

Baroness Andrews
Chair of the Common Frameworks
Scrutiny Committee
House of Lords
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Email: hlcommonframeworks@parliament.uk

Your Ref:
Our Ref: MC2020/00213

08 January 2021

Dear Baroness Andrews,

Food and Feed Safety and Hygiene (FFSH) Common Framework

Thank you for your letter of 9 December and for your consideration of the FFSH Provisional Framework. You requested clarification and additional information in several areas, which is provided in this letter.

FSA-FSS Memorandum of Understanding (MoU)

On the issue of the committee having sight of the revised MoU between the Food Standards Agency (FSA) and Food Standards Scotland (FSS), I am pleased to inform you that the updated MoU has been agreed and is now available on the [FSA](#) and [FSS](#) websites. The MoU sets out the operational detail of the working relationship between the two non-Ministerial departments in all areas of responsibility, not just those under the Framework. It was for these reasons that the FSA-FSS MoU was not considered appropriate to include as part of the provisional Framework documentation. The MoU is the responsibility of the two organisations' CEOs, who will retain the ability to update the MoU in future as and when operational details of our relationship need to be adapted.

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Northern Ireland and the Framework

While the Framework will promote the delivery of consistent policy approaches through collaborative working in areas where the UK has the ability to set its own approaches, under the Northern Ireland Protocol, EU food and feed safety and hygiene law will continue to apply in Northern Ireland. Northern Ireland Ministers will not have scope to set their own policy approaches in areas of food and feed safety and hygiene law. The Framework does not, therefore, enable continued alignment with the EU law in the rest of Great Britain.

However, non-routine proposals (for example, where there is significant consumer or political interest or the potential for existing regulations to be undermined) that are under consideration through the EU's risk analysis process (which would ultimately apply in Northern Ireland), may also be subjected to UK risk analysis. If a food safety concern is identified regarding a change coming into effect in Northern Ireland, Ministers will be advised and there will be opportunity to raise the issue through the committees established under the Protocol. Such analysis would also provide a better understanding of the non-routine issue to support effective risk communication activities. While routine changes to EU food safety law (which will apply in Northern Ireland) will be monitored, they will not be considered through the UK risk analysis process as the UK does not have the resources to do this and may not have access to the necessary data.

Changes to food and feed safety and hygiene legislation that are being considered for Great Britain will be considered through the risk analysis process as set out in the Framework. The process will always take account of data from all four nations of the UK and consider the impact on consumers across all four UK nations. Officials in Northern Ireland will be able to provide input at all stages of the process. Where the outputs of the risk analysis process demonstrate that it is appropriate, the same risk management approach as that applied in Northern Ireland will be recommended to Ministers in Great Britain. There will also be instances where different risk management approaches are appropriate. When there is divergence between Northern Ireland and Great Britain in any policy area in scope of food and feed safety and hygiene law, Northern Ireland businesses will continue to have unfettered market access to Great Britain, as provided for in the UK Internal Market Act.

The Framework dispute resolution process is not triggered automatically: it can only be triggered where either officials or Ministers (in any nation of the UK) wish to object to the approaches recommended in one or more of the Great Britain nations. In most instances, we expect that disputes are unlikely, because any proposals for divergence will be supported by evidence-based risk analysis and discussed by officials from the four nations, and the UK Internal Market Act will ensure the free flow of goods across the UK.

Ministers in Northern Ireland will be made aware of the recommendations that are put forward in Great Britain and will be able to initiate a dispute should they have a concern.

UK Internal Market Act and the Framework

The Internal Market Act has received royal assent. The Act promotes the continued functioning of the internal market for goods in the United Kingdom. It will ensure that businesses in Northern Ireland have unfettered access to the market of Great Britain, meaning qualifying Northern Ireland goods that are produced in accordance with EU law will be able to be sold in Great Britain.

Schedule 1 of the Act includes an exclusion from the market access principle of mutual recognition to ensure that Ministers retain the ability to act quickly to prevent movement of unsafe food or feed from one part of the UK into another.

A concession relating to common frameworks was granted in the Act to provide that the Secretary of State may amend Schedule 1 of the Act to exclude certain requirements from the application of the market access principles. The FSA is currently engaging with Whitehall departments and devolved administrations to ensure we understand how this should be accounted for in the Framework. The Framework already includes a process for managing divergence, which is still valid, though may need to include an additional step to allow consideration of whether the market access principles should apply in instances where divergent policies are proposed.

Incident Management

The FSA's capabilities to prevent, detect, and respond to food safety incidents are proven and strong. We are committed to ensuring that in the post EU transition period, we remain ahead of the curve in maintaining the UK's world class incident management reputation. The EU-UK Trade and Cooperation Agreement commits the parties to rapidly notifying each other of food and feed safety risks and issues without undue delay. Although the agreement does not provide the UK with direct access to information through the use of RASFF, it ensures the exchange between the EU and UK of significant food safety information which the FSA can then use as part of its incident detection and management system.

Risk Analysis

The risk analysis process will be underpinned by collaborative working across the FSA and FSS, engagement with devolved administrations and other government departments with responsibilities for food and agriculture, health and trade to ensure all relevant issues and interests are taken into account. The principles for risk analysis set out in the Framework are embedded throughout the guidance that has been developed for each stage of the process which will be used by both FSA and FSS risk assessors and risk managers.

Further detail on how the FSA and FSS will collaborate on risk analysis can be found in Annex G of the [FSA-FSS MoU](#).

The FSA and FSS Boards have agreed assurance processes for risk analysis, which, as well as the annual review of the FSA-FSS MoU, will feed into the joint annual framework report carried out by the FSA-FSS Frameworks Management Group. If an issue arises relating to the functioning of the Framework, this can be raised for the Framework Management Group to consider at any time by officials in any of the four nations. Information on how the risk analysis process works can be found on our [website](#), and further detail on how the process has been developed can be found in [FSA board papers](#) from [September 2018](#), [December 2018](#), [March 2019](#), [January 2020](#) and [September 2020](#).

Parliamentary Scrutiny

The question of whether parliamentary scrutiny will continue following the implementation of Frameworks will be determined by constitutional teams in Cabinet Office and the devolved administrations, and a consistent approach will be taken across all common frameworks.

Framework Review Process

The Frameworks Management Group, which comprises senior food safety officials from all four nations, will conduct an annual review of the FFSH Framework and will produce a joint report on the Framework, which will be publicly available. The Frameworks Management Group will agree in the first half of 2021 the specific information it needs to see to provide assurance that the framework is operating effectively. The FSA and FSS will also review the FSA-FSS MoU annually, and the outcomes of this will feed into the annual joint report on the Framework (there will not be a separate report on the MoU). As the MoU governs operational matters across our responsibilities, any recommended changes resulting from the review process will be for the two organisations' CEOs to agree.

Legislation

We have prepared a programme of legislation to ensure that there is a functioning body of food and feed law in place, which consists of both primary and secondary legislation. It remains the case that additional legislation is not required to implement the Framework itself. Parliamentary scrutiny of food law is not restricted by the Framework: Parliament will have the chance to scrutinise any changes to food or feed law in the appropriate manner depending on whether the changes require primary or secondary legislation.

We look forward to receiving your recommendation letter on the Framework in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Emily Miles". The signature is written in a cursive style with a long horizontal flourish underneath the name.

Emily Miles
Chief Executive