

13th September 2024

Susan Jebb OBE, Chair
Katie Pettifer, Acting Chief Executive
FSA Board

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Dear Susan and Katie, and FSA Board

CIEH open letter in response to FSA National Level Regulation proposals

The Chartered Institute of Environmental Health (CIEH) is a professional body and charity incorporated by Royal Charter. Our vision is to ensure safer, cleaner and healthier environments for the benefit of all. Our work is grounded in protecting public health, and we engage extensively with the food regulatory system through our members, many of whom work in local authorities, provide consulting services to SMEs, and hold roles within large national retailers. Additionally, many CIEH members conduct third-party audits on behalf of national food businesses. This uniquely positions us to offer a broad perspective on the challenges and opportunities within the current food regulatory framework.

While CIEH values its collaboration with the FSA, we regretfully express significant concerns regarding the Achieving Business Compliance (ABC) paper included in the FSA Board papers for its meeting on 18 September 2024. We are submitting a question to the FSA Board asking them to confirm that they have considered these concerns and ask for their response. The update to the FSA Board in respect of the Achieving Business Compliance (ABC) programme asks the Board to:

Note the success of the ABC Programme in achieving its objectives. The formal programme is now coming to an end, but critical projects on local authorities and further work to support local authority delivery will continue within our Regulatory Compliance Division, and a new Business Compliance team will take forward ongoing work on new approaches to regulation.

Note the findings from the trial and agree to the implementation of phase one for national level regulation, which can be achieved with no increase in resources. Future phases would require ministerial engagement and further Board approval.

CIEH have significant concerns regarding this update and, therefore, urges the FSA Board not to agree the implementation of phase one of NLR. These concerns are:

- Risk of consumer loss of confidence and local point of reference
- Potential to add to public health risks
- Potential to overturn decades of local authorities-based food inspection and monitoring
- FSA's imagined role as a direct regulator
- Lack of transparency, consultation and evidence

Risk to consumer loss of confidence and local point of reference

Consumer confidence in the food regulatory system is a key priority that cannot be compromised. Any shift in regulatory models must be undertaken with the utmost caution to avoid damaging public trust. The lack of transparency surrounding the NLR proposal— what NLR is defined as, what is involved in phase one, the failure to release the evaluation report in a timely manner and engage in adequate stakeholder consultation—poses a risk to the integrity of the proposal.

CIEH is concerned that NLR may increase complexity for consumers and remove their local point of reference. The proposal lacks clarity on how these changes will benefit or be understood by the public.

The [Elliott Review](#) into the horsemeat scandal underscored the importance of consumer trust and transparency in the food system. The public must have confidence that any changes to regulation are designed to improve safety, not diminish it. Without a clear understanding of the potential risks and benefits of the proposed changes, the public may lose trust in the safety of the food system. Consumer confidence is built on transparency and engagement with all relevant stakeholders. The absence of these elements in the current process raises serious doubts about the ability of these proposals to maintain the high standards the public expects from the FSA.

Potential to add to public health risks

It is unclear what impact NLR will have on public health and may add to public health risks. The current local authority-based workforce is able to provide a holistic, competent assessment of other non-food technical areas when inspecting premises, such as health and safety, waste management, communicable disease etc., to protect public safety and health. The FSA have not provided information on how national level regulation will mitigate this if lost.

Potential to overturn decades of local authorities-based food inspection and monitoring

For decades, local authorities have been critical to the success of the UK's food regulatory system, offering irreplaceable local knowledge and expertise. Their understanding of regional risks and business operations is crucial for tailored interventions that maintain public safety at the community level. The Primary Authority partnership further enhances this model by providing strategic support

to businesses. Any proposed shift to NLR should undergo a detailed impact assessment to weigh the risks and benefits of altering this established system

It remains unclear whether the FSA has analysed local authority data on complaints, investigations, and enforcement actions, or what impact centralised oversight would have on these activities. These data would offer a more comprehensive view of the true regulatory challenges and effectiveness of current local authority oversight.

It is also unclear what framework is intended for using third party assurance instead of the local authority model. While CIEH recognises the value that third party assurance can provide in ensuring food safety, we must stress that for these audits to be truly effective, they need to adhere to robust standards of quality, including auditor competency, duration, governance, impartiality and comprehensive audit content. While CIEH notes the reference to 10,000 store audits within the paper presented to the Board, there is no information available on the quality of those audits. CIEH also questions the FSA's reliance on resubmission ratings, such as the 4.9/5 compliance rating for large supermarkets. First-time ratings would offer a more accurate measure of compliance. Moreover, increasing oversight on low-risk activity raises questions about the relationship between oversight and assessed risk compared to the existing model.

With no clarity on what NLR intends, nor any impact assessment, it is unclear what the impact will be for businesses. Any proposal could increase complexity for businesses without demonstrating that these changes would be beneficial. This issue could be further compounded should businesses operating across the three nations be required to comply with different regulatory mechanisms. We are concerned that without a proper appraisal of all available options, the FSA Board may be agreeing to the implementation of NLR that does not clearly state what will be achieved and may not be the most effective or efficient in safeguarding public health. Indeed, it may result in a solution which puts public health at greater risk.

FSA's imagined role as the direct regulator

The current NLR proposal represents a departure from the FSA's agreed role in the 2017 Regulating Our Future (ROF) programme, where the FSA was positioned as a supporting regulator. In your paper, the FSA considers assuming direct regulatory control for large national food businesses, reducing local authority involvement in inspections.

This shift introduces risks around the FSA's capacity to manage expanded responsibilities, particularly given past failures like the Russell Hume case, which exposed investigative shortcomings. Additionally, there is concern that this change may lead to workforce shortages, as local authorities or businesses may lose skilled inspectors to the FSA. Furthermore, the loss of local knowledge could weaken food safety oversight at the community level. Additionally, there appears to be no assessment of the impact should Wales and Northern Ireland never implement NLR. Additionally, it is not clear from the proposal what constitutes a 'national' business under the NLR framework. The term 'national' appears to be central to the scope of this proposal, yet there is no

clear definition of what qualifies a business as 'national'. What is the scale, spread, or nature of operations that would categorise a business as national? Without this clarification, it is difficult to fully assess the impact and scope of the NLR proposal.

Given the lack of rationale for reversing the previously agreed approach, we urge the FSA to conduct a detailed impact assessment before proceeding with this significant regulatory shift.

Lack of transparency, consultation and evidence

The FSA has built its reputation on transparency and working with stakeholders, but the NLR proposals have not met these expectations. The evaluation report for the ELR trial has only been shared yesterday, making it difficult for stakeholders, including CIEH, to assess the robustness of the evidence supporting NLR. There has been no meaningful consultation with key stakeholders, and it remains unclear how NLR differs from ELR.

Conclusion

Without clear objectives, detailed planning, and transparency about resources and the implementation of phase one of NLR risks undermining confidence in the food regulatory system. CIEH urges the FSA Board not to agree the implementation of phase one of NLR so that:

- The ELR evaluation report can be assessed by relevant stakeholders
- Detailed proposals for NLR can be made available, together with an impact assessment and clarity on how the imagined scenario of the FSA being a direct regulator fits into each phase
- Details of all appraised options for delivery models be made available
- Relevant stakeholders are consulted on any proposals across the three nations.

These steps are necessary to protect public health and maintain consumer confidence in the food regulatory system. CIEH would welcome the opportunity to explore modernisation of the food regulatory system and the CIEH remains ready to assist in assessing any proposals to ensure they serve the public interest and safeguard the high standards the public expects from the FSA.

Yours sincerely,

Fran McCloskey, CEO

Judith Hedgley, Chair of the Board of Trustees



On behalf of the Chartered Institute of Environmental Health