategy is needed to enable FSS to optimise use of SND for monitoring LA performance; and,
- (vii) Horizon Scanning and Surveillance – Ensuring we have the appropriate processes in place for identifying emerging and future risks to the food chain and sampling strategies for assessing potential impacts on Scotland.

## 5 Proposed Approach

- 5.1 The intention is to provide the Board with series of papers that sets out the issues and proposals to help address the strategic risk. The papers are:

### (i) Paper 1 - The current Situation

This paper will provide an assessment of the levels of resources, demographics and challenges currently being faced as well as mitigating actions taken by LAs. FSS has a statutory responsibility to monitor the performance of LAs in delivering food law. This is done through the collection of quantitative data through SND and through a formal audit assurance programme.

Findings from assurance audits over recent years have highlighted concerns over the capacity, capability and competence of LAs to deliver food law. Once audits are complete LAs are expected to put in place an action plan to address any recommendations raised. Implementation of these action plans is subsequently monitored by FSS. It has been evident recently that FSS audit intervention has helped LAs focus attention and resource to address some significant long term issues which not have otherwise been addressed.

**This background paper will be provided at the 15<sup>th</sup> June 2022 meeting.**

### (ii) Paper 2 - Developing a more structured and scientific approach to food sampling

Data generated through the sampling, examination and analysis of food produced and sold in Scotland plays a key role in the evidence base FSS relies on to undertake risk assessment, develop policy, target official controls, and provide assurance to consumers on food safety and standards. The maintenance of our public sector science base for official food testing and surveillance also relies on a co-ordinated and stableflow of samples to support the on-going development and accreditation of legislative methods. However, to date, food sampling in Scotland has been largely reliant on LAs, and resource pressures have led to a 77% reduction in the number of food samples over the past 6 years. This has significantly impacted on both our evidence base on food safety and standards assurance in Scotland, and the viability of our scientific services for food and animal feed, which are currently provided by the four LA funded Public Analyst laboratories in Aberdeen, Edinburgh, Dundee and Glasgow.

A paper will be presented to the Board on **16 March 2022**, outlining proposals for a new sampling strategy to support national food surveillance capability in Scotland.

***The Board will be asked to note the challenges associated with the current approach to food sampling in Scotland, and consider the case for a new food sampling strategy as part of a scientifically robust national surveillance programme which can be maintained into the future.***

### (iii) Paper 3 - Safeguarding Laboratory Services for Food and Animal Feed in Scotland

There have been long-standing concerns over the resilience of Scotland's existing food and feed laboratory system, which have become exacerbated due to the impacts of the pandemic and EU Exit on food law enforcement and requirements for trade assurance. The current laboratory system relies on the four PA laboratories owned by Aberdeen, Edinburgh, Dundee and Glasgow LAs, which are officially designated and accredited to undertake examination and analysis for the purposes of food and animal feed law enforcement, surveillance and export assurance. These laboratories currently have an annual expenditure budget of approximately £7.5 million and employ around 100 highly

skilled scientists and support staff. However, lack of investment and on-going reductions in LA sampling activities have significantly impacted on laboratory income streams and their ability to maintain scientific capacity and capability, putting their future viability at serious risk. FSS has no formal oversight or financial authority over the delivery of the PA laboratories, and although we are able to provide a level of funding through our sampling programmes, this will not be sufficient to maintain public sector provision of these services into the future. The lack of laboratory capacity will have serious consequences, not only for the work of FSS and LAs, but for wider Scottish Government public health and food policy, particularly in relation to our ability to investigate outbreaks, monitor the impact of food standards and dietary interventions and support trade assurance. Over the past year, FSS has been engaging on this matter with LA CEOs, Public Health Scotland, SEPA and Scottish Government Food and Drink and Health Teams. Whilst there is broad agreement that a new model for delivering these services is needed, this will require a robust business case that takes account of wider public health and food policy interests, which is formally commissioned by Scottish ministers.

A paper will be presented to the Board on **15 June 2022** outlining the issues that are currently impacting on food and feed laboratory services, and the case for a national model which better serves Scotland's needs. ***The Board will be asked to make a formal request to Ministers to commission a business case for a national food and feed laboratory service for Scotland that will safeguard our scientific capacity and capability into the future.***

#### **(iv) Paper 4 – Re-balance and Modernisation of current delivery system**

The Board will be advised of what can be done to improve further the existing systems.

There remains a very significant, and growing, disconnect between the food control related demands on LAs and their resources to be able to deliver. Work to assist with rebalancing this situation continues to be undertaken by both FSS and partner organisations.

FSS is undertaking an exercise to rebalance the demands and resources available for food law official controls. This includes initiatives across three main streams: increasing resources; reducing demands; and modernising service delivery. A blueprint for LA Delivery has been established and is being developed further. It incorporates multiple programmes of work, some of which are already in progress under the Regulatory Strategy, Sampling and Surveillance Strategy and the Digital Strategy in to a comprehensive strategic plan to ensure an innovative, modern, targeted and effective food law enforcement regime for the future.

In relation to longer term measures to assist with attracting additional resource in to the wider Environmental Health regime, FSS is collaborating with colleagues in Scottish Government (SG), the Society of Local Authority Chief Executives (SoLACE), the Society of Chief Officers of Environmental Health in Scotland (SoCOEHS), the Convention of Scottish Local Authorities (CoSLA), Public Health Scotland (PHS) and the Royal Environmental Health Institute in Scotland (REHIS) to tackle risks associated with the lack of appropriately qualified officers within Environmental Health to undertake all the concurrent demands upon the Service.

A paper will be presented to the Board on **14 September 2022** outlining the timeline and progress to date in developing the blueprint. ***The Board will be asked to note the***

***developments and consider opportunities for future delivery of food related controls.***

### **(v) Paper 5 - Regulatory Reform**

This paper will focus on changes that could be made to the current regulatory system. The re-balancing work is changing to what exists, regulatory reform changes the way we regulate

Regulatory reform at FSS encompasses all the work we do to improve the way in which we regulate. There are a number of key areas under consideration and a few already underway via the Regulatory Strategy Programme which will help us to support LAs and at least maintain to some degree the current system. . Future changes could include:

- Adoption of the principles of Ethical Business Regulation;
- Use data for third party accreditation schemes to assist LAs in the delivery of official controls and reward businesses with sustained compliance;
- Development of a National Framework for Official Control charging for LA-approved and registered businesses to ensure that LAs to ensure uniform cost recovery of OC delivery across Scotland; and
- Development of a Framework Agreement to recognise remote inspections as an OC intervention, thereby supporting LAs and businesses and working towards a more sustainable operating model.
- In the short term, we're updating the guidance on FHIS in an effort to ensure consistency but the intention is to review and replace FHIS with a new Consumer Information Scheme.

A paper will be presented to the Board on **14 September 2022** outlining the work FSS are pursuing in this area. ***The Board will be asked to confirm they are happy with the general direction of travel and that they are in agreement with the proposals.***

The Board will recognise that the proposals above make changes to the current delivery landscape, but do not consider structural reform. The proposals have the potential to modernise the current system but given the scale of the resourcing risks – and no indication that there is further funding to address it significantly - the Board is asked to indicate whether they want further work done on options for structural reform to assess whether that would help mitigate, remove or hinder the management of the existing risk.

### **Risk Management and Risk Appetite**

As the paper shows, a considerable amount of work has been done and there is the opportunity for further work to be done to help mitigate the risk. Initial work has identified opportunities towards reducing the deficit, but this will not close the gap. Therefore, the current intractable point is that the current level of LA resource is inadequate and while these changes are possible, a challenge remains nonetheless in the lack of availability of LA resources to deliver further improvements. So while this paper sets out a potential way forward at this point, given the LA resources we cannot be definitive in saying this can be achieved. LA resourcing for food Official Controls, continues to contract and the projections are that it will continue to do so. Findings from audits of LAs continue to support the view that the situation continues to deteriorate. Capacity is an across the board issue but has reached a critical level in some LAs. It is a descending spiral – as

recruitment issues develop in an LA, it becomes harder to recruit and increasing pressures on remaining staff mean they move on. There is also evidence that this Capacity erosion is impacting on Competency as experienced officers leave/retire. This is not just a financial issue, there is often budget available, but a lack of officers to recruit. The issue is that, whilst system improvements can be made as a short term assist, there are LAs across Scotland who will be unable to deliver what might be considered an adequate level of Official Controls – even in high risk and Approved establishments.

From a risk perspective that then leaves a number of possibilities. Besides consideration of whether to escalate the risk to the highest possible level, it raises a question on whether the Board's tolerance for this risk in terms of its appetite should change. For example, on public health/consumer protection the current appetite is "averse" which means there is the lowest tolerance level. The appetite could therefore be changed to indicate a higher tolerance in terms of public health protection. Clearly, LAs are not the only contributors in this criteria, but given the significant level of food law delivery through LAs it is clear that changing the tolerance would manifest itself most readily in the day to day delivery.

A further option for the Board to consider is that, even with the level of Board oversight on this risk, there is merit in raising the risk level. The risk is currently rated at 200 and further escalation would take the risk to 250, but it raises a question as to what the rationale would be. The distinction to be drawn at this point is not that we cannot identify mitigated measures nor that improvements cannot be made to the current system, the change is that there is increasing evidence of the lack of LA resources to enable delivery of the mitigations. In other words, while we can identify improvements, the challenge now is whether there is the capacity to deliver them.

A further option for consideration is whether the issues should be raised with Ministers. Given the current spending review there is some potential advantage in raising this issue at this time even though we have identified a range of mitigations that can be put in place. However, in considering whether to raise the issue with Ministers – and bearing in mind the spending review timescales – the Board may decide it would be appropriate to seek assurance from SOLACE on LA capacity prior to any notification to Ministers of Board concerns..

## 6 Strategic Questions for the Board to Discuss

- 6.1 The proposals above will all make a difference, but the issue of resources – both people and funding – is fundamental to whether improvements can be made or whether we continue to try and sustain the current model. The key questions for the Board therefore are:
- (i) How prepared are the Board to continue to accept this as an on-going strategic risk?
  - (ii) In terms of risk appetite on this particular issue are the Board still content with the risk appetite (see Annex A)?
  - (iii) Given the on-going risk of service failure, what visibility does the Board want to give this issue with Ministers?
  - (iv) What are the Board's views on whether structural reform should be considered?



## 7 Equality Impact Assessment and Fairer Scotland Duty

- 7.1 Completion of an Equality Impact Assessment (EQIA) and a Fairer Scotland Duty Assessment are not required for this paper.

## 8 Conclusion/Recommendations

- 8.1 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 under current Food Law. There isn't a simple nor quick fix to address a model that needs modernising, nor actually is fully resourcing the current model the right answer.

- 8.2 The Board is asked to:

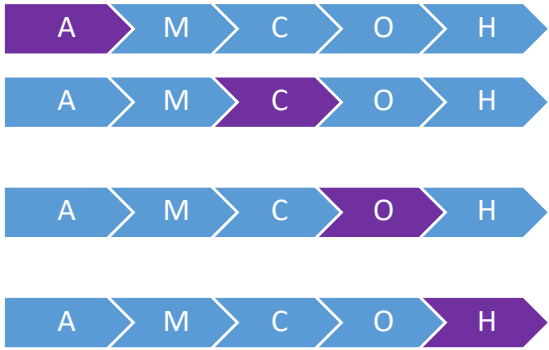
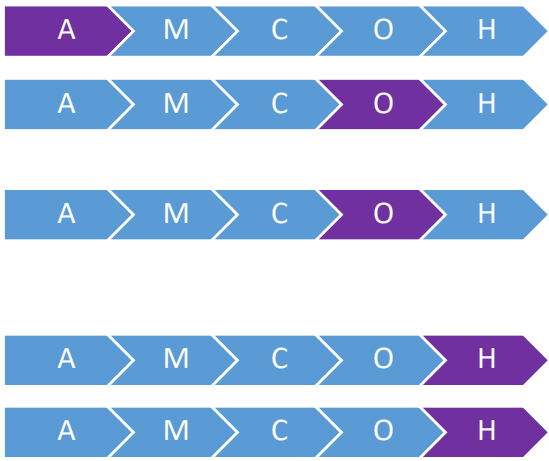
- **Confirm** they are content with the proposed timescales for the papers identified
- **Confirm** whether they are content with the current risk rating or to re-rate the risk.
- **Agree** any changes to the risk appetite in respect of this strategic risk
- **Decide** whether the Board wish to bring this risk to the attention of Ministers given the level of resource constraint on LAs to even support implementation of the mitigation measures, or raise the capacity issues with SOLACE first
- **Indicate** whether the Executive should also consider the degree to which structural reform might mitigate, remove or hinder the management of the existing risk.

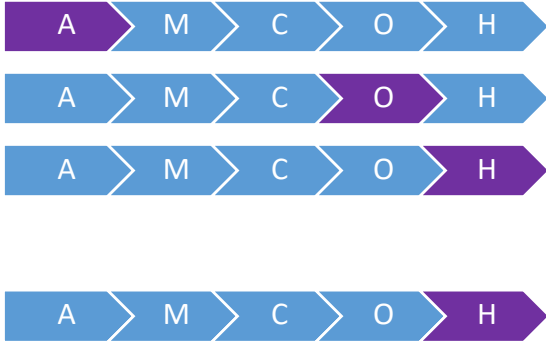
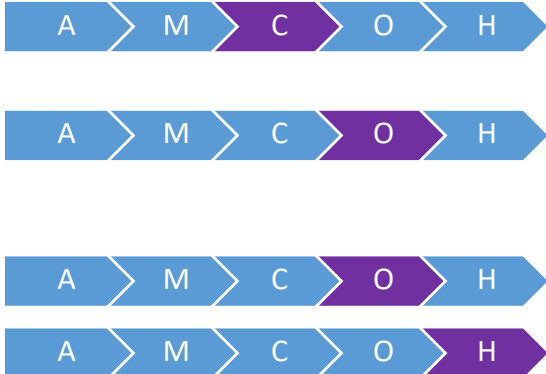
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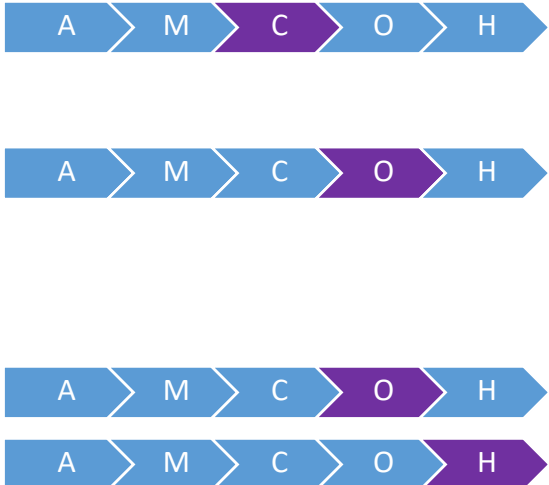

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16<sup>th</sup> March 2022

**Annex A: FSS Risk Appetite – February 2021**

<p>Public Health/Consumer Protection</p>	<p><b>Averse</b> to material risks that have potentially significant impact on public health  <b>Cautious</b> where there is uncertainty around the balance of risks and benefits for public health or other consumer interests  <b>Open</b> to new approaches and partnerships with the potential to enhance public health/consumer protection or to improve dietary health  <b>Hungry</b> for innovative ways of improving the Scottish diet and reducing risks to the food chain</p>	
<p>Policy/Legal/Regulation/Enforcement</p>	<p><b>Averse</b> to approaches that fall short of legal requirements  <b>Open</b> to policy/regulatory approaches that are evidence based, with the potential to produce the best outcomes in Scottish-specific circumstances  <b>Open</b> to pursuing innovative approaches for implementing Regulatory Standards where analysis indicates potential for significantly improved compliance  <b>Hungry</b> for policy approaches that combat the food-related effects of inequalities.  <b>Hungry</b> to apply the principles of better regulation, applying regulatory approaches which minimise burdens on businesses where appropriate</p>	

<p>Operational Delivery</p>	<p><b>Averse</b> to approaches which could potentially compromise the safety or wellbeing of staff  <b>Open</b> to partnership working with the potential for improved compliance outcomes  <b>Hungry</b> to consider innovation (e.g. working practices, systems, new technologies) with the potential to deliver improved efficiency and effectiveness  <b>Hungry</b> to develop a skilled, confident and empowered workforce</p>	
<p>Reputation/Authority/Public Confidence</p>	<p><b>Cautious</b> about activities which could impact on our ability to influence effectively to protect consumers  <b>Open</b> to making evidence-based decisions and recommendations and influencing opinion where we are clear that the benefits for consumers outweigh the risk  <b>Open</b> to advocacy on behalf of consumers, where there is evidence to support their interests  <b>Hungry</b> to exploit communication channels which promote FSS as the trusted source of advice on food safety, standards, diet and nutrition</p>	

<p>Relationships / Partnerships</p>	<p><b>Cautious</b> around our relationships with industry and government to safeguard our independence and ensure our work prioritises consumer interests</p> <p><b>Open</b> to contributing to Scottish Government strategy for promoting sustainable economic growth within the Scottish food and drink sector and supporting future export markets, ensuring there is no conflict with our consumer protection role</p> <p><b>Open</b> to working with all partners who are able to help us in achieving our strategic goals</p> <p><b>Hungry</b> to form partnerships with the potential to influence consumers' dietary behaviour</p>	
<p>Financial</p>	<p><b>Averse</b> to risks of internal fraud or corruption</p> <p><b>Minimalist</b> but willing to consider options with other financial risks if they have the potential to deliver success</p> <p><b>Open</b> with regard to new approaches which could impact on efficiency and value</p>	
<p>External Factors</p>	<p><b>Minimalist</b> to risk of impact of external events; robust business continuity and incident management plans in mitigation</p>	