

Key principles to underpin the future delivery of official food and feed controls (OCs) in Scotland

1 Purpose of the paper

- 1.1 This paper proposes a set of key principles that will underpin the future delivery of food and feed official controls (OCs) in Scotland in advance of engaging with stakeholders. The principles will then be used to shape the development of further proposals, including future delivery models that will be brought to the Board over the next 12 months.

The Board is asked to:

- **Agree** the principles on which we engage and consult with stakeholders.

2 Strategic Aims

- 2.1 This work supports a number of FSS Strategic Outcomes including Outcome 1: Food is safe, Outcome 2: Food is authentic, Outcome 4: Responsible food businesses flourish and Outcome 6: FSS is efficient and effective.

3 Background

- 3.1 Official controls are activities undertaken by enforcement authorities, such as inspections, audits, sampling and analysis, to ensure business compliance with safety and standards legislation for food, feed, animal health and welfare. The legal framework for official food and feed controls is harmonised at European Union (EU) level by Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- 3.2 At its 16 March 2016 meeting the Board agreed a draft regulatory strategy which the Executive is now taking forward. The Board will recall that, in addition to providing a strategic framework for ensuring our regulatory activities are carried out in accordance with better regulation principles, an important element of the regulatory strategy is **how** OCs can be delivered sustainably in Scotland in the future, within the context of the EU legal framework. The current delivery model will not be sustainable if resources decline over the period of the corporate plan. In the context of this paper resources refers to staff deployed by Local Authorities in the delivery of OCs and programme expenditure available for FSS to procure the delivery of various OCs for which it is responsible. There is a degree of urgency, driven by both the declining resources and the need for us to decide what we want to do to inform our decisions with regards to delivery from 2018 when the current OC contracts on meat and shellfish expire. Realistically, any re-tender process would need to commence in Q4 of this financial year.
- 3.3 This paper describes how we intend to progress our future OC delivery work through the prism of the draft regulatory strategy, as well as contributing to our strategic outcomes, and is particularly relevant in the work required during 2017 to re-tender contracts for how Food Standards Scotland (FSS) delivers OCs for meat hygiene and shellfish hygiene. Given pressures on resources it is opportune that

we review our historical approach to a range of OCs to ensure we achieve maximum efficiency at optimum cost. It is intended that the principles apply to the delivery of all food and feed OCs regardless of delivery body and so should apply to OCs currently delivered by local authorities (LAs), as well as those delivered by FSS.

- 3.4 In the context of OCs, the outcomes we want are entirely aligned with our regulatory strategy so how we deliver official controls will need to meet the test of:
- (i) supporting responsible and compliant food businesses;
 - (ii) minimising regulatory burdens where possible;
 - (iii) encouraging responsible self-regulation and a greater role for commercial and third party assurance where it is appropriate and practical; and
 - (iv) tackling effectively those businesses that wilfully neglect their legal obligations through targeted, risk based enforcement and proportionate and dissuasive sanctions.

4 Discussion

- 4.1 We will need to finalise new specifications for the re-tender of FSS's OC contracts for meat hygiene and shellfish hygiene by the end of December 2016. The Executive intends to bring further papers to the Board on the delivery of both meat and shellfish OCs, but in moving from the high level Regulatory Strategy through to the delivery of OCs, it would be helpful to have an agreed core set of delivery principles that the Executive can work to. We will also present a paper on high level charging options for OCs at the 17 August 2016 Board meeting, setting current systems in the context of these principles.
- 4.2 This paper articulates the core principles that the executive believes should be applied to OC delivery that are consistent with the Corporate Plan and Regulatory Strategy.

Regulatory Outcome	Principles - For Official Controls Delivery this means...
Consumers are protected	The delivery of OCs will verify that Food Business Operators (FBO's) are meeting their responsibilities to ensure that food is safe.
Responsible food businesses flourish	Responsible, compliant businesses may, where appropriate, be recognised through alternative regulatory mechanisms of assurance approved and verified by FSS. FSS will have processes in place to ensure that such alternatives meet legal requirements.
Irresponsible food businesses are dealt with effectively	OCs should ensure that non-compliant businesses become compliant, and where businesses are persistently non-compliant, OCs should be effective in preventing such businesses from operating.

	The cost to businesses of non-compliance should be more than the cost of compliance. Non-compliance should not be supported by public subsidy.
Food and feed official control systems are sustainable, responsive and robust	Wherever possible, there should be consistency of approach regardless of the official controls being delivered. All businesses should contribute to the costs of OCs, but the costs should be no more than they need to be.
FSS is a trusted, empowered and effective regulator	The actions of the regulator should be proportionate and the outcome of OCs should be transparent, and consumers should be given the relevant information to make informed decisions.

- 4.3 Agreeing these delivery principles will create the framework that will enable the Executive to develop proposals to secure a sustainable future OC delivery landscape.
- 4.4 We anticipate that there will be issues with resource levels in LAs and, working with SFELC, we need to consider how we can change and future-proof the regulatory delivery mechanisms to support LA delivery, while at the same time protecting consumers. The use of alternative accreditation schemes as part of our regulatory over-sight may be one such tool, where these can be shown to be consistently robust, aligned with regulatory requirements and where FSS can be assured that the schemes are effective in protecting consumers. It is also important that we deal effectively with irresponsible and non-compliant businesses and secure compliance.
- 4.5 As outlined in the draft regulatory strategy, our future approach to OC delivery in Scotland will need to be considered in the context of negotiations to revise the EU official controls framework which are nearing conclusion under the Dutch Presidency. The revised OC proposal forms part of the wider Smarter Rules for Safer Food (SRSF) package of measures put forward by the European Commission to further strengthen and consolidate OCs across the agri-food chain. The OC proposal does not, in general, specify what controls must be carried out. Rather, it sets a framework for how member states should approach the delivery of those official controls, including specifying the role and responsibilities of official control staff (e.g. official veterinarians) and mandatory charging requirements.
- 4.6 The main changes introduced by the proposal are:
- Broadening the scope of the rules on official controls to encompass controls on plant health and plant protection products to consolidate an integrated approach to controls.
 - Increasing the effectiveness of administrative assistance and cooperation among member states to deal with cases of cross-border non-compliance.

- Introducing a uniform set of rules for controls carried out at EU borders on animals and goods from third countries to overcome the existing fragmentation of controls and improve their prioritisation based on risk.
- Increasing clarity of rules about transparency of controls by establishing what information should be made available to the public.
- Amending the current system of fees to ensure that sufficient resources are allocated to official controls for their effective implementation and to reduce the dependency of the control system on national budgets, especially in the current economic climate.
- Providing additional control systems for food fraud (in part a response to the horsemeat incident in 2013).

5 Application of the Principles

The delivery of OCs will verify that FBOs are meeting their responsibilities to ensure that food is safe.

- 5.1 We know that the majority of FBOs are responsible and do their best to comply with legal requirements. Compliance with legislation is not optional and responsible businesses do not decide when and where to comply. The Elliot Report¹ highlighted that the UK has one of the safest food systems in the world and it is important that we retain the standards that we have. We also need to give more recognition to businesses that show a track record of good compliance to encourage others to improve their performance and to enable resources to be directed at non-compliant businesses. Alongside that, we need to determine where there is scope to reduce regulatory burden when there is evidence that current approaches are not protecting public health.

OCs should ensure that non-compliant businesses become compliant, and where businesses are persistently non-compliant, OCs should be effective in preventing such businesses from operating. The cost to businesses of non-compliance should be more than the cost of compliance. Non-compliance should not be supported by public subsidy.

- 5.2 The production of safe food has a cost attached to it. If we accept that it is important to incentivise compliance, there needs to be a differentiation between those who are compliant (and bear the costs of compliance) and those who are non-compliant. It is important that the requirement for regulatory oversight generates a cost for a business that has tried to avoid compliance costs, for example by charging for all OC resources that are deployed to deal with non-compliance. We know compliant businesses expect regulators to tackle those who are non-compliant and potentially are competing with an unfair advantage. It may also be beneficial if compliant businesses were to apply peer pressure on non-compliant operators within a sector. We also believe that where there is

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350726/elliott-review-final-report-july2014.pdf

sustained major non-compliance and the business benefits from a public subsidy, that subsidy should cease until a business has demonstrated it has improved and the regulator has confidence in on going compliance. Where resources are limited, consumers will want to be assured that public subsidy is not supporting businesses that are potentially putting consumers at risk.

Responsible, compliant businesses may, where appropriate, be recognised through alternative regulatory mechanisms of assurance that are approved by FSS. FSS will have processes in place to ensure that such alternatives meet legal requirements.

5.3 Many businesses are members of third party accreditation schemes that may cover a number of regulatory areas including the production of safe food. The cost of membership can be significant and such schemes can support audit regimes to confirm standards. Where FSS determines that compliance is supported by third party accreditation and that implementation is robust, we should recognise those schemes as part of our regulatory framework where we determine that it is appropriate and there are sufficient controls in place to provide such assurance. We will need to have systems in place to provide assurance on the quality of the assurance scheme. For example, ISO accreditation provides some of that assurance but equally FSS will want to satisfy itself of the quality of the scheme through assessment of performance and confirmation of standards. The existing framework of assurance schemes already embraces the diversity of size and scale of FBOs and customer demands and impacts proportionately on each business. For example, an FBO supplying a major retailer across the UK might pay the costs of larger accreditation schemes, smaller businesses may simply subscribe to schemes specifically targeted at Small and Medium-sized Enterprises (SME's) as part of their commercial requirements. Ensuring small businesses have the same opportunities to benefit from good compliance will be an important factor in our development of proposals.

Wherever possible, there should be consistency of approach regardless of the official controls being delivered. All businesses should contribute to the costs of official controls, and the costs should be no more than they need to be.

5.4 Inevitably, current legislation means that different OCs need different approaches that can vary with the commodity, e.g. foods that are of animal origin are generally subject to more OCs than foods that are not, and there are differences between different foods of animal origin e.g. meat and shellfish have very different OC regimes. The acceptability of the application of charges to sectors will depend largely on political, economic and social drivers and not simply the ability of an individual business to pay. The CEO and Director of Operations have also seen from visiting a number of countries that all of those countries charge for more OCs than we do in Scotland. Changes for OCs have the potential to be controversial and may conflict with wider economic strategy with respect to minimising burdens and supporting SMEs. However, continued sustainability of OCs is essential in supporting economic growth and plays an important role in the food industry's contribution to the export market. This means we need to look seriously at how charges for OCs might apply, whether through FSS or LAs. Economic growth inevitably generates increased costs of OCs if there are new market entrants or existing businesses expand into new locations. Expansion of export markets

cannot be done in isolation from some of the essential costs of OCs to support that growth.

5.5 The outcome of OCs should be transparent, and consumers should be given the relevant information to make informed decisions.

5.6 Protection of consumers is not just about having safe systems but also about consumer trust in the food sector and FSS as the regulator. Transparency is important and can be demonstrated in a number of ways. For example, the publication of audits and public information schemes such as Food Hygiene Information Scheme (FHIS) provide consumers with compliance information. Consumer behaviour is also critical in driving compliance improvement. There is evidence from the Food Standards Agency's Food Hygiene Ratings Scheme (FHRS) in Wales that mandatory display of the scheme has led to improvements in compliance because businesses recognise that consumers may choose not to eat in establishments with low ratings.

6 Consultation

6.1 As the national body in Scotland responsible for coordinating OCs it is important that the FSS provides clear direction and leadership for the delivery of OCs. However, as the Board knows many OCs are delivered through other delivery partners, mainly LAs but also Scottish Government Rural Payments and Inspections Directorate who deliver OCs at primary production (on farm). Whilst this paper sets out the principles, it will be important that we engage and consult with LAs on the principles and work closely with them as we develop our proposals in detail. Once the Board has agreed the principles, we will use them as the basis for consultation with our stakeholders.

7 Identification of risks and issues

7.1 The adoption of these principles will be subject to intense scrutiny by industry and LAs and it is important that we engage in meaningful dialogue in order that there is a mutual understanding and agreement on the direction of travel.

8 Conclusion/Recommendations

8.1 A set of key principles that will underpin the future delivery of official food and feed controls (OCs) in Scotland is required to shape the discussion and development around future delivery models.

The Board is asked to:

- **Agree** the principles on which we engage and consult with stakeholders.

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