

## A FRAMEWORK FOR REGULATORY DECISION MAKING IN THE FOOD STANDARDS AGENCY

1. The statutory objective of the Food Standards Agency is to protect the health of the public and the interests of consumers in relation to food and drink<sup>1</sup>.
2. In meeting its objectives, we will be true to our core values:
  - We will put the consumer first, by improving the safety of food, by maintaining food standards, by giving honest, clear information, and by making it easier for everyone to choose a healthy diet.
  - We will be open and transparent, making policy decisions in an open and consultative way. The way we do this will reflect the nature of the decision to be taken: for example, whether we need to take urgent action to protect public health; whether the decision affects some stakeholders or some consumers more than others; and whether there are particular devolved issues needing input from our Advisory Committees for Scotland, Wales, and Northern Ireland. In formal consultations we follow the Cabinet Office Code of Practice on Consultation<sup>2</sup> and equivalent guidance in devolved countries. Our decisions are taken in the light of what people say to us through consultation or other routes<sup>3</sup>. We will continue to try out imaginative and innovative approaches to engaging with consumers and stakeholders.<sup>4</sup>
  - We will be an independent voice, impartial, honest and evidence-based. We aim to gain international respect for UK food safety and nutritional standards. We will publish our advice.<sup>5</sup>

---

<sup>1</sup> In the rest of this document the term “food” is used (as in law) to mean food and drink

<sup>2</sup> [www.cabinet-office.gov.uk/regulation/consultation/code.htm](http://www.cabinet-office.gov.uk/regulation/consultation/code.htm)

<sup>3</sup> see FSA Code of Practice on Openness [www.food.gov.uk/aboutus/how\\_we\\_work/copopenbranch](http://www.food.gov.uk/aboutus/how_we_work/copopenbranch)

<sup>4</sup> At its meeting in December 2005 (see [www.food.gov.uk/aboutus/ourboard/boardmeetings/boardmeetings2005/boardmeeting120805/minutes8dec05](http://www.food.gov.uk/aboutus/ourboard/boardmeetings/boardmeetings2005/boardmeeting120805/minutes8dec05)), the Board agreed objectives for consumer engagement and that the FSA should be creative and experimental in developing a multiplicity of modes of consumer engagement.

<sup>5</sup> Although we are accountable to the Westminster Parliament and the devolved administrations, we are entitled to make public the advice we give to Government Ministers. This means that the FSA can be seen to act openly and independently in looking after the interests of consumers.

- We will act on the best available evidence. We will seek and use the best expert scientific advice.
3. We use a range of classic regulatory and alternative approaches to help achieve our objectives. Our role as a regulator is to set the regulatory framework; food businesses are responsible for ensuring that they do not sell unsafe food or engage in illegal trade practices, and that food labelling and compositional standards are met.

### **Our vision**

4. Our vision is of a balanced and effective market where;
- businesses ensure that the food and drink that they sell is safe, fit for its intended purpose, and correctly described;
  - businesses manage effectively the food safety hazards within their products, processes and premises; and
  - empowered consumers have the information they need to make informed choices about what they eat and judgements about the health claims increasingly made about some foods.

### **Deciding whether to intervene: key principles**

5. Our remit for consumer protection spans the food chain “from farm to fork”. This breadth of remit is a particular strength as it allows us to remain responsive in a rapidly changing environment.
6. As a regulator, working with our enforcement partners across the UK, we will consider intervening to protect consumers where the market is not balanced, effective or provide proper levels of food protection, but will only intervene where the benefits justify action and outweigh the risks of inaction.
7. In deciding whether to intervene, we take into account:
- the evidence and extent of harm, or potential harm, to public health or consumer interests, based on the best scientific evidence;

- the prospects of intervention reducing that harm or mitigating the risks, balanced by the prospects of creating new and unintended risks;
- proportionality, taking account of the balance of risks, costs, and benefits to everyone concerned<sup>6</sup>, within our statutory duty to attach the greatest weight to protecting the interests of consumers;
- the risks of inaction – including the risk of loss of consumer confidence in the regulatory system.

We will assess the regulatory<sup>7</sup> and sustainability<sup>8</sup> impacts of our proposed actions.

8. We may intervene at different stages of the regulatory process:

- to secure or improve compliance with existing law:
  - ◆ at the European and international level (e.g. by co-ordinating activities with those of other national food authorities through international rapid alert systems);
  - ◆ at the national level (e.g. by encouraging voluntary withdrawals or recalls of products that do not comply with safety requirements);
  - ◆ at the local level through interventions by enforcement bodies (ranging from advice and coaching to prosecution);
- to encourage voluntary action that goes beyond strict legal requirements; or
- to seek a change in the existing law to make it more proportionate to risk or to protect against risks not previously identified.

### *An evidence-based approach*

9. Our decisions on whether and how to act are very rarely straightforward, and often require us to sift, consider and weigh a wide range of scientific, economic and social evidence. We are committed to basing our decisions on the best available evidence. We recognise the importance of drawing on a broad range of external expertise in a wide range of sciences, for

---

<sup>6</sup> We have a statutory responsibility to take costs and benefits into account when considering whether and how to exercise any of our powers. We will assess possible approaches not only in terms of improvements to public health, consumer protection and consumer confidence, but also in light of the effects on industry and other stakeholders.

<sup>7</sup> [www.cabinetoffice.gov.uk/regulation/ria/index.asp](http://www.cabinetoffice.gov.uk/regulation/ria/index.asp)

<sup>8</sup> [www.food.gov.uk/multimedia/pdfs/sustainactionplan.pdf](http://www.food.gov.uk/multimedia/pdfs/sustainactionplan.pdf)

example through an extensive programme of commissioned research and surveys, and through the advice from a network of independent scientific advisory committees.

10. We are open about what we know and what we don't know. Where the risk is uncertain, but the potential risk to public health is serious, we take a precautionary approach, publishing what we know when we know it, and taking the appropriate action quickly. In doing so, we seek to avoid using the absence of certainty either as a reason for delaying proportionate action, or as an excuse for taking action other than that needed to protect the public. We revise our approach as new evidence emerges.<sup>9</sup>

### **Options for intervention**

11. When we have decided in principle that we need to intervene, we consider the options for intervention. Our choice of interventions will be affected by the way in which the market is not balanced, effective or providing proper levels of food safety. Would consumers be effectively protected if businesses complied with the current law? Does the problem result from lack of compliance with the current law or does the law itself provide insufficient protection? Does the market failure result from lack of consumer knowledge or understanding or from them being given insufficient information about what they are buying? Or is the current law disproportionate and over-precautionary – with unnecessary impacts on costs or consumer choice?

12. Table 1 summarises the main tools for intervention that our enforcement partners and we might use in different circumstances.

<b>Table 1</b>
----------------

---

<sup>9</sup> Further details of our approach to risk are given in our 2003 statement ([www.food.gov.uk/multimedia/pdfs/riskapproach.pdf](http://www.food.gov.uk/multimedia/pdfs/riskapproach.pdf)) and a more recent summary document (House of Lords Select Committee on Economic Affairs, *5<sup>th</sup> Report of Session 2005-06: Government Policy on the Management of Risk, Volume II: Evidence*, HL Paper 183-II, pp 183-191, publ. The Stationery Office, London). We have produced frameworks to help us take account of risk, scientific uncertainty and conflicting views in policy development (see the checklist in *A Framework for Measuring Food Risk Management against Philips' Lessons*, [www.food.gov.uk/multimedia/pdfs/note020205.pdf](http://www.food.gov.uk/multimedia/pdfs/note020205.pdf)) and in Board discussion and decision (a science checklist based on that discussed by the Board in February 2006, see [www.food.gov.uk/multimedia/pdfs/fsa060207.pdf](http://www.food.gov.uk/multimedia/pdfs/fsa060207.pdf))

## **REGULATORY TOOLS FOR INTERVENTION<sup>10</sup>**

- Consciously doing nothing, having first analysed the issue and decided that action is counter-productive or unwarranted.
- Assembling and publishing the evidence, to inform public debate.
- Providing information to consumers, without advocating a particular course of action, so consumers may make informed choices.
- Providing advice to consumers.
- Providing and publishing our advice and recommendations to Ministers.
- Publishing the results of surveys to inform consumers and enable them to make more informed choices.
- Encouraging, recognising or rewarding desirable behaviour, and discouraging undesirable behaviour, by the private or voluntary sector by non-statutory means including positive recognition and/or reputational sanctions.
- Encouraging self-regulation through voluntary codes of practice.
- Co-regulation through statutory or Government-backed codes of practice or action plans.
- Encouraging compliance through collaborative working with responsible businesses.
- Providing practical advice to businesses to help them comply with the law.
- Encouraging responsible businesses to blow the whistle on businesses that are irresponsible or fraudulent.
- Promoting effective and risk-based interventions by the relevant enforcement bodies, through guidance, training and support, and through standard-setting, performance monitoring and audit.
- Encouraging enforcement bodies to take proportionate enforcement action, and to apply or seek appropriate penalties.
- Licensing products, people, processes or premises.
- Seeking EU-wide or global action to address new or emerging risks.
- Negotiating for changes to EU legislation to protect UK consumers, or (where this is legally permissible) advising Government to change domestic law to improve consumer protection or make penalties more appropriate.

### **Deciding how to intervene: key principles**

---

<sup>10</sup> This is an updated version of the list included in the papers considered by the FSA board at its open meeting in October 2005.

13. As a UK body working in the context of devolution, we recognise that, within the overall framework of EU law, different risk management approaches – and hence different types of intervention – may sometimes be appropriate in the different circumstances of each of the four countries of the UK. But in deciding on how to intervene, we seek to follow the same principles – protecting the interests of consumers, being evidence-based, risk-based, proportionate, open, and consultative – that we follow when we decide whether to intervene. We also aim to follow the principles of better regulation and the regulators’ compliance code<sup>11</sup> by delivering the desired outcome through interventions that:

- are evidence-based, proportionate, and risk-based;
- use the market, where appropriate, to achieve change;
- focus on practical and deliverable solutions;
- minimise regulatory and administrative burdens where this does not compromise outcomes;
- drive improvement and reward good performance, whilst seeking firm action against those who persistently fail to meet acceptable standards, or negligently expose the consumer to serious risk.

14. In deciding how to intervene, we propose to adopt the following regulatory style:

- to support voluntary approaches, using the market to achieve change, provided they deliver proportionate consumer protection and are consistent with the requirements of EU law;
- to expect businesses to act responsibly, and to encourage and recognise those that do so;
- to seek to work collaboratively with responsible businesses, and/or their representative organisations, to protect consumers;
- to work with enforcement bodies to help responsible businesses comply and to penalise those that are wilfully and repeatedly non-compliant, or seriously negligent with respect to consumer safety;

---

<sup>11</sup> under development

- to work with other regulators to minimise the burdens on businesses, for example through joint inspection regimes and data sharing, where this does not jeopardise regulatory outcomes.

### **Review and evaluation of this framework**

15. This framework has been developed by the Food Standards Agency and informed by consultation and engagement with our stakeholders.

16. We will implement this framework across the organisation. We will review the framework and our performance against it, two years after its adoption.