

## HEALTH AND SPORT COMMITTEE

### EUROPEAN UNION (WITHDRAWAL) ACT 2018 – FOOD RELATED UK STATUTORY NOTIFICATIONS

#### SUBMISSION FROM FOOD STANDARDS SCOTLAND

Food Standards Scotland (FSS) has been invited to attend the Health and Sports Committee on 18<sup>th</sup> December 2018. The Committee has asked if we can provide some information in advance. The information requested by the Committee is below.

**The Scottish Government has referred to work between the FSS and FSA to develop a UK Framework for food and feed as ongoing. We request further information on how on existing EU networks and/or specialist facilities might be able to be accessed if there is no deal. We consider there to have been limited certainty provided to date on how access would be achieved.**

1. The Scottish Government believes that the best option for the future wellbeing and prosperity of Scotland, and the UK as a whole, is to remain in the EU which would of course mean very little change to current arrangement. In the event that the UK does withdraw from the EU, the Scottish Government is clear that continued membership of the European Single Market and a customs union would be the least damaging option for the UK, and will continue to make that case. Nevertheless, as part of the wider the Scottish Government intensification of its preparations for all EU Exit scenarios, FSS is contributing appropriately both in terms of our own planning and contributing more generally in other areas where we don't lead but have an interest, for example exports. Preparations are well underway, but are hampered by the lack of clarity surrounding the multiple scenarios that could ensue from the UK Government's approach. Many critical issues that will affect Scotland's interests, and the Scottish Government's responsibilities for public services, are reserved and the responsibility of the UK Government which means there are limitations to the direct mitigation that we can take.

2. Even with an escalation of planning activity, at this time we are unable to say with certainty how we might access EU networks and facilities. As we work on our contingency arrangements, including for a No Deal scenario, our planning is considering how we might proceed and identifying areas of working where co-operation would be advantageous to both the EU and the UK. For example on food fraud, where FSS has developed strong operational relationships with EU counterparts. The uncertainty over the ability to access EU networks and facilities as a result of a No Deal outcome emphasises the importance of being as ready as we can be for a range of different scenarios, hence our collaborative working with counterparts across the UK to build capacity and resources, whilst protecting Scotland's interests. Consequently, on certain activities such as risk analysis, we are working with the FSA on improving UK capability and infrastructure in these areas. Another main stream of activity is working on alternatives to the EU's rapid food alert system for food and feed (RASFF) to enable food safety bodies in the UK to continue to manage food incidents effectively.

3. The position therefore remains that unfortunately only limited certainty can be provided because in a no deal scenario access to EU networks will depend on a range of factors, including the quality of the relationship that remains between the UK Government and the EU. FSS's Chief Executive and Deputy Chief Executive visited the Scottish Government in Brussels at the beginning of October to discuss EU exit and the importance of the maintenance of relations with EU institutions following exit. Within that context FSS would work within any relationship framework developed between the Scottish Government and the EU.

4. On Frameworks generally, the Scottish Government has made it clear that it is not opposed to UK wide frameworks where these are in Scotland's interests, but frameworks must be agreed between the UK Government and the devolved administrations, rather than imposed. Initial framework outlines in 6 policy areas which included food & feed safety and hygiene and nutrition health claims, composition and labelling, were considered by the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2018. This technical work undertaken by officials is underpinned by the statement of principles agreed by JMC(EN) in October 2017, has been taken forward by agreement and is without prejudice to the views of Ministers. Further exploratory work continues in all 24 devolved policy areas identified in the UK Government's analysis as potentially requiring legislation. It was never the intention that common frameworks would be in place by exit day and frameworks remain discrete longer term work to be put in place post Brexit and will only be agreed when there is clarity about the UK's final agreement and future relationship with the EU and the situation in Northern Ireland

5. Work also continues on the cross-cutting issues which require to be worked through for frameworks to be finalised in the areas of domestic governance, the internal market and, where appropriate, future funding. The Scottish Government remains committed to continue to work collaboratively on developing future UK-wide frameworks in specific policy areas; however, the Scottish Government also remains resolutely opposed to Section 12 of the EU Withdrawal Act 2018 and will withdraw from any official level discussion if a restriction on devolved powers is imposed. The recent UK Government report 'European Union (Withdrawal) Act and Common Frameworks' states that on the basis of the significant joint progress on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any section 12 regulations at this juncture. On this basis, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussions continue. On this basis, we are satisfied that Scotland's interests in relation to food and feed safety and standards can be protected.

6. It is also worth noting that whatever the future access is to EU institutions, there are already well established mechanisms in place within Scotland and the UK as a whole to carry out the type of risk assessment and risk management functions currently carried out by these EU institutions. This includes decisions on incident management and determining whether or not a legislative basis is required to underpin risk management decisions. In particular, matters concerning the legal underpinning of local enforcement activity have been the subject of subsidiarity and mostly determined within the UK. In addition to science and policy staff already employed by FSS (and FSA) to carry out such assessments there is a network of UK scientific advisory committees available to provide independent advice on matters such as general microbiological and chemical risk assessment through Advisory

Committee on the Microbiological Safety of Food (ACMSF) and Committee on Toxicology (CoT) and also through specialist Committees such as the Advisory Committee on Dangerous Pathogens (ACDP) which advises on specialist issues such as risks from BSE.

7. The main functions which are transferring from the EU institutions relate to the scientific support for risk assessment to underpin future modification of the tertiary elements of the EU law and to provide specific advice on emerging risks and potential risks associated with new products or food additives designed for placing on the market commonly referred to as “regulated products”. It is in these areas that it is considered that current capacity will require to be bolstered to cope with the additional burden of risk assessment and associated risk management decisions. The current discussions between FSS and FSA are building on the well- established collaboration between the bodies which is already underpinned by a Memorandum of Understanding (MOU). It proposed that a new UK-wide Advisory Forum for Food and Feed is established to pool expertise and supplement the skills sets which already exist in the organisations and also to review and where necessary redefine the roles of the existing scientific support committees. Officials will then meet to discuss the appropriate risk management advice to Ministers across the UK seeking consistency where possible, but also supporting different risk management approaches where this is supported by risk assessments.

**Reference has been made to a number of new schemes and processes being required. We request information on what assessment of the practical changes and costs has been conducted and a copy of these assessments. We also ask what additional costs are expected to be incurred by the FSS as a result and whether they are expected to be met within current budgets?**

8. The schemes and processes are already referred to in the previous answer. Work is on-going to determine the on-going future costs. However, we do not believe that additional functions required of FSS as a result of leaving the EU could be met from existing budgets. While there is no suggestion as yet that there will be no additional funds, if that is the case, then FSS would need to consider which of its current functions it could no longer undertake. However, that of itself is not a solution, as stopping certain functions doesn't mean that we would necessarily have the new skills requirements. So we will need to review our existing skills and resources in FSS against any new requirements. Furthermore, the level of additional resources, funding and timescales will be impacted by whatever final deal is achieved with the EU. A no deal scenario brings more immediate pressures, while any transition deal would allow more time to deliver solutions. The current difficulty caused by the level of uncertainty means that while it is possible to forecast requirements to some degree, there is no certainty that the requirement is necessary. For example, in theory one can resource up for a no deal scenario, but if that is not where we end up, then the resource requirement is unlikely to be needed, and the needs will be different in the event that a transitional deal is agreed.

9. FSS is currently carrying out a capacity and capability review to establish additional resources required to support new or additional requirements as a consequence of leaving the EU. However, in addition to the uncertainty outlined above, it is also difficult to estimate resource requirements accurately, due to lack of information about potential new business applications for regulated products, which will be dependent on wider market consideration.

FSS is therefore carrying out research and analysis in an attempt to better understand current food distribution networks and predict future trends as far as possible to underpin this capability and capacity assessment.

10. We can advise the Committee however that FSS had allocated £0.922m to EU exit work for the financial year 2018/19, and our latest forecast is that the total cost for this year will be £1.13m. FSS expects that the programme of exit work would still be in place in 2019/20, and assumes the same baseline cost of £1.13m, and estimated that additional funding of between £0.7m and up to £5.75m will be required to deliver anticipated new obligations post EU exit, depending on the nature of the UK's exit. However, as the Committee will note the range is considerable which is a simple reflection of the extremes in cost depending on the different leaving scenarios. Further work is currently underway to review these initial estimates.

11. FSS was allocated an additional £0.885m, as set out (though rounded up to £0.9m) on page 99 of the 2018-19 Autumn Budget Revision, which was laid before the Scottish Parliament in September 2018 and is published here: <https://www.gov.scot/Resource/0054/00540768.pdf>. This means FSS has had to allocate £0.245m from our original 2018/19 allocation.

**Reference has been made by the Scottish Government to the “statement of performance setting” which FSS have to lay before Parliament from “time to time”. The last iteration was in August 2017 and did not include detailed reference to Brexit. Are there any plans to provide a further statement in the near future?**

12. As the Committee will be aware, our Statement of Performance of Functions is a requirement of the Food (Scotland) Act 2015 (section 5), and is a statement on how FSS intends to perform its functions, specifically how FSS intends to meet its objectives, and how it intends to operate in accordance with section 4 (which is about governance and accountability).

13. Its focus is on how we will:

- be proportionate, transparent and accountable;
- use good decision-making practice (by consulting those affected by our decisions, basing decisions on good information, recording decisions, and making decisions and their rationale publicly available);
- develop and maintain effective links with the Scottish Ministers and public bodies and office holders with food/feed functions.

14. Within the legal framework outlined above, FSS will therefore need to consider a review of a number of documents, including potential revisions to our Strategy, a new corporate plan (the current one runs to 2019) and the Memorandum of Understanding with the Food Standards Agency as well as the Statement of Performance of Functions. However, until we are clear about the nature of the UK's exit, and we have finalised agreements with the UK Government and the other devolved administrations, it is not possible at this stage to determine the final changes that will be required.

## **Copies of your current strategic plan, outcomes and performance reports, financial performance reports together with any forward projections that exist.**

15. FSS was established by the [Food \(Scotland\) Act 2015](#) as a non-ministerial office and a corporate body, part of the Scottish Administration, alongside, but separate from, the Scottish Government. The members of FSS are appointed by Scottish Ministers and are informally known as ‘the Board’. The wholly non-executive Board provides FSS with strategic direction, oversight and governance. The Chief Executive is accountable to the Board for the performance of the Agency.

16. The Board meets in public at least 4 times a year, in accordance with its standing orders. Board papers and minutes are published on the FSS website, as is the FSS [Code of Governance](#), which includes our [Framework Agreement with the Scottish Government](#), Terms of Reference for the [Board](#) and its [Audit and Risk Committee](#), [Standing Orders](#), a detailed [Scheme of Delegation](#) from the Board to the Executive, and our [Statement on Performance of Functions](#).

17. The Board has approved FSS’s [Strategic Plan to 2021](#), which sets out 6 key strategic outcomes and incorporates our Corporate Plan for 2016-2019. In March 2018 the Board also approved our [Financial Management Plan to 2021](#), as a working document to be reviewed at regular intervals and approved by the Board annually. The plan will be reviewed once the position with respect to EU exit consequential funding becomes clear.

18. The Board receives quarterly financial reports, and six-monthly reports on performance in delivering key activities. The Board also receives a report on progress against our 6 Strategic Outcomes twice a year, and approves our Annual Report.

19. Our Strategic Plan and Financial Management Plan are provided as annexes to this document. We have also annexed the Outcomes Report, Performance Report, and Financial Reports that were presented to the Board at their public meeting in November 2018. These, and earlier reports, can be found on our website via the following links:

### **Outcomes Reports**

April 2017 - September 2017

[https://www.foodstandards.gov.scot/downloads/Outcomes\\_Report\\_171109.pdf](https://www.foodstandards.gov.scot/downloads/Outcomes_Report_171109.pdf)

[https://www.foodstandards.gov.scot/downloads/Outcomes\\_report\\_171109\\_ANNEX\\_A.pdf](https://www.foodstandards.gov.scot/downloads/Outcomes_report_171109_ANNEX_A.pdf)

October 2017 - March 2018

[https://www.foodstandards.gov.scot/downloads/6\\_-\\_Outcomes\\_Report\\_Paper.pdf](https://www.foodstandards.gov.scot/downloads/6_-_Outcomes_Report_Paper.pdf)

[https://www.foodstandards.gov.scot/downloads/7\\_-\\_Six\\_Monthly\\_Outcomes\\_Report\\_-\\_Annex\\_A.pdf](https://www.foodstandards.gov.scot/downloads/7_-_Six_Monthly_Outcomes_Report_-_Annex_A.pdf)

April 2018 – September 2018

[https://www.foodstandards.gov.scot/downloads/08\\_-\\_Six\\_Monthly\\_Outcomes\\_Report.pdf](https://www.foodstandards.gov.scot/downloads/08_-_Six_Monthly_Outcomes_Report.pdf)

[https://www.foodstandards.gov.scot/downloads/08\\_Six\\_Monthly\\_Outcomes\\_Report\\_-\\_Annex\\_A\\_-\\_181108.pdf](https://www.foodstandards.gov.scot/downloads/08_Six_Monthly_Outcomes_Report_-_Annex_A_-_181108.pdf)

## **Performance Reports**

To September 2016

[https://www.foodstandards.gov.scot/downloads/FSS Business Performance Reporting 161010.pdf](https://www.foodstandards.gov.scot/downloads/FSS_Business_Performance_Reporting_161010.pdf)

[https://www.foodstandards.gov.scot/downloads/FSS Business Performance Reporting 161010 Annex A.pdf](https://www.foodstandards.gov.scot/downloads/FSS_Business_Performance_Reporting_161010_Annex_A.pdf)

To March 2017

[https://www.foodstandards.gov.scot/downloads/Board meeting - 2017 May 17 - Performance Reporting.pdf](https://www.foodstandards.gov.scot/downloads/Board_meeting_-_2017_May_17_-_Performance_Reporting.pdf)

[https://www.foodstandards.gov.scot/downloads/Board meeting - 2017 May 17 - FSS Performance Reporting - Annex A.pdf](https://www.foodstandards.gov.scot/downloads/Board_meeting_-_2017_May_17_-_FSS_Performance_Reporting_-_Annex_A.pdf)

To September 2017

[https://www.foodstandards.gov.scot/downloads/Performance Reporting - 171110.pdf](https://www.foodstandards.gov.scot/downloads/Performance_Reporting_-_171110.pdf)

[https://www.foodstandards.gov.scot/downloads/Performance Reporting - 171110 - ANNEX A.pdf](https://www.foodstandards.gov.scot/downloads/Performance_Reporting_-_171110_-_ANNEX_A.pdf)

To March 2018

[https://www.foodstandards.gov.scot/downloads/8 - Performance Reporting.pdf](https://www.foodstandards.gov.scot/downloads/8_-_Performance_Reporting.pdf)

[https://www.foodstandards.gov.scot/downloads/9 - Performance Reporting - Annex A.pdf](https://www.foodstandards.gov.scot/downloads/9_-_Performance_Reporting_-_Annex_A.pdf)

To September 2018

[https://www.foodstandards.gov.scot/downloads/09 - Performance Reporting - 181109.pdf](https://www.foodstandards.gov.scot/downloads/09_-_Performance_Reporting_-_181109.pdf)

[https://www.foodstandards.gov.scot/downloads/09A - Performance Reporting - Annex A.pdf](https://www.foodstandards.gov.scot/downloads/09A_-_Performance_Reporting_-_Annex_A.pdf)

## **Finance Reports**

April – June 2015

[https://www.foodstandards.gov.scot/downloads/Board Meeting - 2015 September 16 - Finance Performance Report 2015-16 150908.pdf](https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_2015_September_16_-_Finance_Performance_Report_2015-16_150908.pdf)

June – September 2015

[https://www.foodstandards.gov.scot/downloads/Financial Performance Report Quarter 2 1.pdf](https://www.foodstandards.gov.scot/downloads/Financial_Performance_Report_Quarter_2_1.pdf)

September – December 2015

[https://www.foodstandards.gov.scot/downloads/Board meeting - 2016 March 16 - Financial Performance Report Quarter.pdf](https://www.foodstandards.gov.scot/downloads/Board_meeting_-_2016_March_16_-_Financial_Performance_Report_Quarter.pdf)

January - March 2016

[https://www.foodstandards.gov.scot/downloads/Board meeting - 2016 June 15 - Financial Performance Report Quarter 4 160605.pdf](https://www.foodstandards.gov.scot/downloads/Board_meeting_-_2016_June_15_-_Financial_Performance_Report_Quarter_4_160605.pdf)

To 31 July 2016

[https://www.foodstandards.gov.scot/downloads/Board\\_Meeting\\_-\\_2016\\_August\\_17\\_Finance\\_Report\\_to\\_Board\\_-\\_17\\_August\\_2016\\_-\\_160807\\_1.pdf](https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_2016_August_17_Finance_Report_to_Board_-_17_August_2016_-_160807_1.pdf)

To 31 August 2016

[https://www.foodstandards.gov.scot/downloads/FSS\\_Financial\\_Performance\\_Report\\_-\\_161009.pdf](https://www.foodstandards.gov.scot/downloads/FSS_Financial_Performance_Report_-_161009.pdf)

To 31 October 2016

[https://www.foodstandards.gov.scot/downloads/Board\\_Meeting\\_-\\_2016\\_December\\_14\\_-\\_Financial\\_Performance\\_Report\\_-\\_161208-Final.pdf](https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_2016_December_14_-_Financial_Performance_Report_-_161208-Final.pdf)

To 31 January 2017

[https://www.foodstandards.gov.scot/downloads/Board\\_Meeting\\_-\\_2017\\_March\\_08\\_-\\_Finance\\_Report.pdf](https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_2017_March_08_-_Finance_Report.pdf)

To 31 March 2017

[https://www.foodstandards.gov.scot/downloads/Board\\_meeting\\_-\\_2017\\_May\\_17\\_-\\_Financial\\_Performance\\_Report.pdf](https://www.foodstandards.gov.scot/downloads/Board_meeting_-_2017_May_17_-_Financial_Performance_Report.pdf)

To 30 June 2017

[https://www.foodstandards.gov.scot/downloads/Board\\_Meeting\\_-\\_2017\\_August\\_16\\_-\\_Financial\\_Performance\\_Reporting\\_-\\_Garry\\_M\\_170807.pdf](https://www.foodstandards.gov.scot/downloads/Board_Meeting_-_2017_August_16_-_Financial_Performance_Reporting_-_Garry_M_170807.pdf)

To 30 September 2017

[https://www.foodstandards.gov.scot/downloads/Financial\\_Performance\\_Update\\_-\\_171111.pdf](https://www.foodstandards.gov.scot/downloads/Financial_Performance_Update_-_171111.pdf)

To 31 December 2017

[https://www.foodstandards.gov.scot/downloads/Financial\\_Performance\\_Reporting.pdf](https://www.foodstandards.gov.scot/downloads/Financial_Performance_Reporting.pdf)

To 31 March 2018

[https://www.foodstandards.gov.scot/downloads/12\\_-\\_Financial\\_Performance\\_Report\\_-\\_May\\_2018.pdf](https://www.foodstandards.gov.scot/downloads/12_-_Financial_Performance_Report_-_May_2018.pdf)

To 30 June 2018

[https://www.foodstandards.gov.scot/downloads/2\\_-\\_Financial\\_Performance\\_Report\\_-\\_180807.pdf](https://www.foodstandards.gov.scot/downloads/2_-_Financial_Performance_Report_-_180807.pdf)

To 30 September 2018

[https://www.foodstandards.gov.scot/downloads/10\\_-\\_Financial\\_Performance\\_Reporting.pdf](https://www.foodstandards.gov.scot/downloads/10_-_Financial_Performance_Reporting.pdf)

## **Annual Report and Accounts**

[FSS Annual Report and Accounts 2017-18](#)

[FSS Annual Report and Accounts 2016-17](#)

[FSS Annual Report and Accounts 2015-16](#)