

FSA EU Transition Policy Update

Report by Rebecca Sudworth, Director of Policy

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1. Summary

1.1 This paper reflects on the current position one year after the end of the EU transition period and focusses on future areas of four country policy activity. It does not report on all EU Exit related issues for the FSA.

1.2 The Board is asked to: **note**:

- the key developments and activity since the last update on post transition arrangements in March 2021.
- the FSA expects to be asked to contribute to Section 42 reports, which is a requirement in the Agriculture Act 2020 for the Secretary of State for Department for International Trade to lay a report before Parliament on whether free trade agreement measures on agricultural products are consistent with the maintenance of UK levels of statutory protections, including for human health.

1.3 The Board is asked to:

- **agree** that the FSA executive should reconsider its original 2018 principle in light of the changes in context since we exited the EU.
- **agree** that, in considering alignment or divergence across the UK, the central factor in determining advice should be safety and public health, with wider contextual factors that could also impact consumers considered secondarily on a case-by-case basis.

2. Introduction

2.1 In March 2021, the Board noted the progress and changes that were successfully implemented following the end of the EU transition period. The Board's position remained:

- we should preserve our approach to the analysis of risk.
- we should continue to be open and transparent with our science and evidence; and
- we should ensure consumers' interests are taken into account as the NI Protocol is implemented.

2.2 Since the last update to the Board in March, the FSA has continued to firmly focus on embedding those ongoing changes and managing the associated areas of uncertainty. The FSA's specific post transition activities have centred around two core areas: ensuring the FSA is working effectively in a devolved context (including implementing the NI Protocol and working within UK Frameworks) and wider trade matters (including changes to EU import controls).

2.3 This paper focuses on these themes and areas of activity, and the FSA's role within each of these. In doing so, it provides an update on the current position, an overview of changes yet to occur, and a focus on the key challenges associated with these. Although the FSA is not the lead department in key areas of ongoing change, they impact on specific elements of the FSA's responsibilities and therefore it is important that the FSA is playing an active role to understand impacts and influence changes where appropriate.

3. Background

3.1 Throughout the process of exiting the EU and managing the post transition regulatory impacts, the FSA's approach has been and continues to focus on ensuring that public health protection and consumers' interests are put first. In 2017, the Board set out commitments that any future regulatory system should:

- be at least as effective, or more effective, in protecting public health.
- maintain or increase confidence in food safety, and in the regulatory regime.
- minimise disruption for consumers and industry; and
- seek to achieve as unified a system as possible, in the consumer interest, whilst respecting devolution arrangements.

4. Discussion

Working in a devolved context

4.1 To support the FSA's role and responsibilities within the UK, we have continued to take a four-country approach to the FSA's responsibilities. Our focus has been on the NI Protocol developments, finalising the UK Frameworks the FSA is party to, and more generally on how best to monitor and manage divergence given NI Sanitary and Phytosanitary (SPS) policy remains in continued alignment with EU rules.

Northern Ireland Protocol

4.2 Over 2021 it has become clear that there are real difficulties with the way the NI Protocol is operating, including in the SPS area. Both the UK and EU have set out proposals to address these problems and the UK Government is in intensive discussions with the EU with the aim of delivering significant changes to the NI Protocol which are durable in the long term. The FSA is providing technical input into the work led by Cabinet Office and Defra to ensure that the food and feed safety implications of proposals are fully understood and considered as this work progresses. The UK Government has announced that it will maintain "standstill" arrangements to give certainty and stability to businesses while UK-EU discussions proceed.

4.3 The FSA is clear that since 1 January 2021 there has been no evidence of any increased food or feed safety risk associated with GB goods being placed on the NI market for NI or EU consumers. We continue to monitor EU changes that are applicable in NI to determine where further analysis of the impacts on NI are needed.

UK Frameworks

- 4.4 The FSA is party to three UK Frameworks provisionally agreed over 2021, the Food and Feed Safety and Hygiene Framework (FFSH); the Nutrition-related Labelling, Composition and Standards (NLCS) and the Food Compositional Standards and Labelling (FCSL) Frameworks. Provisional UK Frameworks are soon to be finalised in early 2022. These new institutional and cross-Government arrangements put in place commitments to joint ways of working and seeking consensus on changes across the UK, recognising that often businesses trading across the UK want consistency and consumers want consistent levels of protection. UK Frameworks also recognise we can recommend divergence within the UK where we agree this is appropriate and evidence based.
- 4.5 Both the FFSH and NLCS Frameworks have had minor updates, to reflect feedback from Parliamentary Committees, which were agreed at official level on a four-nation basis and are now close to finalisation. The FCSL Framework will shortly undergo Parliamentary scrutiny and will then be updated to reflect feedback.
- 4.6 FSA and Food Standards Scotland are working together closely in line with the commitments set out in the provisional FFSH Framework and Memorandum of Understanding, and these arrangements are proving to be effective. After Frameworks have been finalised, a regular review process will be in place to confirm that the arrangements are effective and provide opportunity for any required changes to ways of working.
- 4.7 Under the NLCS and FCSL frameworks four nations policy groups are also in place and operating effectively as a means of information sharing and joint working. Recent examples include joint work by the four countries through these groups to consider front of pack labelling and review of the bread and flour regulations. More widely, any overall review of food labelling, within scope of FCSL policy, will also be considered under the FCSL Framework structures. These four nation arrangements recognise the integral role each nation plays in future UK NLCS and FCSL policy and ensures the interests of all nations and UK stakeholders are factored into policy development across the UK.

Managing Divergence

- 4.8 The NI Protocol and the devolved nature of food policy decisions means that, now GB is outside the EU's harmonised system, divergence can occur between the regulatory systems of different UK nations. This is already happening in areas which undergo regular change.
- 4.9 In 2018, the FSA Board decided that changes to the regulatory system should seek to achieve **as unified a system as possible, in the consumer interest, whilst respecting devolution arrangements.**

- 4.10 Since then, the implementation of the NI Protocol has led to an international obligation for NI to implement EU food and feed law, including changes the EU makes to its legislation in relevant areas. The FSA (and FSS in Scotland) will provide advice on issues of food and feed safety to Ministers, reached through consensus across four countries in line with new commitments under UK Frameworks agreed since 2018. Using this advice, Ministers may take different decisions, and they may take decisions that cannot be implemented in NI due to the NI Protocol and continued application of EU food and feed safety law.
- 4.11 This significant change in context means that the Board's 2018 steer no longer reflects the circumstances we operate in. In the current regulatory context, 'as unified a system as possible' could be interpreted as a presumption of alignment across the UK with EU law, which is not feasible or practical. The status quo no longer concurs with an assumption of alignment across the entire UK.
- 4.12 The UK Internal Market Act has also entered into force since the Board's last discussion of its principle for managing divergence. The Act gives effect to the unfettered market access of NI goods moving into GB and provides that where there are differences in regulation across the UK, goods can continue to be sold freely across nations (except for goods moving into NI which must currently meet EU rules). This new feature of the regulatory regime also makes a review of the previous principle worthwhile, because regulations can differ while still achieving the same outcomes for consumers and free movement of goods can continue, potentially reducing the likelihood of consistency across the UK in all instances.
- 4.13 In [January 2020](#) the Board endorsed a position that the FSA's future strategic approach should be agile and ready to respond to various fast-changing factors including recent experience of political uncertainty, changing consumer practices, technological advances and changing business behaviour. This 2020 steer, considered in conjunction with the new regulatory context in which we operate, and the naturally different priorities among the three administrations the FSA serves (as well as the Scottish Government), make it appropriate to review the Board's 2018 position.
- 4.14 We are working on the basis that an updated principle from the Board for the executive should continue to reflect the FSA's commitment to four-country working and, alongside FSS, representing the interests of consumers in all four nations of the UK. A principle is needed to guide the FSA executive work when weighing up options to address risks and, as divergence should serve a purpose, this purpose should be informed by the Board's principle.
- 4.15 The changes discussed above do not alter the FSA's core role of ensuring food is safe. Therefore, the updated principle on how we manage divergence should **keep safety, and public health risks** identified through risk assessment as the central factor in our decisions.
- 4.16 However, our advice to Ministers must also acknowledge the wider context and the impact our proposals may have on other consumer interests. Contextual

factors would include ensuring our recommendations are proportionate, impacts on industry and the consequences for international and intra-UK trade. This includes ensuring with Wales, NI and, with FSS, that differences across England, Wales, NI and Scotland are accounted for in advice.

4.17 The balance of our view on the safety and public health risk and contextual factors has the potential to drive our advice towards divergence or alignment across the UK in different situations. These can already be examined in our risk analysis (which includes consideration of “other legitimate factors”) and impact assessments. We cannot determine in advance whether the balance of these factors will lead toward divergence or alignment in any given situation, so a predetermined approach is not appropriate.

4.18 To be clear, this would not change our risk analysis process, but it will provide the FSA with a steer that divergence and alignment in the UK must be considered on a case-by-case basis with central and contextual factors taken into consideration.

4.19 The Board is asked to:

- **agree** that the FSA executive should reconsider its original 2018 principle in light of the changes in context since we exited the EU.
- **agree** that, in considering alignment or divergence across the UK, the central factor in determining advice should be safety and public health, with wider contextual factors that could also impact consumers considered secondarily on a case-by-case basis.

Trade negotiations and the introduction of import controls on EU imports

4.20 The FSA has a key role within both negotiations and import control changes. In doing so, the FSA’s remit and responsibilities not only ensure consumer protection is maintained, but opportunities for improvement are also explored.

International Trade Negotiations

4.21 The FSA continues to provide technical advice on agri-food trade negotiations for new Free Trade Agreements (FTAs) in line with the principles set out by the FSA Board in January 2020. Most notably, the UK-Australia and UK-New Zealand negotiations both reached ‘Agreement in Principle’ in June and November 2021 respectively.

4.22 Once legal text is finalised for these agreements, the Government has a statutory duty under Section 42 of the Agriculture Act 2020 to lay a report before the UK Parliament on whether the FTA maintains UK statutory protections for human, animal and plant life and health, animal welfare, and the environment. We expect the FSA, along with FSS, to be asked to provide advice and input during development of this report.

4.23 The UK is now in the process of acceding to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and looking ahead to a number of potential FTA negotiations next year with India, Canada,

Mexico, and the Gulf. There are no issues to highlight on those potential negotiations at this time.

Import Controls

- 4.24 In September, the Government announced a revision to the timetable for introducing import controls on goods imported from the EU. Under the new proposals, pre-notification of high-risk food and feed from the EU which was planned to come into effect from October 2021 was delayed until 1 January 2022. Full import controls which were due to be introduced on 1 January 2022 will now commence from July 2022.
- 4.25 Development of new Border Control Posts (BCPs) and expansion of existing BCPs, whilst not an FSA lead, is clearly an area of great importance and interest as these additional facilities are needed to enable the necessary SPS controls to occur. In England, development, and expansion of these BCPs is led by Defra and is on track to be ready before 1 July 2022 when import controls are introduced. In Wales, the delivery of new BCP infrastructure is being led by the Welsh Government and BCP development is proceeding along a different timeframe. However, Welsh Government officials are currently considering interim arrangements to enable the continued flow of SPS goods from July 2022. Staffing at BCPs across the UK for enforcement of import controls, remains a concern. It is estimated that around 200 additional posts will be required within the new and expanding BCPs and, with Port Health Authorities (PHAs) competing to recruit from the same pool of potential candidates, there is a risk that many posts will not be filled. We are working with the enforcement bodies, including PHAs to monitor and understand how this might impact on the delivery of controls and to mitigate any increased risk to food safety.
- 4.26 The introduction of pre-notification of high-risk food and feed from the EU will support FSA's incidents notification systems (including INFOSAN). It will additionally provide further mitigation for the reduced access to EU systems (in particular the Rapid Alert System for Food and Feed; RASFF). Having pre-notification in place will enable a more effective and efficient, targeted response to food incidents arising from food and feed originating from the EU
- 4.27 From January 2022, until the introduction of full import controls on high-risk food and feed from the EU in July 2022, importers will be required to complete a simplified electronic pre-notification process using the 'IMP' module within IPAFFS (Imports of Products, Animals, Food and Feed System), Defra's import control system for GB. The 'IMP' module is fully operational and as the revised date for introducing pre-notification has been well-publicised, confidence is high that industry will be ready to comply from January 2022. The FSA is actively encouraging importers to voluntarily pre-notify prior to the required date of 1 January 2022, and we are aware that in some instances traders are already doing so. The FSA is liaising with Defra to obtain weekly receipt of pre-notification data in advance of January, to ascertain the level of voluntary pre-notification.

- 4.28 The FSA is currently developing a Memorandum of Understanding (MoU) with HMRC to enable customs declaration data on EU imports of high-risk food and feed to be shared with the FSA. Analysis of this dataset against the IPAFFS pre-notification data will help in identifying consignments of high-risk food and feed imported from the EU which have not been pre-notified. We are working with our counterparts in HMRC to deliver the MoU and necessary data transfer systems that will enable customs import data to be shared with the FSA from 1 January 2022. The FSA will be monitoring compliance levels of pre-notifications following its introduction and will continue to work with stakeholders to ensure both awareness of the pre-notification requirement and that compliance levels remain high.
- 4.29 The FSA's remit in relation to import controls is integrated into the wider changes and Government activities taking place. For example, this includes ensuring business readiness, which has been a key priority for the Cross-Government Border Protocol Delivery Group (BPDG). Specific activities include a continued programme of well attended stakeholder industry events to raise awareness to industry of the forthcoming import requirements.
- 4.30 One advantage of the introduction of full import controls being delayed until July 2022 is that there will now be six months between the introduction of pre-notification and implementation of full controls. This provides a longer period for industry to become familiar with the changes, promote enhanced compliance, and for the FSA and Defra to monitor and target non-compliance.

5. Conclusion

- 5.1 The Board is asked to **note**:
- the developments and activity since the last update on post transition arrangements in March 2021.
 - the FSA expects to be asked to contribute to Section 42 reports, which is a requirement in the Agriculture Act 2020 for the Secretary of State for Department for International Trade to lay a report before Parliament on whether free trade agreement measures on agricultural products are consistent with the maintenance of UK levels of statutory protections, including for human health.
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- 5.3 Subject to the Board's agreement, a further paper will be presented to the FSA Board in March 2022 covering:
- an update on implementation of EU import pre-notifications; and
 - the outcome of FSA executive's review of the Board's 2018 principle on alignment.