Dear Lewis

EU FOODSTUFFS AND HYGIENE – EU EXIT REGULATIONS

Thank you for your letter of 7th November 2018. As requested please find responses to the additional questions and information that the Committee requested following my appearance before them last week.

1. Stakeholder engagement

As is normal practice for a consultation on a UK wide instrument the consultation was carried out by the UKG department (FSA) across the whole of the UK. However, Food Standards Scotland ensured that key affected stakeholders in Scotland were separately notified of this UK wide consultation.

FSA received responses from the Scottish Salmon Producers’ Organisation, Health Protection Scotland, North Ayrshire Council, Stirling Council and Perth and Kinross Council.

The local authority respondents generally expressed support for the proposals noting that they seemed, sensible, straightforward and would not create any significant additional burden, albeit it was not clear which specific authorities would be responsible for what in certain areas and that certainty on this would be required before overall training and resource implications would be known.

With respect to specific impacts, one local authority felt that the overall burden for it would be greater on it than on food businesses, particularly with respect to
disseminating the effects of the changes on the workforce as a whole. It was also noted that changes to authorisations, letter templates and statutory notices would likely be required to reflect the new regulations. However overall the familiarisation exercise was considered to be minimum.

One local authority mentioned the potential risk that if any relevant law was inadvertently missed in the process it would present inoperability issues after EU exit. Another local authority mentioned the need to ensure consistency of approach, in future, where products were being marketed across the whole of the UK.

One local authority highlighted the lack of clarity on arrangements for dealing with imports and exports given the current uncertainty around the nature of exit and future arrangements and potential impacts.

Health Protection Scotland stressed the importance of retaining links and maintaining scientific networks and expressed wishes to see continued collaboration across European countries.

The industry stakeholders indicated they were generally content and supported the principle of the main effect of the exercise, which was to provide legal continuity and certainty at the point of EU exit and looked forward to being consulted on any new food and feed safety and hygiene arrangements in future.

2. Further Information on framework arrangements and resources for replicating EFSA, RASFF and Incident functions

Frameworks

It is important to stress that the UK frameworks discussions are not directly related to this contingency planning for a no deal Brexit and that they should be considered separately. It would be my intention to return to the committee to discuss the relevant frameworks in this area at the appropriate time, if that would be helpful to the committee.

But I can advise that officials continue to work on developing future UK-wide frameworks in specific policy areas where it has been agreed that they are necessary, based on the principles agreed by the four UK administrations at JMC(EU Negotiations) in October 2017: that is, in a way which respects the devolution settlements and the democratic accountability of the devolved legislatures. Food and feed safety and hygiene is one of the 24 policy areas that the
UKG analysis identified as potentially requiring a framework. However, no frameworks will be finalised until there is clarity about the UK’s final agreement and future relationship with the EU, and the position of Northern Ireland. All discussions to date are also without prejudice to ministerial decisions.

In FSS areas of policy the main purpose is to ensure consistency of approach across the UK, where this is appropriate, but also to facilitate different Scottish solutions where that is necessary to protect public health in the period after Brexit.

Significant progress has been made by officials in developing a UK Food and Feed Safety and Hygiene (FFSH) framework which is intended to minimise additional burdens through collaborative sharing of information and resources and pooling expertise to provide appropriate advice to Ministers across the UK, seeking consistent approaches where possible. However, the arrangements are also designed to respect the devolution settlement, reflecting the JMC (E)N principles. For example, with respect to risk assessment and related activities the intention is that these are sensitive enough to support policy divergence and different targeted Scottish solutions where appropriate and necessary. The FSS / FSS framework is one of the furthest progressed and builds on the previous strong relationships between FSA and FSS.

Whilst the work of the frameworks is separate from no deal contingency planning, FSA and FSS are also undertaking work to consider which elements of the framework should be prioritised in the event of the UK finding itself in a no deal situation which is what these fixing instruments are also preparing for.

**EFSA / Risk assessment**

With respect to risk assessment, both organisations already have dedicated scientific support staff who assist in the development of risk assessments and there is a network of scientific advisory committees which already advise Ministers across the UK. The new working arrangements will be designed to bolster this base to ensure that there is sufficient scientific resource to undertake current risk assessment functions such as incidents handling, as well as the additional capability and capacity needed to support the functions that will be repatriated to the UK from EU institutions. This includes risk assessments for products which require pre-market approval or authorisation before being marketing within the UK in future. It is important to note that regardless of the new arrangements, the general publically available EFSA risk assessments reports will continue to be available for consideration within the UK context post Brexit. FSA and FSS themselves are not replacing EFSA, simply attempting to ensure that the elements of risk assessment, currently carried out by them, required in the UK in the event of a no deal will be available at the point of Exit.
FSS and FSA have both commissioned research work designed to help predict the extent of the new burdens on the UK and in Scotland as a result of Brexit including attempting to assess additional risk assessment capacity. However, it is impossible to predict this accurately, since it involves making judgements about probable future market trading arrangements which will inevitably change depending on the nature of a deal and will also change if there is a no deal.

**RASFF**

In the event of a no deal, following Brexit, it is expected that there will only be third country access to RASFF for the UK. This would place FSS at risk of being unable to acquire some of the information from EU member states to assist in the mitigation of a food/feed safety incident.

FSS is collaborating with the FSA to develop a UK wide solution which is aimed at mitigating the loss of the information provided through RASFF. The solution looks to use a variety of methods for capturing information which will enable FSS to manage incidents affecting Scotland in future whilst benefitting from a UK wide approach to information sharing. In line with the Scottish Government’s clearly stated position on membership of the EU, my preferred option would be to retain access to these systems that have served us well, and we continue to press the UK Government in that regard. As a responsible government however, we must also make sensible contingencies and that is why we are collaborating with UK counterparts to ensure that we can continue to act to protect public health in Scotland the event of a no deal exit.

**Potential Future Policy Divergence from currently harmonised EU rules**

These fixing SIs provide mechanisms by which Ministers in each of the 4 countries, independently, or where appropriate across the UK as a whole, might, via subordinate legislation, amend aspects of the retained EU law commensurate with the tertiary legislative powers that are currently available to the European Commission through EU comitology procedures. This means that should Scotland decide in future that it is appropriate to keep pace with future EU-wide modifications of the retained EU law it will be in a position to do so, even if other administrations do not. However, as previously indicated, it would be the intention to maintain UK consistency wherever possible.
3. Request for future written updates to the Committee from FSS, on Operational Readiness with respect to any future transfer of functions to it, as part of its accountable to the Scottish Parliament

The governance arrangements for FSS accountability to the Scottish Parliament is set out in the Food (Scotland) Act 2015. This requires FSS to publish an annual report on its functions and performance and lay it before the Scottish Parliament.

FSS is also required to prepare a statement of performance setting out how it will carry out its functions in order to meet its objectives. The statement needs to be approved by the Scottish Ministers and laid before the Scottish Parliament. The statement is required to be reviewed from time to time and a revised statement submitted when necessary to the Scottish Ministers for approval and laying before the Scottish Parliament.

The way in which FSS will carry out any new functions, confirmed as having been transferred to it, as a result of these instruments will be notified to the Parliament. Should the Health and Sport Committee wish, FSS would be happy to provide that information in parallel to the Committee.

I hope this additional information now affords the Committee the ability to reach a decision with respect to consent to this first batch of instruments. Given that the revised laying date for the first of these instruments is 17th November, it would be very helpful if the Committee could give its response, as soon as possible, so that I can write to the Westminster Health Minister in accordance with the agreed protocol.

JOE FITZPATRICK