

Revision of the Food Standards Agency-Food Standards Scotland Memorandum of Understanding (MoU)

1 Purpose of the paper

- 1.1 The purpose of this paper is for discussion and to provide an overview of the process undertaken with regards to revising the Food Standards Agency (FSA)-Food Standards Scotland (FSS) Memorandum of Understanding (MoU).
- 1.2 The Board is asked to:
 - **Note and accept** the explanations provided at paragraphs 4 & 7 of the Report for the extensive amendments and additions to the MOU dated 1 April 2015.
 - **Approve** the principles on which the revised MOU has been drawn up.
 - **Approve**, for its interest, the revised MOU on the basis that, whilst the detailed provisions address the operational relationship between FSS and FSA, the generality of the provisions set out in the document provide sufficient assurance to the Board that FSS's ability to discharge its functions in collaboration with FSA are adequately protected.

2 Strategic Aims

- 2.1 This work supports delivery of all Strategic Outcomes as well as our key programmes of work (EU Exit, Regulatory Strategy, Nutrition and Future Structures).

3 Background

- 3.1 The Memorandum of Understanding (MoU) between the FSA & FSS was written and signed in 2015 by the CEOs of FSA and FSS, when FSS was first established.
- 3.2 The MoU recognises and upholds the 'Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee'.
- 3.3 The MoU consists of sections which provide a high level summary of responsibilities and commitments made by each organisation to the other.
- 3.4 Annexes to the MoU contain Protocols providing more detailed working arrangements and requirements relating to key sections of the MoU (e.g. on data sharing, science and evidence, incident handling etc.).
- 3.5 Working level agreements (WLAs) will be provided where the FSA & FSS agree greater collaboration is desirable in areas not covered by the Protocols.

4 Reason for the requirement to revise the FSA-FSS MoU

- 4.1 FSA and FSS Chairs agreed that the FSA-FSS MoU would need to be updated to reflect post EU Exit ways of working and any changes in the approaches or work areas both organisations manage.

- 4.2 Chairs agreed that this work should be scoped out and taken forward by a joint project team, consisting of FSA and FSS officials.
- 4.3 Given the wide-ranging changes as a result of EU Exit, significant changes to the MoU have been required to ensure the MoU is reflective of the new regulatory landscape in which we operate.
- 4.4 The revised MoU includes the new ways of working, such as the joint risk analysis process, and delivers on commitments in place under the UK Framework.

5 Link between the MoU revision and the UK Framework

- 5.1 UK Frameworks set out enduring agreements for how the four countries will work together in policy areas that are devolved, where EU law currently creates consistent practices across the UK.
- 5.2 The Food and Feed Safety and Hygiene Framework will be documented in a Concordat, setting out high level agreements between the four governments, and the revised FSA-FSS MoU sets out the operational detail of how the FSA and FSS work together on a day-to-day basis.
- 5.3 The key features of the Food and Feed Safety and Hygiene Common Framework (yet to be agreed by Ministers) are:
 - High level principles for joint working
 - Commitment to a joint risk analysis process
 - Provisions for managing divergence
 - Provisions for Ministerial decision-making
 - Dispute resolution process
 - The framework Concordat will not set out the detail of how the FSA and FSS executives will work together on a day-to-day basis; this has been captured in the revised MoU.

6 Project Approach

- 6.1 The project, which was established in September 2019, has followed the principles of joint working as currently practised by the FSA and FSS.
- 6.2 The project has been jointly co-ordinated by one FSA and one FSS staff member whose job it has been to set overarching approaches, administer the project and provide scrutiny across all sections.
- 6.3 Additionally, each section of the MoU was allocated an FSA and FSS lead, and they have worked together to update their assigned section and any associated protocols. The role of the section lead included:
 - Developing new/revised content for their respective sections.
 - Organising and leading technical sessions with FSA/FSS colleagues, as required, to progress development of revisions/new elements of the MoU.
 - Seeking opinions from section reviewers, as and when required, to ensure a breadth of technical expertise and sign-off for content.
 - Engaging with other section leads to ensure interdependent sections and protocols align where required.
- 6.4 The project co-ordinators and section leads met monthly to ensure that all of the MoU sections align with the overarching approaches.

- 6.5 Throughout the process, review and approval of the content has been sought in two ways. Firstly, section leads have ensured that their section and protocol has been signed off by technical staff responsible for the work area in question. Secondly, guidance on the direction of the project and feedback on specific aspects of the MoU has been provided by a group specially established to do so: the Senior Review Group (SRG). This group is made up of senior staff members from the FSA and FSS.
- 6.6 In this role, the SRG has undertaken two formal reviews of the MoU in the last twelve months. The most recent of these was held in October, where the final version of the MoU was approved.

7 Key Changes

- 7.1 The key changes made to the MoU fall into two categories: new content and significantly revised content.
- 7.2 The largest amount of new content is the two sections and protocols on food crime and the updated risk analysis process respectively. These have been added because food crime is a new area of work established since the MoU was first signed in 2015 and the updated risk analysis approach will be implemented after the transition period ends.
- 7.3 Significant revisions have also been made in a number of other areas. These have been undertaken to reflect upcoming post-transition period changes (international matters, working-level agreements and the MoU review process) as well as to more accurately reflect current working practices (incidents, science and evidence and data and information sharing).
- 7.4 Some consideration has also been given to future changes to MoU content which may need to be addressed at times when the annual MoU review and amendment process is not imminently scheduled.
- 7.5 Some of these changes have already been identified by project participants. They include areas: where key aspects which will influence the FSA-FSS working relationship have not yet been determined (such as the future relationship with the EU) or where detailed processes are still in development (the updated risk analysis process). In these cases, the additional detail will be incorporated into the MoU via a supplementary working-level agreement (WLA).
- 7.6 The process to develop and sign-off these additional WLAs is still being considered, but it is not expected to be onerous for participants.

8 Outstanding Points

- 8.1 Following the FSA's Business Delivery Group (BDG) review of the FSA-FSS MoU in October 2020 the FSA Deputy Director - Head of Regulatory Compliance noted that regular engagement between both organisations on official controls delivered by LAs has always been important. However, given recent developments such as EU transition, FSA's ABC Programme/FSS's Regulatory Strategy Programme and the impact of COVID-19 on LA resources, engaging regularly on this area of our responsibilities is going to be more critical than ever before.
- 8.2 Whilst the MoU adequately addresses Operational Delivery that section is very much about how we will work together in relation to FSA/FSS delivered official

controls and there is no reference anywhere in the document to those delivered by LAs. The director suspects that this in part may link back to the fact that some years ago responsibility in FSA for LA delivery sat within our Operations Group but that hasn't been the case for some time now and whilst Operational Delivery in FSS's world includes LA delivery in ours it does not.

- 8.3 The director has asked if further thought could be given to this and it is felt the best approach at this stage would be to identify leads at both FSA and FSS and develop the text as a WLA.
- 8.4 In order to ensure that the MoU is in place for the end of the transition period it is suggested that this approach, of developing the text as a WLA, should be applied to any other areas of work that might be identified as being necessary for inclusion in the document, unless it would be extremely problematic to proceed in this way.

9 Conclusion/Recommendations

9.1 The Board is asked to:

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