Briefing

Food law enforcement – putting consumers first

Summary

Consumers rely on effective food law enforcement to ensure that they can trust food is safe and honestly labelled. But the current system is under increasing strain. Food production is becoming ever more complex, supply chains more globalised while enforcement resources are limited and subject to repeated cuts. The UK's decision to leave the EU will also present new challenges as well as allowing for greater flexibility. Gaps that will be created in co-ordination and oversight currently carried out at EU level, as well as checks on production facilities in countries that we import from and checks on food we export, will need to be addressed.

The Food Standards Agency (FSA) [1], along with Food Standards Scotland (FSS), [2] is currently undertaking a fundamental review of how food enforcement works. This Regulating Our Future project is considering whether the approach and responsibilities should be changed – including whether more should be done by businesses or private inspection bodies, rather than public authorities, and the balance between what is done by the FSA and FSS, as national regulators, and local authorities who currently have most of the responsibility.

Which? has repeated analysis of the national landscape of food hygiene enforcement to see how effectively business compliance with hygiene rules is being ensured by different local authorities. While businesses are legally responsible for ensuring the safety of what they sell, our consumer research shows that consumers expect that this is over-seen and checked, including strong support for businesses to be inspected before they start to sell food

We have looked in-depth at the data submitted by local authorities to the FSA[3] and developed indicators in order to compare them (consumerinsight.which.co.uk/maps/hygiene). The 2015-16 data presents a picture of many local authorities managing to achieve high levels of compliance for high and medium risk food businesses in their area, but a lot of variation and some clearly struggling to fulfil their consumer protection responsibilities. Business compliance levels with hygiene standards can range from 35% to 98% for high and medium risk businesses depending on the part of the country.

The pressure on local authority consumer enforcement responsibilities is not unique to food law, but reflects wider pressures on local authority Environmental Health and Trading Standards work. Unlike many areas of consumer enforcement that fall to local authorities, food has the benefit of national regulators with a clear remit to put consumer interests first. It is essential that consumer interests drive the FSA and FSS review and that the patchy picture of compliance our research has highlighted is addressed.

There are around 500,000 cases of food poisoning a year from known pathogens[4]. Maintaining hygiene standards so that it can be prevented is therefore crucial. Consumers also need to have confidence that the food they buy is what they think they are paying for. The horsemeat scare, where beef was

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[1] https://www.food.gov.uk/enforcement/regulation/regulating-our-future

[2] Developing the FSS Regulatory Strategy, Food Standards Scotland consultation, 24th January 2017

[3] The Food Standards Agency Local Authority Monitoring System (LAEMS): https://www.food.gov.uk/enforcement/monitoring/laems

[4] Second Infectious Intestinal Disease Study, Final Report, 2015, Food Standards Agency and Department of Health

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substituted for horsemeat across a range of products, highlighted the vulnerability of supply chains to food crime where there are opportunities to substitute cheaper and sometimes unsafe ingredients.

The FSA/FSS Review therefore needs to ensure a system that is able to address the breadth of current challenges and ensure that the resources, expertise and tools available for enforcement match the nature of the risks. It is an opportunity to innovate and take a fundamental look at enforcement, while maintaining important principles, such as independent checks.

The future system must, therefore:

1. **Understand the risks**
- A more strategic approach is needed based on a better understanding the nature of food businesses and supply chains, the hazards and risk they present, as well as new and emerging risks. With the UK leaving the EU, systems will be needed to maintain the flow of intelligence between EU Member States, as well as wider trading partners and ensure continued rapid exchange of information.

2. **Enhance expertise and review responsibilities**
- Resources and expertise need to be better matched to these risks, including how responsibilities are shared between the FSA and FSS and local authorities as well as across local authorities. The FSA and FSS must take a stronger role, particularly for more complex businesses. This will be essential for Brexit as the UK takes on responsibilities currently carried out at EU level, including greater import and export checks.
- The roles of the different professions and the split between Environmental Health and Trading Standards within local authorities in most of the UK should be reviewed.
- Any role for private third party inspection and certification bodies needs to be considered with caution. While there are gaps in the system, independence is crucial.

3. **Create meaningful incentives for compliance**
- Businesses should meet minimum requirements before they can start to trade through more robust registration prior to trading.
- The system must continue to be risk-based with more attention given to the highest risk businesses.
- Fees for enforcement, including inspections, if collected in a way that is efficient and avoids conflicts of interest, should provide resources and help incentivise compliance.
- Display of Food Hygiene Rating Scheme (FHRS) scores should be mandatory for businesses in all parts of the UK, not just Wales and Northern Ireland as is currently the case.

4. **Uphold the independence of the system**
- Independent enforcement is essential for consumer confidence, as well as wider confidence in UK food, and must be retained.
- The status of primary authority partnerships between businesses and local authorities (as well as potentially the FSA) needs to be reviewed so that it does not constrain enforcement action or create conflicts of interest and primary authority advice can be independently reviewed.

Introduction

A large body of food legislation is in place which aims to ensure that food is safe, the standard people expect and that they can make informed choices, most of which is currently agreed at EU level. It is businesses responsibility to ensure that food is safe and of the nature, quality or substance demanded[5]. Responsibility for enforcing this falls to a range of bodies. The Food Standards Agency (FSA) and Food Standards Scotland (FSS) have responsibility at national level, but much of the work is carried out by local authority Environmental Health and Trading Standards Services, backed up by public analysts and port health officers for border controls.

Consumer research conducted by Which? has highlighted how important people think it is to have these checks in place. A Which? survey in 2015[6] found that:
- 9 in 10 (89%) thought that food businesses should be inspected to ensure that they are complying with food hygiene requirements before they start to sell food to the public
- 8 in 10 (79%) wrongly assumed this to already be the case
- 9 in 10 (91%) said they would be concerned if constraints on local authority resources meant that food businesses in their area were no longer inspected for food hygiene regulations (86% in the case of food standards), and
- 86% would be concerned if they were inspected less regularly (81% in the case of standards).

Previous Which? analysis has, however, highlighted that many local authorities have been struggling to keep on top of business compliance in their area[7]. Our analysis of the FSA's Local Authority Enforcement Monitoring System (LAEMS) data in 2014 and 2015 showed a lot of variation in terms of business compliance, as well as whether local authorities were able to keep up with businesses in their area, rate them for risk and carry out the interventions needed.

With the FSA and FSS currently conducting a fundamental review of the system of food law enforcement and a number of challenges facing the system, we have repeated this analysis and updated our comparison of local authorities around the country. This briefing sets out the findings in the context of the wider challenges facing the system and makes recommendations for the approach that is needed in order to ensure consumers can have confidence in the system and the safety and standard of the food they buy.

The current system

The FSA is the UK competent authority for the UK and sets the broad framework for enforcement. It has policy responsibility for food safety issues, as well as enforcement responsibility for food safety and standards (such as correct labelling, for example). Policy responsibility for food standards falls to Defra. The FSA has established a Framework Agreement with local authorities and it regularly audits them. In Scotland, this oversight lies with FSS, since it was created as a national agency for Scotland in 2015. A Food Law Code of Practice[8] specifies the qualifications enforcement officers need to have, based on the EU Official Controls Regulation[9].

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[5] Food Safety Act 1990; General Food Law Regulation (EC) 178/2002

[6] Populus, on behalf of Which?, surveyed 2791 UK adults online between 14th and 15th January 2015. Data were weighted to be demographically representative* of the UK population.

[7] Ensuring Consumer Focused Food Law Enforcement, Which?, January 2014; The Food Enforcement Lottery, Which?, February 2015.

[8] Food Law Code of Practice 2015

[9] Regulation (EC) No 882/2004 on official food and feed controls (under revision)

At the end of 2015, the FSA established a food crime unit. This was initiated by the Elliott review into the horsemeat incident[10] which recommended that a centralised unit be established. The Unit has initially focused largely on evidence gathering, but a review of its status after two years[11], recently recommended that this be developed into a fuller investigatory capacity. This would enable the FSA to take on cases of crime that are too complex or national for local authorities to deal with, or not complex or serious enough for the police to deal with. The FSA also provides other forms of support, such as resources for some authorities in taking complex prosecution cases and co-ordinating national outbreaks or scares (as seen with horsemeat). Public Health England (PHE) will also have a role in food poisoning outbreaks.

Some types of food also have more specific enforcement regimes because they are particularly high risk. This includes controls over meat and meat products. This falls to the FSA which under EU law over-sees enforcement in slaughterhouses and meat plants. EU law sets out the competency and qualifications required of inspectors to do this – with a more relaxed approach for poultry. While some responsibilities fall to official veterinarians, others can be carried out by official meat hygiene inspectors and, for poultry, by plant staff employed by the business. The approach to meat inspection has been under separate review at EU level. The main area of divergence between the UK and other member states has been the role of official veterinarians. These have historically played a greater role in food safety than has been the case in the UK, where these responsibilities largely fell to EHOs.

Enforcement approach

Enforcement is based on the risk that a food business presents. This affects the way that local authorities allocate resources and target interventions, such as inspections, as well as how they decide when to take more formal enforcement action, including prosecutions.

The risk is based on an assessment of the potential hazard which includes the type of food and method of processing and the consumers at risk (eg. whether the business supplies food nationally or internationally and whether it sells to vulnerable groups of people); the level of compliance; and the confidence in the management and control procedures. Food businesses are required to register with their local authority at least 28 days before they start to trade to enable the local authority to visit them and assess their risk – although this is not strictly enforced.

Local authorities can use a range of interventions to increase compliance by food businesses. These including conducting inspections, auditing their practices and carrying out sampling (eg. testing products to see if they are contaminated or meet certain standards) as well as advice and education. The tools available to ensure compliance vary for food hygiene and food standards breaches and reflect how imminent the risk is, but include informal notices setting out the action needed in the form of a letter; improvement notices (in the case of food safety issues) which are legally enforceable; hygiene emergency prohibition notices (and emergency prohibition orders) which are used when there is a risk to health; detention or seizure of food notices, which are used where immediate action is needed to detain or seize food because there is a risk to health; and ultimately prosecutions.

The Food Hygiene Rating Scheme (FHRS)[12] operates in England, Wales and Northern Ireland and a different Food Hygiene Information System is in place in Scotland. These schemes enable consumers to see how businesses perform – based on a score of 0-5 in the case of the FHRS and a pass/fail rating in Scotland. The Scottish system is currently under review.

There has been an increasing focus on reducing burdens on businesses. The Government has, for example, heavily promoted primary authority partnerships between businesses and local authorities with a strong focus on provision of advice (see Challenges).

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[10] Elliott review into the integrity and assurance of food supply networks: final report, September 2014

[11] National Food Crime Unit Review for the Food Standards Agency, November 2016

[12] http://ratings.food.gov.uk; http://www.foodstandards.gov.scot/food-safety-standards/food-safety-hygiene/food-hygiene-information-scheme

Challenges facing food enforcement

Food law enforcement has reached a critical point in several respects and the next few years are likely to see a lot of change. There are a broad range of challenges that will impact on the way that it is delivered and how effectively consumers will be protected.

Diversity and complexity of food production:
The food supply chain and food production methods are increasingly complex and globalised, and therefore have the potential to introduce new risks that can be quickly spread. There are many diverse businesses of varying levels of complexity and size. Over 630,000 food businesses are registered[13] - from multi-national food manufacturing to local producers and small take-aways. These all present different inherent risks, which it is the food business' responsibility to effectively manage and local authority enforcement officers and the FSA or FSS to over-see. Much of the food eaten in the UK, or ingredients used to produce it, come from a broad range of countries which means that hazards in one part of the world can quickly spread. The rapid turnover of food businesses in some parts of the country also adds to the challenge. With new businesses opening and ownership or management frequently changing, it can be difficult to keep on top of businesses within an area, particularly cities and urban areas where there is a high concentration of food businesses. While businesses should register before opening, this is largely a paper exercise with no conditions currently attached and it is not effectively enforced.

Pressure on resourcing and expertise:
Consumers' line of defence against this complexity is generally provided by local TSOs or EHOs who may carry out food enforcement work along with other responsibilities. Pressures on local authority resources mean that some local authorities have shrunk the services that they provide - and our research reflects how this, and the ability to keep on top of the food businesses in the area, can vary for different authorities. The overall number of full time equivalent professional staff nationally decreased by 6% (from 2303 to 2164) between 2014/15 and 2015/16 – with bigger cuts made for food standards work (10.3% less staff – from a total of 507 to 455) than food hygiene (4.8% - from 1796 to 1709). Added to this, the FSA's resourcing has also been reduced. To help address a wider trend in reduced public funding, the European Commission proposed the introduction of fees charged to businesses for enforcement work during the recent review of Official Controls legislation. This was not supported by Member States including the UK as a requirement – although it was agreed that it should be an option. The UK will no longer be constrained by the EU framework in the coming years in any case.

As well as the issue of resourcing, local authorities also need to maintain sufficient expertise to be able to effectively audit, monitor and enforce standards within this broad range of food businesses. This can require specialist expertise. It can also be a large financial risk for a local authority when taking legal action against a global, multi-national company for example and specialist legal advice will also be needed.

Financial incentives for food crime:
As the horsemeat incident in 2013 highlighted, pressures on food prices can create incentives on some businesses to reduce costs and in some cases, cut corners – or in extreme situations, deceive or commit food crime. Which? food testing has found problems with food fraud in a range of products from a range of food outlets – from lamb take-aways containing no lamb to supposed oregano on sale in supermarkets that was mainly olive and myrtle leaves. With food prices predicted to continue to rise as a result of currency exchange rates, other Brexit effects and wider pressures on the food system and price of commodities, this could become a greater risk.

National responsibility vs local delivery:
The FSA is the competent authority for food controls in the UK. It is therefore accountable under EU legislation on food controls, as well as under the Food Safety Act and, at least theoretically, can step in to take over enforcement work where a local authority is failing. Although FSS has responsibility for food safety and standards in Scotland, it is still the FSA that is the overall UK authority. Resourcing and

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[13] Annual report on UK food law enforcement, 1 April 2015-31 March 2016, Food Standards Agency

funding of food law enforcement is not, however, determined at national level and is subject to local prioritisation. The FSA therefore doesn't have control over delivery of the system for which it is responsible. In the case of enforcement of animal feed law, where the European Commission auditors found failings with UK enforcement, a National Trading Standards Team has been set up to co-ordinate the work that individual local authorities were failing to do. This is the only example in the food area – and even in other areas, these national teams have limited resources and status.

Duplication of professional roles:
Resourcing of food enforcement is also complicated by the split in responsibilities between EHOs and TSOs. While this has historically made sense, it is questionable whether it does at a time of constraints and in view of the way the food supply chain has transformed. TSOs, usually based at County level, unless part of a unitary or metropolitan authority cover food standards; whereas environmental health officers, usually at district council level, cover food hygiene and safety. The boundaries can however become blurred – animal feed controls fall to Trading Standards for example. In Scotland and Northern Ireland, EHOs carry out all functions. The situation is more complex for some specific foods – such as the role of an official veterinarian already referred to in relation to meat inspection. The concept of a single food enforcement officer at local authority level has previously been proposed, but not taken forward in any meaningful way. Leaving the EU provides an opportunity to review the professional competencies that are most appropriate. This however needs to be done in a way that does not reduce consumer protection or introduce any conflicts of interest.

Reducing business burdens agenda:
A wider challenge for consumer enforcement is the current Government emphasis on reducing burdens on businesses. There is a danger that this, if taken too far, will lead to local authorities failing to take effective enforcement action when it is needed. The Government has, for example, heavily promoted primary authority partnerships (PAPs), where a business can partner with a local authority and help fund its enforcement work on a cost recovery basis. This does not yet apply in Scotland. While intended to ensure a single point of contact for a business that operates in more than one area, there is a heavy focus on provision of advice and this risks undermining the ability of the local authority to step in to take formal enforcement action when necessary. There may also be at least a perception of a conflict of interest if the business has an important role in the local community. The primary authority scheme also requires other authorities to defer to any advice that the primary authority gives and therefore limits the ability of another authority to take action, even if there is a problem with an outlet or product in their local area. There is, however, currently no mechanism to challenge primary authority advice, which in effect becomes national advice – for example, where a different local authority considers another approach is required, there is no process for this. The role of primary authority was extended in 2016 to national regulators, but it is not yet in place in Scotland. The FSA and FSS could therefore take on this role with larger or more complex businesses, ensuring that while providing advice on compliance to businesses, they retained full potential to take formal enforcement action when necessary to protect consumers, in line with their responsibility to put consumers first.

Tools and sanctions:
The tools and approaches to enforcement also vary in different parts of the UK and have limitations. In Scotland for example, it is a legal requirement to report food fraud[14]; it isn't in England. Remedial Action Notices can be used to require a wide range of businesses to quickly rectify breaches without resorting to action through the Courts in Scotland, Wales and Northern Ireland, but their use is much more limited in England. FSS is also looking to introduce the option of fixed penalties. As set out above, primary authority partnerships place a strong and potentially inappropriate emphasis on advice between a local authority and a business, but this advisory role is being heavily promoted. As well as having the full range of tools to incentivise compliance, it is also essential that there are effective deterrents. The Sentencing Council has recently strengthened guidelines that cover food law breaches[15], with the aim of creating stronger penalties. There have often been difficulties ensuring that the Courts take food safety and standards breaches sufficiently seriously. The establishment of the

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[14] Food (Scotland) Act 2015

[15] Health and safety offences, corporate manslaughter and food safety and hygiene offences, November 2015 (enforcement date February 2016), Sentencing Council

Food Crime Unit has also reflected how food crime has not been taken sufficiently seriously compared to other crimes and therefore needed a national specialist team.

Consumer information and positive incentives:
Consumers are reliant on checks by local authorities and the FSA to make sure that when they eat out food is safe. It's not easy as a consumer to work out from the nature of the restaurant, shop or take-away, whether a business is likely to take hygiene seriously or not. The introduction of the food hygiene rating scheme (FHRS) has made this easier. Hygiene ratings based on inspections are made available by local authorities and can be accessed via the FSA and FSS web-sites. In Wales, it is however, mandatory for businesses to display the hygiene rating. This is also being required in Northern Ireland. It is not currently a requirement in England, where display is voluntary and therefore consumers are unlikely to be able to see which businesses perform poorly. FSS is reviewing the scheme in Scotland – both in terms of its approach and mandation. The FSA has said it intends to propose widening the scheme to England, particularly in view of evidence from Wales that mandatory display has incentivised businesses to improve their standards[16]. Up until now, making it a mandatory requirement has fallen foul of the Government's deregulatory drive, including a rule that for every new law introduced, three must be scrapped. It is important that this is addressed and that there is a national scheme that is visible to consumers in food premises across the UK.

Leaving the EU

At a more fundamental level, as the current system is heavily underpinned by EU regulation, audit and co-operation, Brexit will mean that there will be a lot of gaps to fill in terms of checks on imports and exports. The UK currently works closely with other EU member states, the European Commission and the European Food Safety Authority. EU legislation sets out how official controls should be carried out and the European Commission conducts audits within Member States as well as within third countries who we import from to check compliance with food law requirements[17]. Post-Brexit, the UK is likely to have to do this at a national level, as well as assessing the standards of food we export meets requirements, which will require extra resourcing and a new approach. In this case, bodies such as the Codex Alimentarius Commission, the international food standards setting body, and its Committee on Food Import and Export Certification Systems (CCFICS) may become more significant.

Leaving the EU will also give the UK the option of moving away from the approach and competencies set out under EU Official Controls regulation – which is a risk as well as an opportunity. The EU's approach currently has a strong emphasis on independence and through mechanisms such as the Rapid Alert System for Food and Feed (RASFF) means that there is early warning between Member States when problems are found.

The national picture

Our analysis of the FSA's LAEMS data from April 2015-2016 has enabled us to compare local authorities and see which are having most difficulty fulfilling their enforcement responsibilities. We used three indicators that we developed for our previous analysis in 2014 and 2015. These are designed to compare authorities based on how many of their high or medium risk food businesses are complying with hygiene rules, as well as how pro-active the local authority is in ensuring compliance. We have therefore taken account of[18]:
- the proportion of medium and high risk premises that are compliant
- the proportion of total premises that have been rated for risk; and
- the proportion of planned interventions (eg. inspections or follow up actions) the authority achieved.

Detailed findings and an interactive map showing how each local authority compared is available at http://consumerinsight.which.co.uk/maps/hygiene.

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[16] Update report for the National Assembly for Wales, Implementation and Operation of the FHRS in Wales, August 2015

[17] https://ec.europa.eu/food/audits_analysis_en

[18] We scored each local authority against the UK average for each of the three criteria, and then combined those scores giving 50% of the weighting to the indicator for compliant high and medium risk premises – as their main purpose is to ensure compliance – and 25% of the weighting to each of the other two criteria.

The FSA's data paints an overall picture of depleted resources managing to achieve improvements in enforcement actions and compliance compared to the previous year. However, there is a great deal of variation nationally.

- On the positive side, despite the reduction in resources and an increase in the number of food businesses, the proportion of local authorities with broad levels of business compliance of over 90% increased from 84% to 87%.There was a small increase in food hygiene enforcement interventions (by 0.5%) and a bigger increase in food standards interventions (by 8.9%). The total number of enforcement actions also increased by 5.4%.

- Overall, the top authorities based on our indicators were: Erewash, Eden, Basingstoke and Dean, Brentwood, Hartlepool, North Devon, North Dorset, Orkney Islands, South Lakeland, Sunderland and West Dorset. The bottom three were: Hyndburn, Birmingham and Newham.

- We found that around 2 in every 10 food establishments in the UK are not meeting hygiene requirements, however in 20 local authorities the chances of someone buying from a food business that isn't meeting hygiene requirements was as high as 1 in 3, and in the lowest rated authority Hyndburn, this was as high as nearly 2 in every 3 establishments. The proportion of non-compliant businesses ranged from 35% in Hyndburn to 98% in Wynchavon, Derry and Strabane, Anglesey and Daventry.

- The number of food businesses in a local authority area varies enormously, requiring differing levels of resourcing and expertise. But we still found a great deal of variation between similar types of area and authority. Birmingham with 8071 food businesses was second from bottom overall, based on our scoring – achieving 87% of risk ratings; 59% compliance (medium and high risk businesses) and achieving 79% of planned interventions. Leeds in contrast has 7603 premises and managed 96% of risk ratings; 82% compliance and 100% of interventions. Cornwall had the largest number of food businesses to deal with overall (8471) – and 88% of the high and medium risk ones were compliant.

- Bexley was the best performing of the London Boroughs, achieving 100% of risk ratings, 90% compliance and 100% of planned interventions. This is a turnaround from when Which? first analysed the LAEMS data in 2014. Bexley was worst for the whole of the UK at that time with just 57% of medium and high risk businesses complying with hygiene rules[19]. London Boroughs overall appear to be struggling, possibly reflecting, as with other cities, the high turnover of businesses. Newham, while having rated 93% of businesses for risk and achieved 95% of its interventions, still only had a 49% rate of compliance, making it the poorest performing of the London Boroughs included in the data set.

- Bexley was the local authority that had shown the most significant improvement since our analysis two years ago. It made changes following our previous findings, including increasing staffing levels and focusing on the poorest performing businesses. Bexley was followed by four other English authorities: Sunderland, Stockport, South Cambridgeshire and Barrow-in-Furness. In contrast, the local authorities where there had been the most decline since our previous research were (also all English): Woking, Manchester, Castle Point, Charnwood and the London Borough of Redbridge.

- Mandatory display of food hygiene ratings by businesses in Wales may be one reason why there were comparatively high levels of compliance across the Welsh authorities. This ranged from 77% for Bleanau Gwent to 98% for the Isle of Anglesey. They were also generally on top of the risk rating of businesses, although some, such Swansea and Denbighshire were more limited in achieving the planned risk ratings.

- Edinburgh is the authority with the highest number of premises in Scotland (6033), followed by Glasgow (6170). Edinburgh was 379th overall, largely due to only 60% of medium and high risk premises being compliant. Glasgow was 376th and had 72% compliant. Falkirk has the lowest

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[19] http://www.staticwhich.co.uk/documents/pdf/ensuring-consumer-focused-food-law-enforcement-445280.pdf

compliance overall in Scotland (57%). The best overall rankings were for Orkney Islands, North Lanarkshire and East Ayrshire.

- Compliance for the high and medium risk businesses ranged from 80-98% in Northern Ireland. Derry and Strabane with the smallest number of businesses (992) had 98% compliance. Belfast (3638 businesses) had 91%, but had also achieved 100% of risk ratings and 98% of interventions. The poorer performers based on our three indicators were Causeway Coast and Glens (230th overall) and Antrim and Newtonabbey (219th).

- Of the English Metropolitan Boroughs, Birmingham was ranked lowest, followed by Manchester. Sunderland, followed by Stockport, were the best in this category. Hyndburn and Erewash were respectively the poorest and best of the English District Councils and overall.

As with our previous analysis, this research shows that there can be a lot of variation. While the reality of cuts to public spending is clearly having an effect, it is not alone the reason why some local authorities are able to ensure higher rates of compliance than others. There is therefore further scope to share and promote best practice and ways of working.

Highest ranking UK local authorities

Local Authority Name	Total count of Establishments	% establishments rated for risk by LA	% ABC rated premises found broadly compliant	% interventions achieved
1.Erewash	947	99	97	100
2.Eden	1,069	99	96	99
3. Brentwood	672	100	94	100
4. West Dorset	1,683	98	97	97
5. Sunderland	2,145	100	95	95
6. Basingstoke and Deane	1,280	100	94	100
7. Orkney Islands	447	99	94	100
8. North Dorset	795	100	97	89
9. North Devon	1,668	98	96	97
10. Hartlepool	820	100	93	100

Lowest ranking UK authorities

Local Authority Name	Total count of Establishments	% establishments rated for risk by LA	% ABC rated premises found broadly compliant	% interventions achieved
386. Hyndburn	766	92	35	67
385. Birmingham	8,071	87	59	79
384. Newham	2,293	93	49	95
383. Ealing	3,254	89	61	72
382. Lewisham	2,587	86	74	43
381. Camden	3,607	85	78	37
380. Bristol, City of	5,057	85	78	39
379. Edinburgh	6,033	87	60	98

378. Isles of Scilly	140	86	65	90
377. Manchester	4,885	89	64	80

We asked the lowest ranking authorities to comment on our findings. Ealing commented that its enforcement is one of the highest in the country, and that in 2015/16, they served the third highest number of food hygiene prohibition notices in the UK and concluded the fourth highest number of prosecutions. They say they have one of the highest numbers of food premises in London with more than 3,250 establishments including large, high-risk food manufacturers, restaurants, cafes and shops.

The City of Edinburgh said that its Environmental Health Team robustly inspect and assess food premises, providing written advice and guidance on what they must improve in order to achieve a pass. The Isles of Scilly told us that the FSA conducted an audit in September 2013 and a number of issues were highlighted with the service delivery of food law enforcement. Since February 2015 it says it has addressed the majority of the action points highlighted in the FSA audit report and is working to ensure that all food premises are inspected at a frequency as described in the Food Law Code of Practice.

Birmingham City commented that "*the Risk Ratings are reflective of the conditions found at the inspection and the need for those premises to have more frequent unannounced inspections… Officers Risk Rate premises based on the conditions found at the inspection, so that we can inspect the poorest premises more frequently. This is in accordance with the FSA code of Practice. The score will not change until the next unannounced inspection…. The whole point of this is to risk rate all our premises so we can prioritise the poorest performing businesses.*" Birmingham also said that it is not responsible for businesses complying with the law, but that it is responsible for enforcing the law where failures are found.

The Regulating our Future review

The FSA[20] and FSS review[21] has been initiated against the backdrop of many of the challenges that we have set out and could potentially lead to fundamental reform. A separate review of food recall systems is also being carried out. The FSA has set out several principles guiding its approach:
- Compliance is the responsibility of food businesses
- Focus the regulatory effort in a tailored and proportionate way
- Use all available sources of information
- Recognise businesses that do the right thing and take action against those that don't
- Businesses should meet the cost of regulation.

FSS has proposed similar principles for official control delivery:
- Official controls must verify that food business operators are meeting their responsibilities to ensure that food is safe
- Responsible, compliant businesses may be recognised through alternative regulatory mechanisms of assurance approved and verified by FSS
- Official controls should ensure that non-compliant businesses become compliant, and be effective in preventing persistently non- compliant businesses from operating
- Where possible there should be consistency of approach regardless of the official controls being delivered
- All businesses should contribute to the costs of official controls, which should be no more than they need to be. Non-compliance should cost more than compliance, and should not be supported by public subsidy
- The outcome of official controls should be transparent, and consumers should be given the relevant information to make informed decisions.

There is interest in learning from other countries, such as New Zealand, which place much greater responsibility on businesses to conduct their own quality assurance through private inspection bodies,

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[20] Regulating our Future Programme Update, FSA Board Paper, 15 March 2017: https://www.food.gov.uk/sites/default/files/fsa170304.pdf

[21] https://www.food.gov.uk/enforcement/regulation/regulating-our-future

reducing the role of public authorities. While it is important to base the frequency of inspection and other types of oversight on risk, this however raises a number of questions including the independence, competence and responsiveness of auditors or inspectors that are employed by businesses, rather than working for public authorities. The role of the FHRS is also particularly significant as consumers need to be able to rely on the consistency and accuracy of the ratings that they see. How the auditors themselves are audited would therefore be crucial as well as the relationship with local authorities or the FSA/FSS and the continued ability for local authorities or the FSA/FSS to step in when needed.

Use of assurance schemes and audit by businesses should therefore be a factor taken into account when determining how frequently businesses should be inspected, but should not be a substitute for effective oversight by local authorities and the FSA/FSS – as circumstances in a food business can easily change and the incentives on private inspection bodies are likely to be different to those of effectively run public enforcement bodies.

Alongside these potential changes to responsibilities, the Review is also considering issues such as future funding models, how compliance can be incentivised and poor performance dealt with, whether registration requirements should be strengthened, for example through a permit to trade, and what role there is for greater use of company data to help assess compliance. The following issues must be addressed as part of this review and ensure a robust system that serves consumer interests post-Brexit:

1. Understand the risks
- A much more in-depth understanding of the nature of businesses, the hazards and risk presented is needed. Our analysis shows there is a very variable picture nationally – in terms of levels of compliance, but also the number and nature of businesses in different parts of the country. Some of these will require specialist advice and understanding of the systems and therefore controls that are needed; others may be simpler in terms of their operation, but require regular oversight and enforcement action. The FSA and FSS have emphasised the need to make better use of data – and this will be crucial in order to help shape the system and ensure its responsiveness going forward.
- The Food Crime Unit needs to be developed and data, whether in relation to inspections, complaints, monitoring or surveillance, better co-ordinated nationally.
- There should be a system for registration of food businesses prior to trading that is enforced so that the risks posed by a businesses and confidence in its management can be assessed and failings rectified at the outset.
- Systems will be needed to maintain the flow of intelligence that currently comes through the EU Rapid Alert System for Food and Feed (RASFF), EFSA's work on emerging risks and regular contact with other Member States. Relationships will also need to be developed with a much wider range of countries and their agencies, both as a source of intelligence about risks as well as to understand the production, supply and enforcement situation of current and potential trading partners.

2. Enhance expertise and review responsibilities
- There needs to be a more strategic sharing of responsibilities between the FSA and FSS and local authorities, as well as across local authorities based on the above. Some local authorities do now share regulatory functions with their neighbouring or similar authorities. While local priorities may vary, the FSA and FSS are uniquely placed as national regulators to assess the types of skills and expertise that exist, where it is currently located and where it needs to be. This includes considering where there are gaps in specialist expertise and skills, as well as regional needs and opportunities for sharing of resources, but with a strong focus on matching expertise to risks.
- The FSA's role needs to be significantly enhanced. This will be necessitated by Brexit, where there will need to be a system in place both to certify products for export as well as to ensure the safety and compliance of imports if we are without the current EU processes and infrastructure. As part of this, depending on the nature of Brexit, there will be a need to rapidly assess the types of hazards and their risk from both existing trading partners and new ones. If for example more products are coming from developing countries or countries with developing economies, their capacity to ensure compliance with our standards will need to be understood, as well as potential for new animal or plant health risks or contaminants. The FSA should also take on responsibility for particularly complex businesses.

- The roles of the different professions and the split between EH and TS should be reviewed with a longer-term perspective on the type of skills and expertise that is needed for the future.
- A greater role for private third party inspection and certification bodies needs to be considered with caution. While there are gaps in the system, its independence is crucial.
- The opportunity to review roles and responsibilities in light of leaving the EU should be taken. There is however limited scope for change other than the role of veterinarians for some specialist enforcement work. It is also essential that this is done purely from a consumer interest perspective and that the independence of the system is not undermined.

3. Create meaningful incentives for compliance

- The Review is considering whether there should be a simpler registration process that sets conditions for businesses to meet before they can trade. This should be taken forward. While a full blown system of licensing of food premises is likely to be unrealistic in the current climate, a form of enhanced registration would help to ensure that businesses had to meet minimum requirements before they could trade. This would provide greater consumer protection and potentially be more efficient than local authority action to force compliance once the business was already operating. The threat of removing permission to trade would also help ensure that compliance was maintained.
- In line with the FSA and FSS principles, businesses that can demonstrate that they have a good record of compliance, understand the risks of their business and how to control them and have good management should have less oversight, enabling more attention to be given to higher risk businesses. Where businesses use third party assurance schemes and commission their own audits, this should also be taken into account. It should not however mean that the business is no longer subject to oversight by local authorities or the FSA (or FSS). Circumstances can quickly change and, as the horsemeat scare demonstrated, there can be flaws in company systems, even in the case of major retailers and manufacturers.
- The introduction of fees for enforcement, including inspections, if collected in a way that was efficient and avoided any conflicts, could provide additional resources and help to incentivise compliance. Ensuring compliance would mean businesses would require less oversight and therefore pay less.
- The Food Hygiene Rating Scheme (FHRS) is an effective mechanism to improve compliance (as the experience in Wales has shown) as well as a very useful way for consumers to make informed choices about where to eat and shop. The display of hygiene ratings by businesses should be made mandatory in England and Scotland, as it now is in Wales and Northern Ireland. This should also apply to on-line food delivery companies. More than 9 in 10 people (93%) think that food businesses should be required by law to display their hygiene rating. The review of the Scottish scheme should bring it in line with the FHRS so that it provides more differentiation and therefore helps improve compliance by encouraging businesses to seek a higher score to attract more customers.

4. Uphold the independence of the system

- Independent enforcement is essential for consumer confidence and is therefore important to retain for both businesses and consumers. Going forward, it will also be important in order to ensure wider confidence in the quality and safety of UK food.
- The FSA therefore needs to be enhanced as an independent regulator at arms' length from government and ensure that it fulfils its responsibility to put consumer interests first. This includes supporting a strong Food Crime Unit within the FSA.
- Initiatives that could undermine this need to be reviewed. In particular, the status of primary authority partnerships needs to be changed so that it is ensured that the focus on primary authority advice from local authorities (or potentially the FSA) does not in any way limit or constrain their role in taking enforcement action when needed. This includes the introduction of a process for challenge and independent review of primary authority advice.
- Funding mechanisms, including the ability of local authorities to recover costs from businesses that are part of primary authority partnerships, as well as the potential for wider use of fees, need to be established in such a way that there is no conflict of interest .

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