

## Regulating our Future (RoF) – Briefing Paper

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The FSA's Regulating our Future programme is intended to deliver a completely new regulatory system for food within the UK. All aspects of food regulation – food safety, food standards and feed – are within the scope of the RoF programme. Programme delivery timelines are split into two phases – before (2019) and after Brexit. CIEH acknowledges that the UK has some of the safest food in the world and, while we accept that there is room for improvement, we are not convinced at this stage that the FSA has put forward a sufficiently compelling, evidence-based case of the need for transformational change.

An overview of the RoF programme published by FSA in July 2017 can be viewed [here](#).

### Contextualising RoF from both Government's and CIEH's perspective

- The Cabinet Office report – [Regulatory Futures Review](#) published earlier this year, sets the framework for future regulation and RoF is, in turn, following that framework
- One of the key drivers behind the RoF programme is the issue of falling capacity (particularly within English local authorities) to deliver the existing food control system. This has not been quantified and the impact on public health has not been communicated.
- Another major driver for FSA in respect of the RoF programme is to tap into businesses' own data to provide assurance to the regulator that food that is produced is safe and what it says it is. It is, however, currently an ongoing concern to CIEH that business will not willingly share their data due to commercial sensitivities
- It is crucial for CIEH that, at the conclusion of the RoF programme, FSA maintains its position as Central Competent Authority and is seen to be, and acts as, a strong regulator
- CIEH is clear that FSA's primary role is to set standards and to ensure robust systems are in place to make sure that those standards are maintained and delivered
- In respect of RoF, FSA's guiding principle is that businesses should have a choice about how they demonstrate compliance with assurance being an option. CIEH supports this position as long as it does not undermine LAs position as the competent authority for the delivery of official controls and formal enforcement action; however, CIEH also believes that where FSA has evidence that a LA has neither the capacity, nor the capability, to deliver an acceptable service, then FSA should use its current powers and take appropriate action to ensure acceptable delivery.
- The RoF system is largely a mirror image of the New Zealand model of food regulation introduced in their Food Act of 2014; however, a letter sent in January 2017 from the President of the New Zealand Institute of Environmental Health to the NZ Food Minister states that the system in NZ is not without problems in terms of cost to industry, confusion for consumers and business and failure of private sector assurers to report hygiene failures to NZ local authorities. Furthermore, reports from the Netherlands have shown that reducing public sector supervision in meat plants has taken place on the basis of a Government belief that private regulation of food safety would be at least as good. However, it is reported that

businesses and assurance companies in the Netherlands are unwilling to confront each other over risky behaviours and it is considered inappropriate for consultancies to inform regulatory authorities about such risky behaviour. This mirrors findings from New Zealand and it is alleged that this has resulted in a blurring of standards.

- A number of political questions involving Conservative political philosophy, an impending re-definition of Better Regulation and the politics of devolution are generating tensions and leading to challenges for the RoF development programme
- CIEH supports the development of a holistic approach to food safety, food standards and feed regulation, as intended by RoF, and wishes to support the development of UK food officers to ensure that they are appropriately skilled and competent to deliver official controls across all areas of food.

## RoF costs and businesses paying for regulation

One of the key principles of RoF is that businesses should meet the costs of regulation. CIEH supports this but believes that we need to be confident that the RoF proposals will not cost UK PLC significantly more than the current system, deliver few measurable benefits, reduced public protection and a reduction of confidence in the system.

- CIEH supports the principle that business should meet the cost of regulation; however, clarity is needed from the FSA on both the full scope of the costs to industry, the FSA and LAs, and the anticipated savings to the public purse that RoF will generate.
- CIEH would like to know how FSA intends to address a key concern of business; namely that business already believes that it pays for regulation via business rates. CIEH believes that FSA needs to address this urgently and produce a clear narrative on this issue.
- CIEH believes that the FSA should be prepared to explore a range of charging models from across the world including the Californian compliance rebate model

## Enhanced Registration

CIEH supports the 'Permit to Trade' concept but acknowledges the difficulties in introducing this at this time. CIEH therefore supports the RoF intention to develop a new 'enhanced registration' system that is designed to make it easier for food businesses to register with LAs or with a national registration system prior to entry onto a national database. Such a system will enable businesses to obtain information and guidance to help them comply with safety and standards regulations before they start trading. We also recognise the benefits of linking food business operators, particularly when addressing food incidents and we also see this as being important in delivering food traceability.

- CIEH encourages FSA to ensure that any new digital registration system joins up with requirements for other government departments such as HMRC, Home Office etc.
- CIEH believes that the current problem is not so much that there are large numbers of unregistered food businesses, but that food business operators do not proactively register their businesses. Enhanced registration is not without its risks and we are concerned about the potential for there to be large numbers of unregistered and potentially unregulated

businesses if we don't get this right. The current locally based EH Professional 'on the street' guards against this at present.

- CIEH is also concerned that requiring large amounts of registration data could also be seen as an additional burden on business and that, consequently, there is a balance to be struck here.
- CIEH believes that as part of the enhanced registration system, consideration should be given to the introduction of a requirement for a named, 'responsible person' to be identified and available for each registered and approved food business whilst so ever it is operating.

## Segmentation

In principle, CIEH supports the work on segmenting the market in accordance with risk but, more information is needed and CIEH is happy to work with FSA to develop this

## Certified Regulatory Auditors (CRA) – Third Party Assurance

Assurance is the central plank of RoF and the most contentious aspect. The focus on assurance strongly reflects the Cabinet Office report on regulatory futures and the FSA states that other Governments across Europe and around the world are placing greater reliance on private sector assurance schemes.

- CIEH supports assurance in principle – we acknowledge that it already operates in other areas of UK food regulation i.e. feed and primary production.
- CIEH acknowledges that many businesses already purchase additional assurance to supplement visits from LA EHPs – businesses do this because the frequency of LA inspections does not guarantee the level of brand protection required by businesses and/or their insurers.
- CIEH acknowledges that assurers hold large amounts of additional data concerning businesses, and their levels of compliance, and that this data could be made available to inform decision making by LAs.
- Consultancies delivering assurance services to business strongly believe that they are also delivering a public health function.
- Consultancies see no value in assurance being part of RoF unless they can determine and set a Food Hygiene Rating (FHRS) score as part of their assurance contract – this is opposed by many but not all LAs; it is also opposed by some consultancies and their clients who feel that it would materially impact on their relationship. It is also inconsistent with current legislative requirements in NI and Wales. British Hospitality Association (BHA) is currently developing an assurance system for the catering sector. The scheme, if accepted by FSA, would see BHA operating as a monopoly assurance clearing house for food hygiene assurance within the catering sector.
- CIEH acknowledges that the BHA proposals only relate to food hygiene and do not meet either the agency's aspiration or our own in respect of the development of a holistic food officer or holistic food control which we believe is long overdue.
- CIEH has provided a commitment to the FSA to develop a simpler assurance model which will be suitable across all industry sectors, not just catering and with a lower cost for businesses than that proposed by BHA. The draft CIEH scheme also reserves the current position of

Competent Authorities in delivering official controls but seeks to draw on the extensive data generated by assurers whilst setting equivalent competence standards for Certified Regulatory Auditors to those of Local Authority authorised environmental health professionals.

## FHRS

It is clear that much revolves around the perceived value of the FHRS system to both industry and consumers. CIEH supports the principle of FHRS – we believe that it empowers consumers to make choices about where they eat and buy food; however, we are conscious that some local authorities in England do not have sufficient capacity to sustain a statutory food hygiene rating scheme. We believe the FSA should first fully scope what a mandatory scheme in England might look like and then work with local authorities to better understand and quantify any resource shortfall and explore options for addressing it. Delivery of FHRS by assurers in the private sector is only one option and others should be considered.

## The holistic food officer

RoF documentation produced to date implies that in the future, all inspections will cover food safety, standards and, where appropriate, feed. CIEH supports the development of the holistic food officer and feels that this move is long overdue. It reflects calls made over many years in the Hampton, Rodgers and Lord Young reports and will assist in reducing the burdens on business

- Newly qualified EHOs currently undergo education and training on food safety and food standards. The development of competencies in respect of feed is a comparatively small addition to the current requirements.
- There is, therefore, considerable scope for CIEH to ensure the production of the holistic food officer.
- CIEH recognises that greater commercial awareness is a necessity for all food officers and we would be happy to discuss how this might be delivered with the FSA.
- CIEH's membership is representative across all sectors. Our newly developed Professional Competency framework will enable CIEH to recognise and assure an individual's level of professional competency against a robust, evidence-based standard. In addition, recent redevelopment of the professional membership pathway has strengthened the professional recognition of the Chartered Environmental Health Practitioner by ensuring that meaningful continuing professional development is achieved and a revalidation procedure is introduced to rigorously monitor and shape professional practice.

## RoF and the devolved administrations

Devolution of key powers from Westminster to Scotland, Wales and Northern Ireland presents particular challenges for RoF. Food safety is a matter that is devolved to all of the respective administrations. It, therefore, follows that neither the Westminster Government nor the FSA can unilaterally make decisions in respect of food safety systems and processes; it must secure the agreement of the devolved administrations and this builds-in additional levels of complexity. CIEH should, therefore, fully engage in discussions with the administrations in Wales and Northern

Ireland to ensure that the respective governments are left in no doubt as to its policy positions in respect of RoF.

In respect of the island of Ireland, the Good Friday Agreement of April 1998, the foundation of the current peace process in Northern Ireland, sets out a complex and indeed unique series of provisions and establishes a series of co-operative institutions relating to a number of areas including:

- a. The status and system of government of Northern Ireland (NI) within the United Kingdom. (Strand 1)
- b. The relationship between Northern Ireland and the Republic of Ireland (ROI). (Strand 2)
- c. The relationship between the ROI and the United Kingdom. (Strand 3)

The agreement means in effect that ROI has a say in matters relating to NI that have an impact in ROI. Within the context of Brexit this could arguably include any system of food control that is not developed within the context of EU membership.

In Wales, Ministers have stated their preference for continues, independent, consistent local authority food hygiene inspections to be prioritised and maintained at appropriate levels.

A Welsh Government working group has been established at the request of the Minister for Social Services and Public Health to provide Welsh Ministers with assurance that the needs of Wales are taken account of within the RoF programme, in accordance with the Welsh Government's position statement.

## RoF – summary analysis as at November 2017

- RoF is designed to deliver a completely new food regulatory system for the UK; the impact of this programme for all, including business, consumers, CIEH and its members, is significant.
- As it stands, the RoF programme has the potential to deliver some system improvements in terms of market intelligence, better risk segmentation and in addressing regulatory capacity shortfalls (predominantly in England); however, the risks in terms of higher costs to both business and the country along with the risk of damaging public confidence in the regulatory system, are significant. There is also a significant risk that the resultant regulatory system will no longer align the UK with EU (our current major trading partner for food) and, at a time of Brexit, this will result in the development of avoidable barriers to future trade. Whilst CIEH is developing a possible assurance system; we are not yet convinced that the potential benefits outweigh these risks and we feel that other options for addressing known system problems should at least be considered.
- It seems that, at the moment, the key driver behind the RoF programme is the political philosophy of the Government.
- CIEH has been fully engaged with FSA in developing this programme since its inception and it is committed to that ongoing engagement. Our objective is to shape the resultant scheme to ensure that public protection and confidence are maintained and that the best interests of environmental health and our members are delivered.