
FOOD SAFETY OFFICIAL CONTROLS DELIVERY

Report by Alison Gleadle, Director of Food Safety

1 SUMMARY

- 1.1 The Food Standards Agency is the UK's central competent authority (CCA) for official controls on food safety. These controls are currently delivered through a variety of means: FSA employees; other Government Departments; contractors; and (mostly) local authorities. These delivery responsibilities vary across the four countries of the UK. This range of responsibility for food safety brings complexity. The FSA, as the UK's competent authority, wishes to consider how best to secure efficiency, consistency, resilience and sustainability in this essential public health protection function.
- 1.2 The Board is asked to:
- Note the evidence that supports the need to review the current food safety delivery regime;
 - Agree that the Executive should review the current delivery model and compare it to an alternative delivery model that involves four national bodies; and
 - Agree to consider the results of the review and proposals for action at its open meeting in July 2011.

2 INTRODUCTION

- 2.1 The FSA is the CCA responsible for official controls on food safety in the UK. The current delivery model of these official controls is extremely complex, multi-tiered and involves many different groups. It is further complicated by the fact that delivery responsibilities are different across the four countries of the UK. **Annex A** summarises the division of responsibilities for all food and feed official controls, including those for which other government departments are the CCA. For those brave enough, the complexity is described in even greater detail in **Annex B**.
- 2.2 As the competent authority the FSA is responsible to protecting the interests of consumers in relation to food. To do this it needs a system that ensures food business operators are able to fulfil their obligations for safe food production. In the current climate of increased financial pressures it is timely to consider how best to secure efficiency, consistency, resilience and sustainability in this fundamental public health protection function.
- 2.3 Other Governments in the UK have started to question the current delivery regime. The Board will recall that in August 2010, the First Minister for Wales

asked the FSA to review food law enforcement in Wales. He asked if consumers in Wales are adequately protected and asked for an evaluation of other possible models of delivering food law enforcement. The interim report to the First Minister is attached to this paper at **Annex C – INFO 11/01/01**. The final report will be submitted to the First Minister by the end of February 2011.

3 STRATEGIC AIMS

- 3.1 This work goes to the heart of the FSA's statutory purpose of protecting public health from risks which may arise in the consumption of food, including risks caused by the way it is produced or supplied.
- 3.2 It would directly address current Outcome 5: "Regulation is effective, risk-based and proportionate, is clear about the responsibilities of food business operators, and protects consumers and their interest from fraud and other risks.", and support the proposed Outcome "Enforcement is efficient, consistent, risk-based and proportionate and is focused on improving public health."

4 DISCUSSION

- 4.1 The FSA's core principles for the delivery of official controls are:
- Most effort on interventions of greatest impact on consumer protection,
 - Controls across the UK should be coherent and consistent,
 - Should be clear accountability for delivery of official controls,
 - Efficiency should be maximized, and
 - Stakeholders should know who is responsible for what.
- 4.2 The complexity of the current model makes it extremely difficult to achieve these core principles, particularly in securing delivery on a consistent and coherent basis.
- 4.3 In the UK, 434 local authorities, employing nearly 2,900 highly qualified, professional enforcement officers and over 600 administrative staff, at a cost of £190 million are responsible for ensuring food safety compliance in over 560,000 premises. These are made up of approximately 400,000 catering and restaurant businesses; 130,000 retailers; and 16,000 food manufacturers and others.
- 4.4 The UK food sector is one of the most sophisticated and developed in the world. The current official control delivery arrangements do not mirror the modern food supply chain, which operates across LA boundaries. Food businesses range from multi-nationals and global brands to artisan owner/producers. The turnover of food businesses in the UK can be over 20 per cent each year in metropolitan areas.

- 4.5 Local authorities carry out over ½ million on-site food hygiene and standards checks each year, with the highest risk businesses likely to receive more frequent visits. Local authorities take over 150,000 enforcement actions annually. These are primarily written warning letters, but also more formal interventions.
- 4.6 Despite these resources and interventions:
- Persistent non-compliance is high in some parts of the food chain. As many as 24 per cent of all takeaways were non compliant at two consecutive inspections;
 - The rate that standards improve varies by business type. 66 per cent of non-compliant supermarkets had improved by the next inspection, compared to just 35 per cent of takeaways; and
 - Overall compliance and therefore consumer protection is not improving over time. Across all food businesses: for every one that improves, another declines.
- 4.7 **Annex D** contains information about current delivery of official controls by LAs from available data, commenting further on overall resourcing, performance and resilience. Key issues relate to:
- staffing levels: 2008/09 data confirms that 8% of positions allocated for official control delivery within LAs remain unfilled; and
 - considerable variance in enforcement action taken: just under a quarter of LAs took no action against establishments falling below the broad compliance level; approximately 7% of all food premises remain unrated; and 6% of risk categories A, B and C had overdue interventions.
- 4.8 The first of the FSA's core principles references consumer protection. Official controls must deliver consumer protection and secure public health benefits. However, given the complexity in terms of inputs and the responsibilities of a wide range of contributors it is not possible to validate the role official control delivery has in securing those benefits. We therefore work on the basis of food business operator compliance as a proxy for effective official controls outcomes (mainly in relation to food hygiene). This is discussed further in **Annex E**.
- 4.9 **Financial pressures.** Local Authorities are facing an unprecedented cut in their funding. Spending cuts currently suggested go way beyond the conventional efficiency drives often seen in the past. LAs will have to make hard decisions as to whether functions are reduced or are even to continue. This view is shared by the Local Government Association, the Front Line First Task Force and the Chartered Institute of Public Finance and Accountancy (CIPFA). All are

concerned that LAs will have to consider all options with no preconditions to protect or provide services. These concerns are shared across the UK.

- 4.10 Although the full extent of the financial settlement for LAs is not yet fully understood, it is clear that in addition to an immediate reduction in Local Government spending of 2 per cent, the Revenue Support Grant will be incrementally reduced over four financial years between 2010 – 11 and 2014 -15, amounting to a real term reduction in Local Government spending of 28 per cent.
- 4.11 Forthcoming financial constraints are therefore unlikely to improve current resourcing and performance of LAs. This presents significant risk to the Agency in terms of its responsibilities as the central competent authority.
- 4.12 **Others' views:** others are also starting to question the current delivery model. In addition to the First Minister for Wales' review, Professor Hugh Pennington questioned the delivery regime in his review of the 2005 *E.coli* outbreak in Wales, and most recently Lord Young questioned the delivery regime in his report *Common Sense, Common Safety*. The report and recommendations were subsequently endorsed in their entirety by the Coalition Government Cabinet.
- 4.13 The architecture to support local authorities in England and Wales in their regulatory work is diminishing, with stringent cutbacks made to Local Government Regulation (LGR) and the Local Better Regulation Office (LBRO) being absorbed in the Department for Business, Innovation and Skills.
- 4.14 The European Commission through its Food and Veterinary Office (FVO) has often expressed concern about the complexity of the UK's delivery model. FVO missions frequently identified failings around process and record keeping of approved premises.
- 4.15 **Would a different model work? It might.** Building on the experience of setting up the Meat Hygiene Service (**Annex F**), and learning from that process, an alternative model might be one that is more centralised, but for practical (and political) purposes is based on national boundaries. This would be a model of centralised control and delivery in each of the countries of the UK.
- 4.16 It is clearly difficult to evidence the benefits for a system that does not exist. However, centralising official controls delivery within the meat sector clearly improved levels of compliance, consistency and performance management. And it aligns to a number of the key principles for official controls delivery at 4.1 above.
- 4.17 For the rest, the initial experience with the creation of Operations Group in 2010, which has brought together previously disparate responsibilities and given them new focus on delivery of the FSA's public health commitments, has demonstrated the scope for:

- Greater ability to focus resources and interventions throughout the UK on impacts that would have the greatest impact on consumer protection;
- Improved performance management and CCA role delivery;
- Clearer accountability for delivery of official controls throughout the food chain; and
- Greater efficiencies and response to the financial pressures arising out of the 2010 Comprehensive Spending Review.

3.18 Outsourcing the entire function to the private sector is not an option because of legislative constraints. Regulation 882/2004¹ sets out the characteristics, obligations and functions of competent authorities, as well as the basis upon which performance of those functions is audited by the FVO. It specifies the circumstances under which specific tasks can be delegated to control bodies². This does not include actions taken in the case of non-compliance. This means that the competent authority, which is defined as the central authority of a member state and not a private entity, must retain responsibility for dealing with non-compliance.

5 IMPACT

- 5.1 Undertaking a review will require input from delivery partners, other government departments, food businesses and consumers.
- 5.2 The review will need to be properly resourced and managed within FSA.

6 CONSULTATION

- 6.1 At the Future Food Hygiene Conference on 3 December 2010, the opportunity was taken to announce our intention to undertake a review of official controls delivery. This was supplemented by letters to key stakeholders, explaining that Board agreement to this would be sought in January.
- 6.2 The review will seek evidence and comment from a wide range of stakeholders across the UK.

7 RESOURCE IMPLICATIONS

- 7.1 The review will be undertaken as a managed project, by a dedicated team in the Food Safety Group, drawing on contributions from across the FSA, and involving

¹ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (as amended).

² “‘control body’ means an independent third party to which the competent authority has delegated certain control tasks.” Article 2(5) of Regulation (EC) No 882/2004.

external stakeholders.

8 LEGAL IMPLICATIONS

- 8.1 The review and proposals for action will need to consider the extent to which the FSA is fulfilling its obligations as a Central Competent Authority and gains assurance from those to whom competence is delegated. It will also be necessary to consider the implications of the Food Standards Act 1999 which created the FSA.

9 RISK IMPLICATIONS

- 9.1 Undertaking a review informed by evidence from stakeholders will minimize the risk that the analysis and proposals for action presented subsequently to the Board are ill-founded and would be unlikely to address the issues and shortcomings identified.

10 SUSTAINABILITY ISSUES

- 10.1 By undertaking a review, the Executive will be able to consider and evaluate the full range of potential impacts – environmental, social and economic - in relation to food safety official controls delivery models.

11 CONCLUSION AND RECOMMENDATION

- 11.1 There is a growing body of evidence that the current complex and inconsistent delivery model, coupled with declining resources at LA level and uncertainty about good performance being sustained or poor performance improving amongst food businesses, that the current model does not give the FSA, as the central competent authority, evidence or assurance that delivery is effective.
- 11.2 It is now right and timely to undertake a review of the current delivery model and explore and develop an alternative delivery model that is more nationally consistent and involves four national bodies.
- 11.3 The Board is asked:
- Note the evidence that supports the need to review the current food safety delivery regime;
 - Agree that the Executive should review the current delivery model and compare it to an alternative delivery model that involves four national bodies; and
 - Agree to consider the results of the review and proposals for action at its open meeting in July 2011.

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