



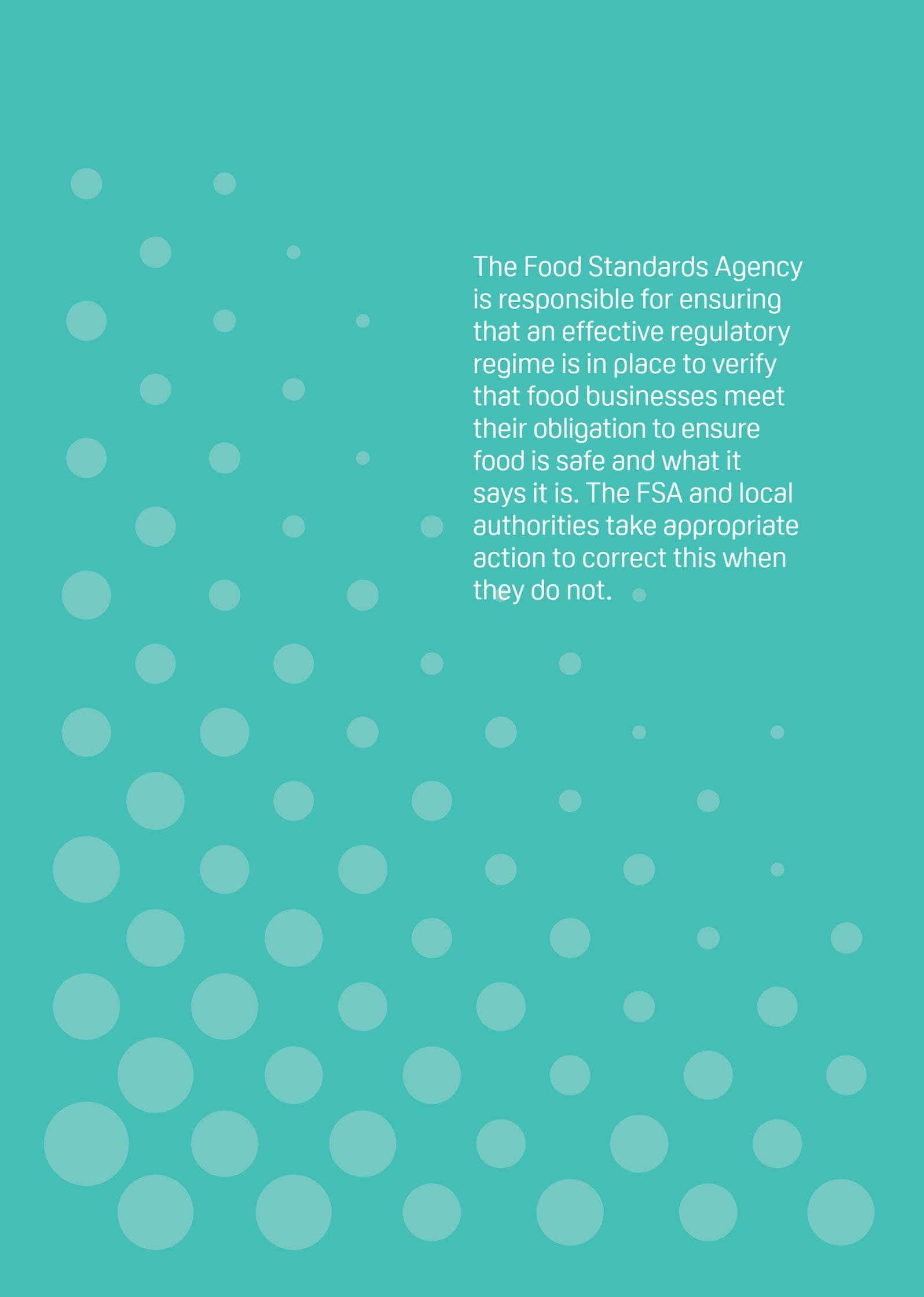
Food
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REGULATING OUR FUTURE

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Why food regulation needs
to change and how we
are going to do it



The Food Standards Agency is responsible for ensuring that an effective regulatory regime is in place to verify that food businesses meet their obligation to ensure food is safe and what it says it is. The FSA and local authorities take appropriate action to correct this when they do not.

We have concluded that it's time to improve the way we deliver regulatory controls in food. This paper explains the direction we intend to take to create a modern, risk-based, proportionate, robust and resilient system.

It is important to say that this is about *how* we deliver regulatory assurance; it is *not* about changing the actual regulations that specify what businesses are required to do. We intend to improve delivery of controls across the food chain, including those for animal feed, but we are prioritising improvement where there has been no modernisation of the system in recent years and where it is most needed.

We see many opportunities to do things better. For the UK to continue to be a strong, credible player in the global food economy, the regulatory regime needs to keep pace with rapid changes in that economy. Leaving the EU will change patterns of food production, trade and consumption, emphasising the need for a flexible and responsive regulatory system.

It is important that we act now, rather than wait for the system to falter, risking damaging consequences for public health and for trust in food.



Since February 2016 we have been consulting and working with consumers, food businesses, other parts of local and national government,

and food regulators in other countries, to develop our future approach to food regulation in England, Wales and Northern Ireland. We are working closely with our colleagues in Food Standards Scotland; where appropriate we aim to ensure harmonisation of outcomes across the FSA's reforms and the Regulatory Strategy in Scotland.

We aim to ensure a sustainable approach to food safety regulation, one that brings about business behaviour change to benefit consumers. By 2020, we plan to have delivered a new regulatory model for food. It will be an approach that can flex and adapt to future circumstances. This paper describes what we expect that model will look like. We are setting this out now, so that we can take into account further feedback as we get into the detailed design stages.

We are planning fundamental changes to how we regulate. These changes can't all be delivered at once, and not all of them are in the hands of the FSA alone. That means that we need to take interim, progressive steps. Since we began this reform programme, the UK voted to leave the EU. As a result we are prioritising the elements of our new system that will enable us to reassure consumers and support the food industry from day one of being outside the EU. But that is only a staging post in implementing the full reforms we have identified to deliver a modern, robust, sustainable system.

We call on all involved in food and feed to join us on this ambitious journey.



REASONS FOR CHANGE

We are changing the existing approach to regulating the food industry because we believe it is outdated and becoming increasingly unsustainable.

It has been in place for more than 30 years and has served consumers well, but has not kept pace with technological change in the food industry, and is not flexible enough to adapt to the changing environment.

The existing ‘one size fits all’ approach to regulating food businesses is ill-suited to the incredibly diverse nature of the industry. In recent years, we have witnessed large numbers of new players enter the global food and food safety landscape; for example, online retailers, food delivery services, private auditors, independent food safety certification schemes. These and many other developments have reduced risks, created different risks, increased risks. But the current regulatory approach doesn’t allow us easily to focus our effort on changing risks. It’s clunky, rather than flexible and agile.

There is a fundamental weakness in the current model as the FSA doesn’t know in real time how many food businesses actually exist or, who is operating them. We aren’t able to draw a complete picture, whether in a food incident or crisis, or just to make the best decisions. We need to address this by ensuring that have an overview of all food businesses rather than this important data just being held by individual local authorities as at present.

The regulatory environment is also going to change, with the UK preparing to leave the EU.

It will be critical for the FSA, as the Central Competent Authority for food safety, to demonstrate that a robust and effective regulatory model is in place.

This applies to all food businesses but control of food imports and businesses that export food will be critical. We need to be sure that all elements of our system inspire confidence in those who are deciding whether we provide adequate control of the feed and food chains.

Finally, the model is financially unsustainable, with taxpayers bearing the cost of food regulation in a way that is incompatible with wider regulatory policy. At the same time, local authorities who deliver most of the current activity are under increasing financial pressure, such that some are struggling to fully discharge their functions.



WE NEED TO BE SURE THAT ALL ELEMENTS OF OUR SYSTEM INSPIRE CONFIDENCE

¹ Cabinet Office Regulatory Futures Review <https://www.gov.uk/government/publications/regulatory-futures-review>

OUR APPROACH

At the outset, we consulted widely on the basis for a future regulatory system. There was widespread agreement about five principles.

Since then, we developed a blueprint to describe our ambition and ideas, at a very high level. We have been testing this blueprint, and the more detailed design of our overall approach, using an open policy making approach. This has involved everyone working in food – from consumer groups to private assurance scheme owners, local authorities to food businesses (of all sizes), food regulators in other countries to non-food regulators in the UK. We have identified best practice and lessons learned by others to enable us to develop the best possible regulatory model for food. We have undertaken some feasibility studies to test ideas and approaches, and learned from them; we will continue to do this and to trial ideas in real time through pathfinding as we get into more and more detailed development of the new regime.

This is not a one-off exercise. Our plan is to build a delivery model that will be dynamic and flexible to adapt as circumstances change and technology develops in the future.

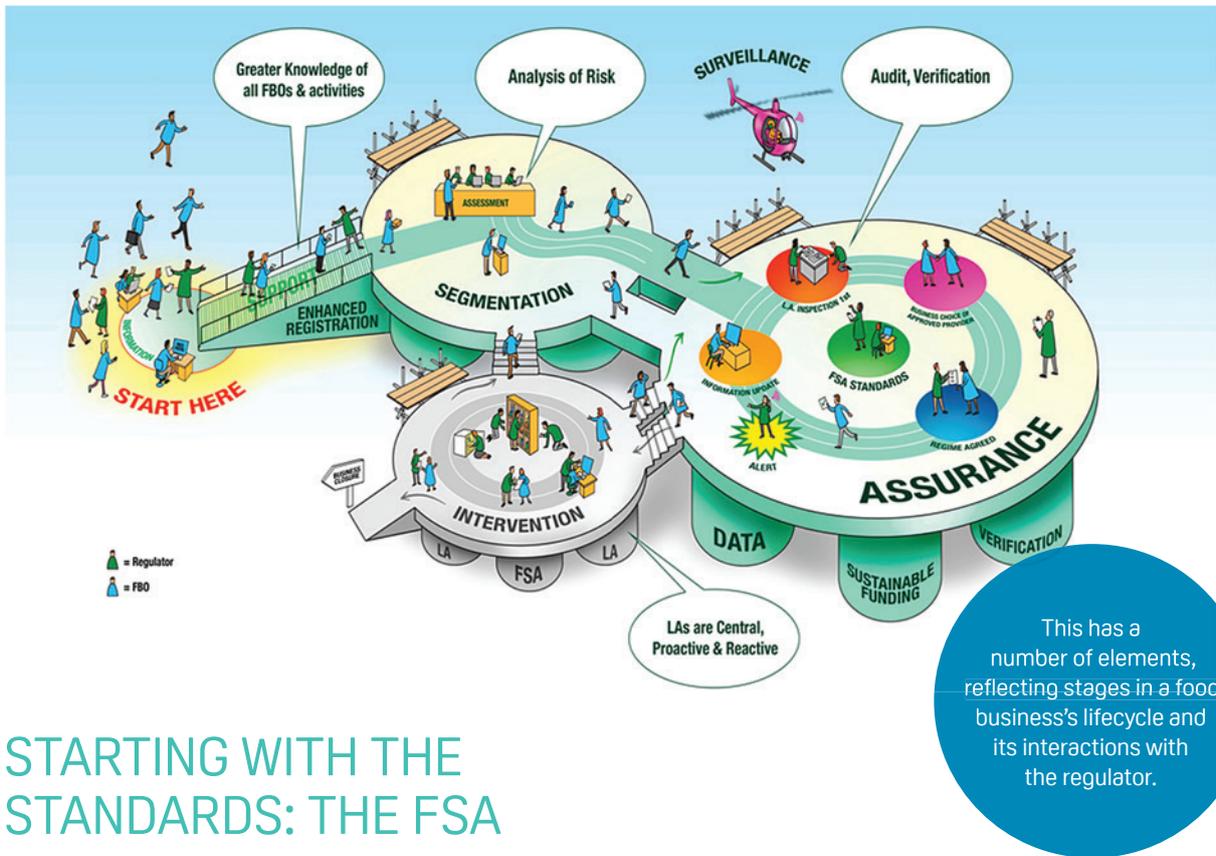
Food risks, business behaviours, consumer expectations, economic drivers (to name but a few) are changing constantly so keeping the system under review will be essential.

FIVE PRINCIPLES

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- Businesses are responsible for producing food that is safe and what it says it is, and should be able to demonstrate that they do so. Consumers have a right to information to help them make informed choices about the food they buy – businesses have a responsibility to be transparent and honest in their provision of that information.
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- FSA and regulatory partners' decisions should be tailored, proportionate and based on a clear picture of UK food businesses.
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- The regulator should take into account all available sources of information.
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- Businesses doing the right thing for consumers should be recognised; action will be taken against those that do not.
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- Businesses should meet the costs of regulation, which should be no more than they need to be.
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WHAT WE ARE AIMING FOR

Coming out of all those workshops and consultations, we can now set out our target operating model.



STARTING WITH THE STANDARDS: THE FSA

We have always been clear that it is the responsibility of food businesses to produce food that is safe and what it says it is. This responsibility is laid down in law.² We at the FSA now intend to be more specific about our expectations of food businesses.

Many businesses have a detailed understanding of the risks they face, and are clear about the steps they need to take to mitigate them. Others may not be so clear, and a small number

persistently ignore their responsibilities: we want those businesses to be tackled quickly and effectively.

In the new regime, the *FSA will set standards* so that food businesses of all types understand what is required of them. We hope that this clarity will help the many valuable private standards operating along the food chain to avoid duplication or mixed messages to food businesses about what constitutes good levels of compliance with standards.

² Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

GETTING IT RIGHT FROM THE START: BUSINESS START-UP/ENHANCED REGISTRATION

Helping new businesses understand their responsibilities for producing safe food, and how to meet those responsibilities, is a cornerstone of the new approach.

Businesses need to set up for success, getting things right from the start before bad practice creeps in putting consumers at risk. Under the current registration system many food businesses do not proactively register at start-up or notify the authorities of material changes that may affect the risk associated with their business. We will establish the reasons for this, and address any barriers identified so that it is easier for businesses to register as required by law.

Our ideal outcome is to have a Permit to Trade requirement placed on all food businesses. This would mean we capture everyone before they start producing, selling or serving food, and help them set off on the right foot. This would require new legislation, which could take several years to bring forward. So, in the meantime, we are going to do all we can to get close to the benefits of a Permit to Trade by enhancing the current registration system.

We will introduce a new digitally-enabled approach that will make it easier for food businesses to get information and guidance to help them comply with safety and standards regulations before they start trading.

We will improve the approach to registration, to make it easier for new businesses to understand what is required of them.

We will work with others to incentivise registration, for example by developing strategic alliances with 3rd parties (e.g. online food ordering and delivery services, financial institutions and insurance companies) to ensure that new businesses are aware of the requirements. We want to create a hostile environment for those that don't proactively register.

We will maximise the value we derive from the registration information we have, by developing a digital solution for real time access to registration details of all food businesses in England, Wales and Northern Ireland.

This will enable the FSA in our role as Central Competent Authority³ to have oversight of all food businesses.



We'll have better information on which to identify and manage risk across the food chain. It will mean we, our delivery partners in local authorities, and others, can respond more quickly and effectively to food incidents, and improve consumer protection. Knowing more about a food business will enable us to make better judgments about regulating it.

³ 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

SEGMENTATION: FITTING BUSINESS INTO THE REGULATORY MODEL

There is enormous variation in the types of business in the food chain.

No single approach to regulation can satisfactorily cover the diversity of size, culture or risk (and any number of other characteristics). We need a system that is more sophisticated in dealing with this reality. We will introduce a new risk management framework that will determine the nature, frequency and intensity of the controls that a food business will be subject to.

The current approach focuses on the nature and scale of activity within the food business. We intend to build on this and use a range of risk indicators based on wider information about the business, including the information gathered at the point of registration and from other sources. For example, we will explore the potential to take into account compliance performance by a business in other regulatory areas beyond food, to judge the behaviour and culture within the business and the impact this may have on food safety compliance.

Using data in this way will for the first time give the FSA the ability to look across the population of food businesses as a whole.



WE WILL INTRODUCE NEW RISK MANAGEMENT

We'll be able to analyse the factors most closely correlated with poor food hygiene outcomes – some of these might not be about food itself, but might indicate poor management culture which is linked to generally low levels of compliance with any regulation or legal requirement. This, combined with available compliance information (including that made available to us by food businesses themselves and third parties), will help us develop a more sophisticated framework to define the intervention frequency and type for each business.

We intend to better recognise those businesses that can demonstrate sustained compliance, reducing the regulatory burden on them by ensuring that intervention is proportionate.

For some businesses, the risk will be so low that they do not merit inspection. For others, inspection could be more intrusive and rigorous than they have experienced until now. To ensure every business continues to be in the right category, we will seek confirmation of any changes in activity, so we can judge whether their risk rating has moved.

We also plan to simplify the delivery model by integrating the food hygiene and food standards elements to provide a more holistic approach to verifying that food businesses are meeting all of their food safety obligations.

ASSURANCE: GETTING THE EVIDENCE THAT BUSINESS IS DOING THE RIGHT THING

Knowing that businesses are meeting their food safety responsibilities is the most important part of the new model, and we intend to use a wider range of sources to help us develop that view.

We want to be confident that businesses are doing the right thing: we will introduce more options for the ways they can prove that.

Many businesses invest heavily in internal processes that provide them with assurance that they are managing their food safety and standards-related risks. They do this because of *their* duty to produce and provide safe and authentic food.

Where these processes are robust and where they meet the standards set by the FSA, we intend them to be the starting point in our new model. By allowing businesses to prove the ways in which they comply with the rules and regulations that protect the public, we can reduce the amount of duplication in checks and inspections that many businesses face. Depending on how good the information that businesses share is, including their past performance, we will set the frequency and type of inspection activity they face. This means good, responsible, compliant businesses will face a lower burden from regulation, and free up local authority resources to target the businesses that present the greatest (residual) risk to public health.

We will introduce digitally enabled technologies to enable assurance data to flow into the system, and – as far as possible – to have it in real time. As technology becomes smarter and cheaper, this should be as helpful to small businesses as it is to big firms.

There are already many private assurance schemes in food. These add value to business in several ways: help them keep up with new requirements and good practice; evidence the quality of their food processes, to consumers or the supply chain; evidence their compliance with regulatory standards; and meet other ethical, quality standards or expectations of particular consumer groups. We see an expanded, formal role for the private assurance schemes already operating in food safety and standards, and we want to incorporate the assurance they can provide in a structured way.

These schemes have an important part to play in our new model, because they can be part of the evidence that business is achieving the right standards.

We will continue to inspect and assure each scheme to be confident that its standards, independence and trustworthiness meet our expectations, being clear that this use of regulated private assurance is not self-regulation.

We would like to see such schemes operate across the whole food industry, as they help to drive up standards and performance. The bigger the population of businesses who are vested in doing the right thing, and proving they are doing the right thing, the more likely it is that they call out those businesses who undermine public trust and compromise public health.

For multi-site operators, we will put an increased focus on the controls that operate at business level rather than each individual outlet.

We will do this by enhancing the Primary Authority scheme and the National Inspection Strategy approach.



We are working with the Department for Business, Energy and Industrial Strategy, Primary Authorities and the businesses they work with to develop the criteria for National Inspection Strategies for food and the standards required to ensure that these will be fit for purpose.

In this approach, assurance that the business is meeting its responsibilities will be determined by its Primary Authority. This will give us much better information about the management and performance of a whole business. It should

reduce the level and frequency of intervention required from local authorities at individual outlets, and so reduce the regulatory burden on the business when it has evidenced good robust levels of compliance. But, it also raises the stakes if a business fails to perform. Rather than a single outlet being the focus of extra attention to get things right, it will be the whole business that needs to respond effectively. We believe this will help keep food safety, authenticity and public health at the front of mind with the leaders of bigger, more complex businesses.

Local authorities will continue to undertake a full range of controls at businesses that do not have formal, recognised assurance systems in place, alongside their other responsibilities for enforcement intervention. We hope that freeing up local authority resources through this new approach will also mean they can do even more to support businesses in the food sector, with advice and guidance.

We also see the potential for using Certified Regulatory Auditors (CRA) within our model. These auditors would be people working in the private sector, who are certified as meeting competency standards set by the FSA. Their evidence of business assurance would be official in nature. Introducing this role would increase assurance capacity, offer choice for food businesses as to where they obtain their

assurance from, and could also provide competent resource to assess compliance within more complex and specialist food businesses, where it is becoming more difficult for local authorities to maintain such competencies.

Furthermore, we see a clear role for the consumer in driving better business behaviour. We have evidence for how effective this is from our experience with the FHRS scheme in Wales and Northern Ireland. That is why we will integrate this extended range of assurance sources, including the CRA, into our transparency approaches.

We hope that freeing up local authority resources through this new approach will also mean they can do even more to support businesses in the food sector, with advice and guidance.

We understand, and want to harness the power of, consumers and commentators having information on business compliance.

Strengthening the robustness and resilience of the Food Hygiene Rating Scheme is a key goal, including ensuring that it is sustainable and that there is mandatory display legislation in England.

A key benefit of this new approach to assurance is that we will have a more complete view of business compliance. We will therefore need a new approach to collecting and reporting performance data to reflect this. This will develop as more information sources that meet our standards become available and we will need to be able to control for this when reporting year-on-year trends in business performance. We will also need a new approach to checking that all parts of the model are operating independently, to the right standards. There is more on what this means in the section “What changes for the FSA”.

INTERVENING WHEN THINGS AREN'T RIGHT

Having a clearer view of what businesses are doing will make it much easier to spot when problems arise.

Using a wider range of assurance sources will free up capacity within local authorities to support new businesses, take appropriate and timely action against non-compliant businesses, and continue to undertake a full range of controls at businesses that do not have formal, recognised assurance systems in place.

There are other sources of information we can use to help us identify where issues are occurring or – preferably – give us warning of where they are likely to occur. We are developing a new strategic approach to surveillance and horizon scanning, to identify emerging risks and see where we need to intervene to protect consumers.

We are strengthening our relationships with our international partners, and food businesses operating internationally, so we can benefit from their intelligence, reflecting the globalised nature of the food chain.

Our ambition to broaden and deepen the role of the National Food Crime Unit will also make a difference here, if we secure the resources and powers needed to develop that Unit beyond its current, limited scope and scale.

When businesses aren't meeting their responsibilities, we will be firm and quick in dealing with them, whether their non-compliance relates to food safety, authenticity, or in any other area of interest to us. We believe

that additional sanctions could complement our existing enforcement tools, encouraging a quick return to the right behaviour by businesses. For example using, civil sanctions such as fixed penalty notices could incentivise the right behaviour, and reduce the burden on regulatory authorities and the legal system.

We see a greater role for businesses in providing insight or information to us that helps the FSA make the right interventions.

This could be information about their own supply chains if they have concerns, or information from elsewhere about potential fraud or malpractice. We want to build a new relationship with the food industry based on mutual trust. We are realistic that this will take time and for all sides to enter into discussions with an open and collaborative attitude.



WE WANT TO BUILD A NEW RELATIONSHIP WITH THE FOOD INDUSTRY BASED ON MUTUAL TRUST

BEING OPEN AND RESPECTING DATA

The more information that we can draw into our new model, the more effective it will be.

An effective regulatory regime benefits consumers and good businesses alike. Consumers want to be confident that the food they are buying is safe and what it says it is, and businesses benefit from that consumer confidence – domestically and in international markets. Of course, there is a balance for us to strike between providing consumers with information that gives them confidence about the food they are buying, and respecting business concerns around sharing commercially sensitive data.

We believe that the interests of the consumer will be better served by an effective regulatory regime in which food businesses feel confident to share data with us in confidence, rather than by the routine publication of all and any data we are able to access. Under no circumstances will we share any data without the express permission of its owner, and we will be working closely with food businesses, their lawyers and ours to establish protocols that are compliant with relevant legislation (e.g. on data protection) and will satisfy the needs of everyone involved. We hope that, alongside these steps, food businesses can become more directly open with their own customers about how they ensure that food is safe and trustworthy.

SUSTAINABLE FUNDING FOR A BETTER REGIME

Many businesses already incur costs for assurance activity, whether it's through government charging for official controls for meat, or for private audits to assure themselves about their food safety performance, or associated with membership of a particular standard or scheme. We will manage the overall cost of regulatory assurance to business and aim to drive positive business behaviour through our funding model.

Successive governments have been clear that business should bear the cost of regulation. This is reflected in our five principles for transforming food regulation. We appreciate that the FSA has an obligation to deliver an efficient and effective regulatory regime, so businesses don't face unwarranted costs or duplication.

Alongside working to make our model financially efficient, we will introduce a new funding model to ensure the future sustainability of the system. This will involve a transparent charging regime. The businesses that require the most intervention from government will bear the highest costs. The new approach we will take to assurance will allow businesses choice about how they demonstrate compliance (where the law allows this), which will determine the costs involved (and who is paid). However, we will implement measures that mitigate against the risks of any provider, public or private, cutting compliance corners, in the interest of higher margins, or to win and retain business and revenue.

WHAT CHANGES FOR THE FSA?

This new system for food regulation doesn't just mean change for food businesses, local authorities, and the many others involved today and in the future. It means major changes for the leadership and the roles performed by the FSA. Leaving the EU will also see a changed role for us as we will need to take on a number of tasks currently performed by EU institutions.

We will need new skills to help us deal with the different types of data we expect to receive. We will need to become more commercially astute, to help us manage the contracts that we will be putting in place with the new, extended range of delivery partners we anticipate working with (including local authorities and independent providers of auditors).

Keeping the system up-to-date and flexible will require us to keep abreast of innovations and developments in the food system, and develop proportionate regulatory responses.

This will mean developing and maintaining close relationships with the food industry. Our position outside the EU may make us a more attractive destination for food innovators, so we need the skills and capacity to embrace that and help keep UK food competitive (and safe).

We are clear that a model that takes into account data from a wide range of assurance sources will have to be robustly regulated if it is to protect consumers effectively, and for them to have confidence in it. One of the most important areas of focus will be how we – the FSA – audit, inspect and assure the authorities and organisations that are themselves inspecting, verifying, and assuring the data that our new model depends upon. This will require us to develop and implement new arrangements to verify that all assurance providers, both in the private and public sectors, are meeting the standards that we will set and we will take timely and firm action when the evidence shows that they are not. This is an additional important area for openness and transparency.

HOW CAN WE MEASURE SUCCESS?

Our role is to protect public health in relation to food; we want the public to trust that food is safe, and that food is what it says it is.

Being able clearly to demonstrate the outcomes the regulatory system delivers helps build public confidence.

It also gives our trading partners evidence about the effectiveness of our regulatory system. The FSA will develop a clearer set of long term measures to track the impact that we (and others) have on public trust and confidence in relation to food.

Improving public confidence doesn't happen overnight, so while we track our longer term impact, we will also report on more immediate outcomes that indicate whether we are moving in the right direction. **These will include:**

Outcomes about protecting public health and preserving food safety and authenticity, such as:

- Trends in food borne disease, incidents and hospital admissions for food allergies
- Improvements in food businesses compliance with regulations
- Improving standards in more risky food businesses, whether that's because they don't comply with the law or because they involve other food related hazards

Outcomes about public trust and consumer confidence, such as:

- Public trust in food regulation
- Improvements in the number of businesses that meet minimum compliance levels and in the number evidencing very good standards of compliance
- Enforcement action against food businesses that fail to fulfil their obligations

Outcomes that show we are becoming a better regulator, such as:

- Improving business confidence in the FSA, which delivers to us more and better insight and intelligence
- Applying our improved knowledge to anticipate and plan for future changes in business practice, consumer behaviour or food risks
- Increased efficiency and effectiveness in driving regulatory compliance so that the cost to the public purse comes down
- Reducing the administrative burden for businesses who demonstrate they are compliant with food law

WHAT HAPPENS NEXT?

We are proceeding in two phases around the time line of EU Exit as detailed below.



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