

To: ENVIRONMENT POLICY BOARD

On: 15 MARCH 2017

Report by: DIRECTOR OF COMMUNITY RESOURCES

Heading: CONSULTATION ON THE FOOD STANDARDS SCOTLAND (FSS)
REGULATORY STRATEGY

1. Summary

- 1.1 On 25 January 2017, Food Standards Scotland launched a consultation on their regulatory strategy.
 - 1.2 The aim of Food Standards Scotland is to *create a food and drink environment in Scotland that benefits, protects and is trusted by consumers* and contribute to the wider Scottish Government aim of increasing sustainable economic growth, helping to make Scotland the most attractive place for doing business in Europe.
 - 1.3 The regulatory strategy establishes five regulatory outcomes against which success will be evaluated. It details Food Standards Scotland's commitment to Better Regulation and aligns with five key principles of proportionality, consistency, accountability, transparency and targeted.
 - 1.4 The FSS regulatory strategy aligns very closely with the Renfrewshire Council Integrated Enforcement Policy that was taken to the Council Leadership Board on 14 September 2016.
 - 1.5 The proposed Council response to the consultation is attached as Appendix 1 and is due to be returned to Food Standards Scotland by 18 April 2017.
 - 1.6 The strategy is available for download on the FSS website and is attached as Appendix 2.
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2. Recommendations

It is recommended that the Environment Policy Board:

- 2.1 notes the publication of the Food Standards Scotland consultation on their draft regulatory strategy.
 - 2.2 agrees the draft response to the consultation detailed in Appendix 1.
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3. Background

- 3.1 The Food (Scotland Act) 2015 established Food Standards Scotland (FSS) as the public food body for Scotland with a clear statutory responsibility to protect consumers from food safety risks, to improve dietary health, and to protect consumers other interests in relation to food. They are part of the Scottish administration, independent from Scottish Ministers and directly accountable to the Scottish Parliament.
 - 3.2 The FSS regulatory strategy proposes five regulatory outcomes against which their success will be evaluated:
 - Consumers are protected
 - Responsible food businesses flourish
 - Irresponsible food businesses are dealt with effectively
 - Food and feed official control systems are sustainable, responsive and robust
 - FSS is a trusted, empowered and effective regulator
 - 3.3 In line with the five principles of Better Regulation, the key elements of the regulatory approach are:
 - Risk and evidence based decision making
 - Targeted interventions
 - Understanding those we regulate
 - Enabling business compliance and growth
 - Clear communication
 - Working with other regulators
 - 3.4 These principles align with the Renfrewshire Council Integrated Enforcement Policy.
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Implications of the Report

1. **Financial** – none
2. **HR & Organisational Development** – none
3. **Community Planning**

Community Care, Health & Well-being – the businesses regulated by FSS have an impact on communities and the health and well-being of the residents of Scotland and Renfrewshire. This shift in regulatory focus should assist businesses and communities.

Greener – As the national food body, FSS lead on certain environmental issues e.g. sustainable food growth which links to Renfrewshire Council.
4. **Legal** – none
5. **Property/Assets**-none
6. **Information Technology** - none
7. **Equality & Human Rights** - There are no impacts on equality and human rights as part of this paper.
8. **Health & Safety** – none
9. **Procurement** – none
10. **Risk** – none
11. **Privacy Impact** - none

List of Background Papers

- a) Food Standards Scotland draft Regulatory Strategy

Author: Oliver Reid, Head of Public Protection
e-mail: oliver.reid@renfrewshire.gcsx.gov.uk

Food Standards Scotland Regulatory Strategy

1. What is your name?

Chris Dalrymple – Regulatory and Enforcement Manager

2. What is your email address?

chris.dalrymple@renfrewshire.gcsx.gov.uk

3. What is your organisation?

Renfrewshire Council

4. Please note that Food Standards Scotland may publish details that you supply in legitimate pursuit of the functions of the organisation. As the publication of responses in full may include personal data (such as your full name and contact address details). Do you agree to the publication of your personal details? If no objection is received we will assume that you consent to full disclosure of your personal details and these may be published.

Yes

5. Do respondents' have any comments on the key outcomes and elements of the draft FSS regulatory strategy attached at Annex B?

Renfrewshire Council agrees with the key regulatory outcomes:

- *Consumers are protected,*
- *Responsible food businesses flourish,*
- *Irresponsible food businesses are dealt with effectively,*
- *Food and feed official control systems are sustainable, responsive and robust,*
- *FSS is a trusted, empowered and effective regulator*

In particular, Renfrewshire Council agrees that consumer protection should be at the core of the strategy.

6. Do respondents' have any comments on the proposed regulatory decision making framework and compliance spectrum model outlined in paragraphs 5.8 and 5.9 of the draft regulatory strategy? The views of enforcement authorities on practical implementation are particularly welcome.

Renfrewshire Council agrees with the adoption of a compliance model which will apply across the range of official controls.

The model in Figure 2 (Section 5.14) is also agreeable for Renfrewshire Council. It is consistent with the graduated approach to compliance and is the same as other regulatory bodies e.g. SEPA.

Specifically in relation to Sections 5.8 and 5.9, discussion will be required with local authorities in relation to the development of voluntary or co-regulation as this can lead to potential difficulties in the future. These include inconsistencies in approach, key issues being missed and a decline in the effectiveness of regulation.

7. Respondents' views are invited on the six key elements of an effective and sustainable system of regulatory oversight attached at Annex C.

Renfrewshire Council agree that the six key elements are appropriate:

- consumers should have trust in the regulatory oversight of businesses;*
- the standards applied to food and feed production should be internationally recognised;*
- businesses should have confidence in regulatory oversight, and be confident that good compliance is recognised, and non-compliance is addressed effectively;*
- compliance should be achieved through risk-based, proportionate and effective enforcement where necessary;*
- there should be confidence in systems for monitoring, reporting and evaluating performance of both businesses and the regulator;*
- controls should be effective and sustainable, protect consumers and support the reputation of Scotland and Scottish businesses*

These elements are exactly what Renfrewshire Council would expect to see in the Regulatory Strategy.

8. Respondents' views are invited on the different ways in which FSS and enforcement authorities can support food businesses achieve sustained regulatory compliance, particularly SMEs.

Sustained compliance will only be achieved if food businesses have sufficient knowledge and ability. Unfortunately, experience shows that with irresponsible businesses, commercial interests will often outweigh public health protection.

Enforcement authorities have for many years given assistance and support to businesses in an effort to raise standards and this has been on the whole successful. Engagement can only be achieved with those businesses that are willing to take part. If this can be achieved prior to a business opening, this will have the most successful outcome. This is why Renfrewshire Council would strongly endorse a system for pre-trading authorisation.

Businesses being able to see a commercial advantage to having sustained compliance will be the key to success.

9. What are the priority areas for developing supporting technical guidance and compliance tools for the food and drink industry?

It not clear exactly what priority areas are being referred to, however, we have assumed it is for the regulatory priority areas rather than Sector.

The supporting technical guidance would need to state clearly what an absolute requirement is or what is best practice.

The priority areas for Renfrewshire Council include:

- safe food and protecting public health,*
- Technical guidance for ports and airports,*
- Changes to Annex 5 and scoring of food businesses,*
- Food Standards and food labelling,*
- Risky foods e.g. biltong.*

10. Respondents' views are invited on the different ways in which FSS and enforcement authorities can gain assurance about the performance of food businesses.

Performance of businesses is critical to ensuring the protection of Public Health. It is clear that a "One size fits all" approach will not work with regards to voluntary/co-regulation, third party etc. It would potentially need to be a myriad of regulation which would be difficult.

Renfrewshire Council would welcome further discussion on this.

The main aim is to gain assurance of the food businesses and different approaches will be required.

Whilst the regime requires to be cost effective, Public Health Protection requires to be the main focus rather than saving money.

11. What are respondents' views on commercial assurance schemes or industry generated data having a more prominent role in the overall regulatory system?

Renfrewshire Council agrees in principle with a proposal to have enhanced data and information sharing between FSS, enforcement authorities and the food and drink industry for official control purposes, particularly in relation to the results of commercial food sampling programmes and traceability infrastructure.

12. What are respondents' views on the current balance of legal, financial and reputational sanctions that are available to the Courts, regulators and enforcement authorities to address and deter non-compliance in the Scottish food and drink sector?

Renfrewshire Council feels that the current sanctions available to regulators are generally sufficient. The ultimate sanction of reporting to the procurator fiscal is infrequently used as food authorities will only use this as a last resort. The problem from experience is that a great deal of resource goes in to preparing reports for the procurator fiscal and often the outcomes appear disproportionate. In the current climate of dwindling resources, enforcers must balance how best to achieve a satisfactory outcome for the protection of public health.

Renfrewshire Council feels that the current sanctions in place are appropriate and can be used to assist business, but also protect Public Health where required.

13. Are there any other forms of penalty or sanction that should be considered or made available?

There should always be a graduated approach to enforcement, consistent with the Regulators Code of Practice.

Consideration should be given to fixed penalty notices for less serious non-compliance as these are already used within local authorities and would easily be transferrable under current administrative arrangements. This would however require some thought, as the penalty would have to be sufficient to

ensure that the penalty was punitive and that the administration costs did not outweigh any benefits from the scheme.

Consideration should be given to establishing a better link with the procurator fiscal service in terms of food law reports. The positive experience in dealing with the specialist procurator fiscal in health & safety cases can be cited as an example of where this works well. This is especially important as food crime becomes more complex.

14. What are respondents' views on the strengths and weaknesses of the existing system for food business registration?

Whilst the existing system for food registration is a means of allowing the food authority to record food businesses within their enforcement area, it relies on the food business contacting the authority and keeping information up to date. Experience shows that only those businesses who are responsible register prior to opening. Non registered businesses in most cases; come to the attention of the food authority following complaints, food poisoning incidents, food fraud, etc. There is therefore a risk to public health, reputational risk and fall in consumer confidence that can also adversely impact on responsible food businesses within the sector.

In addition, responsible food businesses are currently put at a commercial disadvantage. As the sanction for non-registration is reporting to the procurator fiscal. It would be highly unusual for a food authority to take action against a business for non-registration in isolation. Non-registered businesses are from experience, a drain on resources as time is taken to bring them up to a satisfactory standard. This also puts responsible businesses at a disadvantage, as there is less time to spend supporting them. The current system is therefore discredited amongst the enforcement community and industry.

15. Do respondents feel there would be merit in considering further the need for a pre-trading authorisation scheme for all food businesses in Scotland? Please outline your reasons.

Renfrewshire Council strongly agrees that there would be merit in a pre-trading authorisation scheme for all food businesses in Scotland. Any scheme should ensure that there are sanctions which prevent food businesses opening/operating without prior approval. The scheme should ensure that non-registered businesses cannot operate until approval is given by the food authority. This would allow food authorities a reasonable time to deal more effectively with such businesses.

Currently, where there is no imminent risk to health, a non-registered business can still operate. The scheme should ensure that if a business has no pre trading authorisation, then trading should cease immediately until the food

authority are satisfied that they meet the required standard. A reasonable timescale should be built in to the scheme which will assist in resource planning.

A proper pre-trading authorisation scheme would: protect public health, be fairer to the industry, especially responsible food businesses and would ensure that irresponsible food businesses are dealt with effectively.

16. Respondents' views are invited on the principles of official food and feed control delivery at Annex D.

Renfrewshire Council:

- Agrees that official controls must verify that food business operators are meeting their responsibilities to ensure that food is safe.*
- Agrees that responsible, compliant businesses may be recognised through alternative regulatory mechanisms of assurance approved and verified by FSS.*
- Agrees that official controls should ensure that non-compliant businesses become compliant, and be effective in preventing persistently non-compliant businesses from operating.*
- Agrees strongly that where possible there should be consistency of approach regardless of the official controls being delivered.*
- Agrees that all businesses should contribute to the costs of official controls, which should be no more than they need to be. Agrees strongly that non-compliance should cost more than compliance, and should not be supported by public subsidy.*
- Agrees that the outcome of official controls should be transparent, and consumers should be given the relevant information to make informed decisions.*

17. What do respondents feel are the main challenges and opportunities for improvement within the existing model for delivering food and feed inspections in Scotland?

Some of the main challenges and opportunities include:

- Financial challenges*
- Resource challenges*
- Efficient and smarter way of working*
- Sharing expertise and resource where possible*
- Sharing data/intelligence better*
- Changing nature of food crime*

- 18. What are respondents' views on regulatory approaches to private certification and the possibility of using third party inspection bodies as part of the regulatory assurance system for food and feed in Scotland, verified centrally by FSS?**

Renfrewshire Council generally welcomes a greater role for commercial third party assurance schemes for the purpose of earned recognition to reduce official inspection frequencies. The businesses should however; remain a part of the local authority inspection programme.

- 19. Respondents' views are invited on the principle that the food and drink industry in Scotland should contribute to the cost of maintaining an effective and sustainable regulatory system for food and feed.**

Renfrewshire Council welcomes the proposal so long as this will ensure the preservation of food law activity and ensure public health protection. Any scheme would have to be consistent throughout Scotland so that there are not disproportionate burdens placed on particular local authorities, businesses, etc.

Any money raised/received should be to cover expenses and require to be proportionate. A system of charging for revisits and further work may be best as it gives an incentive to the business to get it "right first time".

Care requires to be taken to ensure that businesses don't become customers of enforcement authorities and the balance of power remains critical i.e. just because they are paying doesn't mean we cannot take enforcement action/prosecute etc.

In addition, any monies raised should be ring fenced for the purposes of regulatory activity improving processes and efficiency to support businesses and their development.