

**Directors of
Public Protection Wales**



Directors of Public Protection Wales
November 2017
Response to the
FSA – “Regulating Our Future
Why food regulation needs to change
and how we are going to do it”
July 2017



The Directors of Public Protection Wales (DPPW) is the collective organisation of officers heading up public health protection services within local authorities, with the following Mission Statement:

'To protect personal, environmental, economic and social well-being through policy, regulation and education. By these means to create a safe living and working environment for the communities we serve.'

Public Protection services include all aspects of licensing, environmental health and trading standards. DPPW has two constituent Heads of Service groups - Wales Heads of Environmental Health and Wales Heads of Trading Standards. Under these groups, there are a selection of specialist/expert panels, and groups focusing on generic aspects of delivery such as training, enforcement, and performance management. We also have representation on an extensive range of fora, advisory groups and steering committees.

Food Law Enforcement in Wales

In November 2016, the Directors of Public Protection Wales produced the paper ***Safe Food for Wales, Safe Food from Wales*** stating the following extant underpinning principles for future food and feed regulation.

1. Protect consumers and public health as its first priority.
2. Protect the integrity of the food chain “from farm to fork”.
3. Further strengthen and promote the independently regulated Food Hygiene Rating Scheme in Wales.
4. Further strengthen and promote the food sector in Wales as a national strategic priority.
5. Deliver a regulatory system that is in the best interests of consumers and businesses in Wales – reflecting Wales’ specific needs, priorities, culture and wider delivery arrangements.

Directors of Public Protection Wales call for:

1. A devolved independent food body for Wales, replacing the current arrangements delivered by the Food Standards Agency headquarters in London.
2. A Wales specific approach to future food and feed law regulation.
3. A new strategic approach to food policy in Wales that protects and promotes the health of the nation, encompassing food safety, standards (including allergens and labelling), fraud, animal feed, nutrition, obesity, etc.
4. The food sector in Wales to remain supported by independent Local Authority regulation.
5. Continued support for the Wales Food Hygiene Rating Scheme.
6. Changes to the Food Law Code of Practice to improve effectiveness and efficiency through a more risk-based, better targeted and more flexible approach.
7. Local Government in Wales to further build upon the excellent work with food businesses to forge stronger partnership and support arrangements to help businesses establish and grow.
8. Improved registration arrangements, including development of a new approval or licensing scheme, to help food businesses get it right from the start and provide the assurances the public expect in relation to food safety.

In July 2017, the Food Standards Agency published their paper ***Regulating Our Future Why food regulation needs to change and how we are going to do it.***

In response to the above FSA paper, the Directors of Public Protection Wales state:

1. As DPPW are the body representing the principal food safety and food standards experts in Wales we are concerned that we have received no formal response to our previous submissions on ROF and that our views are being completely ignored and disregarded by the FSA.
2. The proposed system is overly complex and does not protect the consumer or the integrity of the food chain from farm to fork. The FSA Meat Operations team is identified as a weakness in the current official food control system – but has yet to be tackled; it therefore needs an urgent review and overhaul.
3. Disappointment that the FSA has designed a target operating model that has failed to put consumer safety and public health as its first priority.
4. The FSA's silo approach threatens to undermine other public protection arrangements.
5. The FSA proposals are not based on evidence or fact. They have the potential to seriously disrupt food law enforcement in Wales because they do not sufficiently take account of, or build on, the successes of the current model of delivery in Wales.
6. Enforcement responsibility for premises producing and processing cooked and ready to eat foods should transfer from the FSA to LAs who have experience and competencies for inspecting such premises.
7. There is concern that the FSA places strong reliance on the use of overseas Vets for Officials Controls within the UK. This is not likely to be sustainable post Brexit. The FSA needs to identify a succession plan.
8. Agree that the existing food registration system is not fit for purpose and requires reform. Enhanced registration is supported as an interim measure ahead of licensing / permit to trade, which must remain the policy goal and would provide a source of sustainable funding.
9. The timing for such radical change is incompatible with the demanding changes likely to be associated with exiting the European Union.
10. We support the concept of segmentation. However, we are concerned by the current proposals within ROF which will result in the removal of independent regulation and afford less protection to consumers and public health. Segmentation should be based on risk and compliance and determined by LA interventions.
11. We are concerned at the huge cost of this review and the diversion of scarce resource when so much could be achieved by simple and clear fixes that go undelivered by the Agency.
12. Serious concern that assurances to protect public health and consumers will be undermined by the proposed introduction of non-independent Certified Regulatory Auditors to undertake food safety, standards and feed inspections.
13. National Inspection Strategies and Certified Regulatory Auditors cannot be used as a vehicle to implement the Food Hygiene Rating Scheme in Wales due to devolved legislation.
14. Plans to rely on businesses and other assurance sources to provide insight or information to help the FSA to make the right interventions firmly and quickly are unlikely to work.
15. Relying on businesses to share data is extremely aspirational. Commercial sensitivities and damage to reputation are significant barriers which history tells us is unlikely to work.
16. The FSA has failed to intervene/direct failing local authorities in England. FSA should address their own failings.

The FSA states that the reasons for changing the existing approach to regulating the food industry are that a reduction in capacity will mean that the current system is unsustainable. Furthermore, it is claimed the current system has been in place for thirty years and is outdated in that it has not kept pace with technological change in the food industry and is not flexible enough to adapt to the changing environment. The FSA does not propose to change regulations that specify what businesses need to do; the proposed change focusses on how regulatory delivery is assured. DPPW remain concerned that the proposals for ROF are based upon too many unfounded assertions, lack of evidence and an unconvincing case for wholesale change. We remain concerned that the proposals are being driven by an English imperative with insufficient regard for devolution, including the wider political and legal landscape in devolved nations.

DPPW is certainly not averse to the concept of change. Indeed DPPW has proposed many improvements to the system, some of which could be readily delivered but have so far been ignored by the Agency. Wales has been at the forefront of ground breaking public health legislation, including food safety with the introduction of a mandatory food hygiene rating scheme. Over the past thirty years, legislation and Codes of Practice etc. have changed to incorporate risk based approach, introduction of HACCP and butchers licensing has come and gone. Whilst some business technology has changed, so too has the ability of regulators to understand such technology, to advise on its use and to interpret technological output. It is important to note that the larger businesses that rely on technology, generally involve their regulators in the choice, design and appropriate implementation of such technology.

The FSA say they will be more specific about their expectations of food businesses. However, such expectations have not been detailed in any proposals. Previous attempts to update the Code of Practice in respect of food standards (which involved secondments from LAs) to include project work based on national issues, and to develop an intelligence led approach have failed to materialise – why? What happened to this work? The existing Code of Practice is not fit for purpose for food standards. It does not reflect the Intelligence Operating Model being used by trading standards. Further, to date the published proposals have been silent on Food Hygiene.

The FSA does not appear to audit the County Authorities in England; perhaps this is why they do not have a complete picture of what happens on the ground? In Wales, the FSA has a clear picture and detailed understanding of how all unitary authorities are performing based on its audit findings and local authority monitoring data; a picture that illustrates overall, excellent local authority delivery.

The FSA is erroneous in its belief that a 'one size fits all' approach is in operation and is ill-suited to a diverse food industry. The existing system allows for a flexible approach to regulation. Risk assessment of businesses allows for a tiered approach to the frequency of inspections and interventions with the better performers visited less frequently than poorer performers; thus allowing resources to be targeted where

they are most needed. Additionally, there is variation in the way that approved premises are regulated together with the ability to undertake alternative enforcement options in lower risk businesses. LAEMS data shows that Local Authorities in Wales are doing exactly that; targeting higher risk, poorly performing businesses.

The FSA wants a system that can flex. The FSA uses derogatory terminology when describing the current regulatory approach such as it being “clunky” rather than flexible and agile. Local Authorities have time and time again demonstrated that they can flex to any given situation, and in times of crisis can rely on support from neighbouring authorities. We are concerned that private regulators i.e. Certified Regulatory Auditors (CRA) would not be able to respond dynamically in times of crisis.

The most notable food incident in recent years has been associated with the substitution of and mislabelling of horse meat in beef and other products. This sector is predominantly regulated by the FSA Operations Team. At the time of preparing this paper FSA Operations are investigating another potential meat scandal relating to the repacking and labelling of chicken destined for major retailers. The Operations division is in dire need of improvement; however the proposals for change appear to be silent on such inclusion. Why has the FSA failed to identify and tackle such a major risk to public health protection?

The timing for such radical change is incompatible with the demanding changes likely to be associated with exiting the European Union. The FSA states “It will be critical for the FSA as the Central Competent Authority for food safety, to demonstrate that a robust and effective regulatory model is in place.” The ROF proposals will effectively dismantle the current regulatory system, a system that works well when properly resourced and implemented, in favour of a complex, expensive and untested regulatory model. In order to maintain continuity of trade within the EU and to navigate new export requirements, businesses will require substantial support and assistance from their regulators; regulators that they are familiar with, that they can trust and that know their processes and systems in order to fulfil export requirements and to complete export certificates etc.

The FSA claims “it doesn’t know in real time how many food businesses actually exist or who is operating them”. Local authorities maintain databases of businesses and their associated information. Such data could be further improved if registration/licensing requirements were more robust. Such information is readily available for sharing.

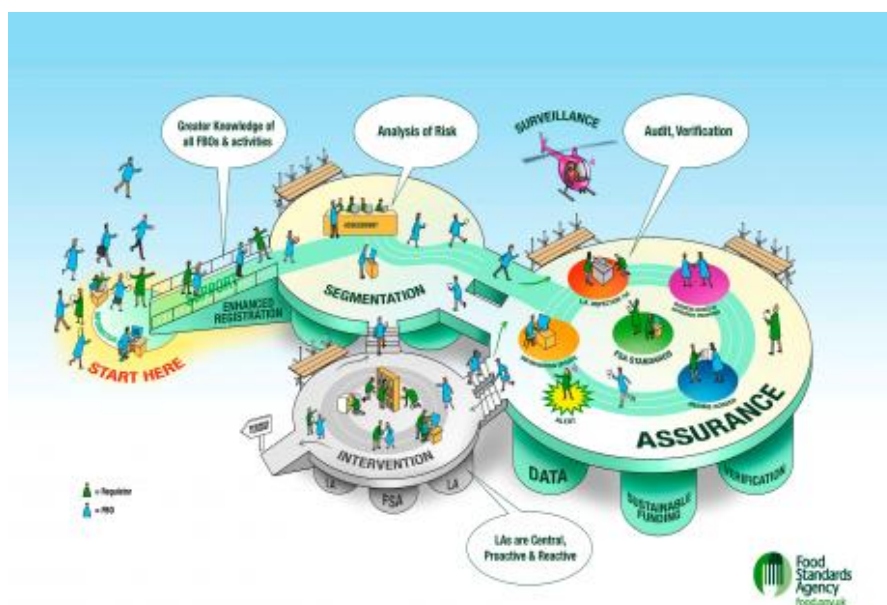
The FSA conclude in their reasons for change “that some are struggling to fully discharge their functions”. This statement should be quantified. Local Authorities in Wales have delivered their functions, as indeed have LAs in most other areas of the UK. Again, this is not a justifiable reason for radical change to the system. Failure to deliver is restricted to a small minority of LAs in England; the FSA has the legal power to intervene/direct and take over such failing authorities – why has it failed to do so?

In our previous document “In Safe Hands” we considered our position in Wales and asked key questions about the efficacy of our food services.

We undertook an examination of available data which suggested that the local authority food law regulatory system was being delivered effectively in Wales: Compliance levels were high and improving year on year; the highly successful Food Hygiene Rating Scheme had resulted in significant improvements in standards; local authorities have prioritised and protected their food safety resources. This year’s LAEMS data provides a positive picture of food law delivery in Wales.

The Target Operating Model

Since the publication of “In Safe Hands” the ROF programme has undergone considerable progress; the early thinking has developed into the following Target Operating Model. The programme delivery timelines are split into two phases – before (2019) and after Brexit and is based on the following themes:



Business start-up and Enhanced Registration

The FSA state that “helping new businesses understand their responsibilities for producing safe food, and how to meet those responsibilities, is a cornerstone of the new approach.” This is not a new approach it has always been a cornerstone of food safety and standards interventions, both educational and regulatory.

The FSA are concerned that some businesses do not proactively register at start-up or notify of material changes. There is currently no base line data to quantify if this is a real or significant issue. The FSA also state that they will establish the reasons for this and address any barriers, yet the FSA does not detail exactly how it will establish or deal with the reasons.

The DPPW supports the introduction of licensing/ permit to trade scheme for appropriate categories of food businesses and food business operators; DPPW are sensitive to the fact that legislative time constraints will not allow this to happen pre Brexit and that businesses in Wales should not be disadvantaged by the introduction of a Scheme in isolation.

We aspire to an upfront licensing scheme; with an annually/bi-annually renewable licence fee which would contribute to the funding of enforcing food law, whilst allowing such enforcement to remain independently delivered by local authority staff. Licensing will deliver an improved package of support to businesses that are starting up or developing their business. Furthermore, the food business operator must be required to pass certain tests to ensure that they are a responsible (fit and proper) person. History demonstrates that the licensing scheme previously used for butchers proved to be very successful resulting in increased levels of food hygiene and safety compliance. Additionally FSA's own research indicates that, consumers also want food businesses to be licensed and independently regulated.

Food Business Operators that do not want to register and start trading prior to any checks will still not proactively come forward, therefore there should be more punitive sanctions for those that fail to register. The use of fixed penalty notices may be an option. They are proving effective in other areas such as failure to display a valid food hygiene rating sticker, where the courts might otherwise see failure to register as a simple administrative offence. Linking food business registration to other regulatory regimes e.g. HMRC should be considered as should incentivising businesses to register e.g. by offering free advisory visits. Experience demonstrates that businesses change ownership, management and what they are doing without informing the appropriate regulator. The proposed target operating model will not address these concerns and problems may be exacerbated by losing this local approach. This is more of an issue for regulators than non-registration. Such information is generally obtained during various food interventions, also via local intelligence e.g. planning applications, building control applications, trade bin contracts, etc. – in short Welsh local authority staff know their districts and what businesses operate within them. This vital intelligence will be lost if businesses are segmented and fall out of the Local Authority intervention cycle.

The FSA is proposing to develop and implement a new IT system to centrally store the UK database of all food businesses. This central database underpins the whole of the target operating model. The system will be used to incorporate real time information supplied by the businesses (including their past performance) and other regulatory bodies and CRAs. The aim is to allow digitally enabled data to flow into the system. The FSA has failed to share details of the IT system together with the cost of development and implementation. DPPW are concerned that the burden and cost of new and additional IT hardware and software usage will introduce a burden for smaller businesses. Certain areas of Wales continue to experience difficulty with broadband speed and access to mobile network coverage; again businesses located in such areas are likely be placed in detriment; alternative communication will need

to be explored. Furthermore any system will only be as good as the information supplied.

Local Authority data is supplied to the FSA via the LAEMS returns. In its role as the Central Competent Authority (CCA) the FSA wish to have oversight of all food businesses, “to draw a complete picture, whether in a food incident or crisis, or just to make the best decisions”. Would LA’s have access to the information on the database? With the possible introduction of segmentation and CRAs, does the FSA plan to centrally allocate businesses for interventions? This is not an option that DPPW would support. Furthermore experience has taught us that when the FSA aspired to a national database for sharing sampling data (UKFSS); this costly venture failed to deliver. How can we have any confidence that this new national database will be any more successful? Business is extremely concerned about commercial sensitivity and potential breaches of centrally held information. This can be demonstrated by the assured advice on the primary authority database which only indicates the area that the advice relates to, not the actual advice, as it is considered commercially sensitive.

The DPPW suggest that electronic registration of food businesses could be achieved by using the .GOV gateway website. Businesses registering with the HMRC etc. should be required to complete an electronic registration form that is automatically pushed through to the home local authority and any future FSA centralised database. However, it is essential that whatever central register is adopted, the registration must be provided to the local authority. Again, only those businesses that operate within the law will register on a central register; how will we know food business operators have not registered, and who will be required to enforce non-registration? Will it be the local authority, the Certified Regulatory Auditors or the Central Competent Authority?

The DPPW suggest that the registration form should be amended to include details of associated businesses and links to other premises.

The DPPW also suggest that businesses in Wales should not be placed in detriment as a result of business failure to register in other regions of the UK.

Segmentation – fitting business into the regulatory model

The FSA states that it will introduce a new risk management framework, which is currently under development however specific details have yet to be disclosed.

FSA indicates that it will use information gathered at the point of registration and from other sources, such as compliance performance by a business in other regulatory areas beyond food, to judge the behaviour and culture within the business and the impact this may have on food safety compliance. Combining this information from businesses themselves and third parties will help the FSA to develop a sophisticated framework to define the intervention and frequency and type for each business. DPPW are concerned by this approach as it does not follow that, a business complying with HMRC by paying their VAT on time (to avoid penalties) will

necessarily comply with food safety or standards legislation. Direct comparisons should not and must not be made.

The FSA also comment that some businesses will not merit inspection whilst others will be inspected more intrusively and rigorously than they have been until now. The FSA will ensure every business continues to be in the right category, by seeking confirmation of any changes in activity, so that the FSA can judge whether their risk rating has moved. Has an algorithm been piloted to facilitate the segmentation of businesses? Experience has demonstrated that local and independent intelligence is far more reliable. There is a very real danger that the proposed model will be overly complex and too sophisticated to be able to flex in real time, something the existing risk rating mechanism is able to do.

DPPW asserts that local authority staff are very well versed in risk rating food businesses to determine the most appropriate frequency and type of intervention. Additionally, with no proposed changes to legislation, DPPW asks how or why inspections would be more intrusive and rigorous? Local authority staff already inspect and regulate businesses proportionate to the risk and compliance identified during the intervention. This is nothing new. The DPPW also asserts that a remote CCA should not determine the risk rating, frequency and type of intervention for individual businesses; such decisions must be made by local authorities based on evidence.

The DPPW are concerned that the FSA plan to deal with multi-site operators by placing an increased focus on the controls that operate at business level rather than each individual outlet. Whilst there is an argument for a consistent approach to dealing with multi-site operators, the individual outlets must not be removed from inspections plans, as no amount of procedures and policies on a shelf at head office will replace the need for highly trained and diligent management at local level. As seen recently, a pest control plan held by Asda Head Office did not stop a serious rodent infestation in a premise that continued to trade. That premises was not properly managed resulting in a prosecution taken forward by the local authority with a large fine issued by the courts. The company was fined £700,000 with £34,856 costs. Sentencing district judge Wendy Lloyd said that Asda's slow response following the initial inspection was 'bewilderingly inadequate'.

Primary Authorities (PAs), collecting assurance data from businesses and CRAs should not be allowed to determine the risk rating and frequency of interventions and certainly not to be able to remove large groups of premises from external regulation.

Similarly, DPPW urges caution in segmenting businesses using the concept of sustained compliance e.g. the attainment of a hygiene rating of 5 for the past few inspections; "past performance does not guarantee future results".

The FSA has suggested integration of food hygiene and food standards elements to provide a more holistic approach to verifying that food businesses are meeting their official food control obligations. DPPW will review those proposals when they have been put forward. However, the FSA has not made it clear at this time whether such

integration applies to unitary authorities where there is a variation in delivery, i.e. combined food safety and standards inspections or separate inspections by Environmental Health Officers and Trading Standards Officers; or alternatively, by integrating the two tier system (County and District) that remains in some parts of the UK. Integrating the approach does have cost implications and will require upskilling of staff.

The DPPW is extremely disappointed that the FSA has had no regard to previous DPPW submissions regarding businesses audit and compliance with the mandatory Food Hygiene Rating Scheme (FHRS) used in Wales. Businesses that do not receive an inspection by a Local Authority officer will not be issued with a hygiene rating and therefore will not comply with FHRS. Furthermore, the FSA has had no regard to the joint Ministers' position in Wales regarding this same issue. The DPPW asserts that food businesses in Wales should not be placed in detriment as a result of such proposals.

In Wales, FHRS scores are issued following inspections only. Therefore all businesses must be inspected by an authorised officer of the Food Authority in order to be assessed for compliance with the mandatory FHRS. The development of national inspection strategies using Primary Authorities currently forms an important part of the Agency's thinking. This thinking is not compatible with the requirements of the Food Hygiene Rating Scheme in Wales.

Alternative Enforcement Strategies (AES) are applied to lower risk businesses only. AES interventions are not classed as inspections and therefore cannot be used to determine or amend a FHRS score. Due to the requirements of the devolved FHRS legislation, the FSA proposal to remove certain businesses from inspections cannot be applied in Wales. DPPW insist that the reputation of the FHRS in Wales must not be compromised.

Assurance: getting the evidence that business is doing the right thing

The FSA has a desire to rely on food businesses to share their information and third party audit reports (paid for by the companies) in order to replace regulatory interventions. History has demonstrated that this does not work in practice.

It would appear that the FSA has based its proposals on the food safety model operating in New Zealand where CRAs are an integral part of the food safety system. To date the FSA has not presented any evidence which has evaluated the success or failure of this model. The Welsh Government commissioned research "Understanding Barriers to Accreditation in the Food and Drink Sector in Wales" concluded that there is a variation in the robustness, respectability, credibility, practicality and membership uptake in relation to private assurance. We cannot see why this would change if it became embedded in a regulatory context. Private assurance schemes have a role to play but should sit outside of regulation.

The FSA plan to use information supplied by businesses and private assurance schemes to allow the FSA to determine risk rating and frequency of inspection. There is an assumption that Local Authority officers will ignore third party assurance data where it exists. This is not the case Local Authority officers value credible third party data and already have regard to such data when assessing how the business is performing. The FSA state that such a system will allow better performing businesses to face a lower burden from regulation allowing local authority resources to target businesses that present the greatest risk to public health. DPPW assert that the present system already allows for the targeting of poorer performing businesses. Furthermore, that such prioritisation decisions are based on independently acquired evidence, including confidence in management and intelligence; not reliant on information supplied by the businesses themselves. Such audits vary in scope and detail and are procured and financed by the businesses themselves. Some may be announced while others are unannounced. There have been a considerable number of examples both home and abroad where such audits have been proven to have been ineffectual; examples include auditors failing to identify serious rodent infestations, private water supplies, etc.

As previously stated, information gathered from private assurance schemes, financed by the food businesses must be treated with caution. Experience has shown that reports are sometimes inaccurate; examples of such have been provided by DPPW to the FSA.

DPPW strongly asserts that allocating risk ratings to food businesses should be the responsibility of local authority officers and not of the remote CCA. Additionally, that local authority staff must continue to have the power to use discretion regarding frequency of inspection. For example, the Food Law Code of Practice states that schools can be inspected every 4 years if they are category Ds – however in view of the potential impact if things go wrong and the clear public and political support for such safeguards most local authorities inspect at every intervention.

The ill-conceived, proposed use of CRAs in a formalised role needs additional clarification. The FSA has so far stated that the CRAs may be individuals that have attained a level 3 in food only. DPPW are concerned about this dumbing down of food safety and standards regulation and the lack of assurance of public protection.

Presumably FSA will have a role in auditing the competency of these CRAs and the companies that they work for. Given the lack of action taken by the FSA in respect of failing LAs which has precipitated the ROF programme; what assurance can the FSA give that they will be effective in ensuring the competency of private assurance? What will this cost the taxpayer and businesses?

Local authority staff in Wales are holistically trained not just in food, but in a range of public health protection disciplines and are required to attain competence and demonstrate continuous professional development. In our paper *"In Safe Hands"* we stated:

“LAs have a flexible resource (outside of the officers employed on food and feed day to day) that could be (and has been) deployed to deal with food incidents, which private sector does not have. LA’s background knowledge of local businesses facilitates investigation of and prompt, effective response to incidents. Any loss of resource from existing food teams would damage the wider public protection functions and local ability to mount a response to a major incident and could be catastrophic.”

“Understanding Barriers to Accreditation in the Food and Drink Sector in Wales” identified a shortfall in qualified auditors. How would this shortfall be met? The movement of staff from local authorities to private companies will deplete resources; to the detriment of public protection.

CRAs will audit as per pro-forma questionnaires and are unlikely to appreciate the holistic approach to food safety and standards and the need to investigate wider issues such as potential links to food fraud etc. Good businesses have indicated their preference for continuation of independent regulation and are therefore unlikely to pay private company CRAs for inspection. The DPPW questions CRAs experience and their ability to determine confidence in management.

DPPW are also concerned that local authorities will lose sight of the full picture of food business activity, including losing opportunities to gather intelligence on food issues within their areas, especially if CRAs are to update the CCA database directly. Will the new system allow for CRA updates to also feed into the various local authority databases in parallel to the CCA updates? If not there is concern that Local Authority databases will no longer be complete. An incomplete picture of the business landscape may potentially fetter responses to food alerts and incidents. This may result in a slower response in identifying implicated premises and product thus exposing the public to risk for longer.

The DPPW are concerned that there will not be a level playing field. It has not been made clear whether the CRAs will be allocated the more difficult to engage or poorer performing businesses or whether such businesses will be allocated to local authorities and the better performing businesses to the CRAs. As such will the CRAs be paid for dealing with the easier businesses leaving the difficult businesses to local authority staff? Will CRAs go to high risk approved premises? Will the CRAs undertake interventions other than audits – as an example will they be expected to undertake microbiological sampling, interpret results and act on such reports? Will CRAs intervene when things are not right? The FSA is mistaken in its belief that local authority resources will be freed up. DPPW is also concerned that expertise and resource will be lost.

The FSA is also mistaken that CRAs will have the experience and competence to deal with more complex and specialist food businesses. The FSA is also mistaken in thinking that Welsh local authorities find it difficult to maintain such competencies. We are pleased that we have a catalogue of diverse, novel, specialist and expanding food businesses operating across Wales; and that local authority staff have

developed and demonstrated an excellent knowledge of the businesses in order to support and regulate as necessary. Such knowledge is not acquired over-night – it takes time to understand the processes, procedures, policies within large businesses and to develop trusted relationships with key personnel. Unlike the FSA Operations Team, our staff are local and have local knowledge and intelligence relating to local businesses. We are also pleased to boast that we have a register of highly experienced officers with sector specific knowledge with the ability to support other authorities where new specialist businesses are setting up.

Wales has led the way with the introduction of a mandatory food hygiene rating scheme. The DPPW is alarmed by any suggestion that CRAs may be able to issue food hygiene ratings. Ratings issued by third parties would, first and foremost, not be independent. An appeal mechanism would need to be put in place; access to the FHRS website to update ratings would be needed. Consistency between auditors issuing ratings would need to be assured. To use the Agency's own terminology the scheme would become clunky and unable to flex. It would be a scheme the consumer could not have confidence in. In Wales ratings can only be awarded by the food authority. However, any move in England to allow CRAs to issue ratings has the potential to undermine the Scheme in Wales by virtue of the fact consumers will not be aware that the Scheme is actually two different schemes; one being independent the other not.

Intervening when things aren't right

The FSA claim they are developing a new strategic approach to horizon scanning, to identify emerging risks and see where they need to intervene to protect consumers. The FSA also want to deal with failing businesses firmly and quickly. The FSA has not detailed the new strategic approach and has a history of failing to identify emerging risks; for example identifying and dealing with persistent failures at an approved premises to control Listeria contamination on their product.

It has not been made clear whether the CRAs will be authorised to investigate, enforce or even prosecute when they spot failures to comply with legislation; especially where there may be an imminent risk to public health. This would present an obvious conflict of interest. When things go wrong the CRA will be in an unenviable position and one where they may need to "whistle blow" on their clients. This is unlikely to happen when contracts are at stake. If regulation remains with Local Authorities support for CRAs may not always be available in a timely manner, as local authority officers will have their own workloads.

The FSA refer to additional sanctions such as fixed penalty notices, however yet again no detail has been provided on whether CRAs will be able to issue FPNs, who will collect the penalty fines or who will record and administer the process. Additionally, no clarification has been provided about when FPNs will be introduced, whether they would be introduced via devolved legislation or what non-compliance matters they will be used for. The DPPW firmly assert that the HSE model known as "Fees for Fault" should not be used for food business regulation.

The FSA sees a greater role for businesses to provide insight or information for the FSA to make the right intervention. The FSA state that they will not share such information without the express permission from the owner of the information. This approach is solely predicated on the belief that businesses will share their information. History has repeatedly told us that this does not happen and is very unlikely to happen in the future.

Sustainable funding

As stated above, the DPPW advocates a licensing scheme for appropriate categories of food businesses, however it is recognised that legislative time constraints will not allow this to happen until sometime following Brexit. An upfront licensing scheme, with an annually/bi-annually renewable licence fee would contribute to fund food law enforcement, whilst allowing such enforcement to remain independently delivered by local authority staff.

The FSA paper does not provide options – it is predicated on businesses paying for regulation and giving emphasis for purchasing power to businesses. Such payment will be for the hours actually accrued for the visit and admin paperwork etc. it does not cover the wider aspects of food control, such as training and dealing with other food related issues such as investigations of food related illness, food complaints and quality etc. Businesses will only need to pay for what it needs. Therefore the FSA will need to look at other ways that businesses can pay. The FSA proposals have not made the system more financially sustainable. The DPPW urges the FSA to look at other costing options.

Some businesses already pay for regulation, such as the meat sector. Such costs are inevitably passed on to consumers. This is a sector primarily enforced by the FSA Operations Team. Such regulation has been found to be lacking, namely in relation to horse meat control, food fraud and failure to effectively control incidents of Listeria from approved premises. Therefore it could be argued that the consumer is not getting the protection that it is paying for.

There is concern that the public will have less confidence in the new system and yet it will cost more. FSA will have to procure the assurance companies and FBOs will have to pay for audits; each transaction costs more money. The implementation of the new IT system will inevitably cost a significant sum of money.

The proposals will require additional staff to be appointed by the FSA. How many and at what cost?

What changes for the FSA?

The FSA recognises that the proposals will require major changes for its roles and leadership; the FSA state that it needs to become more commercially astute to manage contracts with new delivery partners including local authorities and

independent providers. The FSA has failed to point out what contracts will be established with local authorities and how they intend to manage such contracts.

The FSA is not the only policy body that covers food. Food standards and nutrition issues, including labelling policy are currently the responsibility of Welsh Government but being driven by DEFRA and the Department of Health in England. Differences in policy approach by these organisations have resulted in serious inconsistencies in official controls. It is not clear to what extent these other organisations have been engaged in ROF.

The FSA have indicated that there will be a need to develop new models for accrediting and monitoring; "auditing the auditors" – yet more cost that has not been disclosed. Will this include the FSA Operations branch?

Measuring success

The FSA state that their role is to protect public health, however the proposed model does not inspire confidence that public health will be adequately protected.

The FSA state that they will develop a clearer set of long term measures to track the impact that they and others have on public trust and confidence in relation to food. As no detail has been provided, DPPW would welcome in-sight into such proposed measures.