LIMIT ON TRANS FATS (SCOTLAND) BILL

RICHARD SIMPSON MSP

SUMMARY OF CONSULTATION RESPONSES

Introduction

The intention of the proposal is to prohibit the sale in Scotland of foods intended for human consumption where the trans fat content exceeds 1% of the oil or fat contained in any of the ingredients. The consultation document accompanying the draft proposal for the Limit on Trans Fats (Scotland) Bill was issued on 9 June 2009 and ran until 30 September 2009. A number of late submissions were received after the closing date; they were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members’ Bills webpage on the Scottish Parliament website (http://www.scottish.parliament.uk/business/bills/membersBills.htm). It was also sent to 236 organisations, individuals, MSPs, MPs and MEPs; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter. Further copies were emailed or posted out to those who requested it.

General

In total 53 responses were received; these were made up of the following organisations:

- 11 local authorities
- 3 NHS bodies
- 5 food retailers (supermarkets and shops etc.)
- 8 food manufacturers and producers
- 3 restaurant and takeaway groups
- 3 trade unions
- 5 health promotion/awareness charities
- 10 trade/industry bodies
- 1 consumer organisation
- 1 pressure group
- 3 government departments and agencies

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42% of respondents supported the terms of the proposals.

40% of respondents stated that they did not support the proposal. The reasons given included: voluntary action has negated the need for legislation; a change in production and manufacturing methods could increase levels of other unhealthy fats; and a possible increase in manufacturing costs to reformulate products would have a ‘knock-on’ effect on the price paid by the consumer.

In 9% of the responses received, it was unclear whether the respondents favoured the proposal or not because their comments did not clearly state support or lack of support. Some respondents stated that although they recognised the benefits of removing trans fats from Scotland’s diet (and in some cases had removed trans fats from their own products), they were unsure whether legislation was the right vehicle to use to achieve the desired result.

A further 9% declined to comment on the proposals.

The majority of those who agreed with the proposals represented health-related bodies or groups or public sector organisations. The majority of those who disagreed with the proposals represented food manufacturer/retailers or trade/industry bodies.

NHS Western Isles stated, “We agree with the approach proposed which aims to ensure the removal of unnecessary trans fats while recognising that low levels of trans fats may still be present from natural sources such as meat and dairy products….The problem with measures such as this is that the results are not seen immediately, you will have to look to the long term – reductions in heart disease, diabetes, obesity, stroke, some cancers etc. This will result in savings for the NHS….”

This view was supported by the National Heart Forum (NHF), “The NHF agrees with the 2009 WHO [World Health Organisation] review of IPTFAs [industrially produced trans fatty acids] which classes IPTFAs as ‘industrial additives’ based on the facts that they are not naturally present in foods and have no known health benefits…Taking a precautionary approach, where there is no known safe level of consumption of trans fatty acids, the NHF believes that the public health goal ought to be elimination of IPTFAs from the food supply, including from foods eaten outside the home.”

Which?, the independent consumer organisation commented, “…the evidence available from other countries where trans fats limits have been introduced that it is possible to remove them and switch to alternatives.

A number of food retailers were not supportive of a legislative approach, making the point that voluntary action by retailers has cut the level of trans fats consumed in the UK. Burton’s Foods commented, “We…..removed all artificial trans fats and hydrogenated vegetable oils from our products at the beginning of 2008”. Thomas Tunnock Ltd, the biscuit manufacturer, stated, “In 2007 we embarked on a project to voluntary[sic] remove hydrogenated fats and oils from our full biscuit range, resulting in a successful reduction in the
level of trans fats in our biscuits and without compromising on taste and quality.”

However, heart charity BHF Scotland stated that it “…remain[ed] concerned that much of the information in this area, especially in terms of the current level of trans fats in food products, is self-reported by the food industry, often by the over-arching bodies representing individual companies within each individual sector. Although we have no reason to doubt the testimony of these bodies, they have a clear interest in ensuring the regulation of the sector is a light as possible.”

Responses

The consultation document posed eight questions; the responses to each are outlined below.

Question 1

What, in your opinion, are the benefits and disadvantages of limiting the trans fat content of foodstuffs?

22 (42%) respondents directly answered this question.

The benefits of limiting trans fats in foodstuffs were given as: improving in the health of the nation as trans fats are neither essential nor beneficial for health; the associated benefits to the National Health Service with fewer people requiring treatment for heart disease, obesity, diabetes and strokes (given as examples); being a more easily understood system than complex food labelling; and assisting food providers in ensuring they provide the healthiest products.

The National Heart Forum (NHF) stated, “The NHF agrees with the 2009 WHO [World Health Organisation] review of IPTFAs [industrially produced trans fatty acids] which classes IPTFAs as ‘industrial additives’ based on the facts that they are not naturally present in foods and have no known health benefits.”

Aberdeen City Council was not the only organisation to point out the complexity of information on food labels, saying “As food labelling is a complex subject many individuals find it difficult to understand and therefore may struggle to make the choice between foods which contain trans fats and those which do not.” The campaigning body, tfX, added, “Legislation based purely on labelling of trans fats in foods excludes people who do not read, understand or comprehend the implications of food labels, and their families.”

Perceived disadvantages were cited as: a possible increase in producers’ costs which could be transferred to the consumer through an increase in food prices; the use of alternative oils and fats which could result in an increase in saturated fat in food products; an increase in workload on enforcement agencies; and difficulty in testing products.

The Margarine and Spreads Association, in its submission, stated, “The
The proposed Bill will therefore restrict the availability of these healthier oils and fats for use in many products...and potentially see the use of less healthy oils and fats and make supply and certification of products at 1% or below extremely complicated or impossible. Different measures within the UK could also create trade problems for UK businesses.”

The Seed Crushers’ and Oil Processors’ Association is the trade association for companies engaged in oilseed extraction and oil/fat processing in the United Kingdom. It said, “Because of the high levels of polyunsaturated fats in sunflower oil, its levels of TFA [trans fatty acids] will typically be at or over 1% (but below 2%). This will be true of other unsaturated liquid oils. So, perversely, in order to be confident of meeting a 1% TFA maximum, food manufacturers may need to opt for fats higher in SAFA [saturated fat].”

However, health organisation, Heart of Mersey, added “This may be a false concern and has certainly NOT been seen in Canada.”

Food retailer, Sainsbury’s, added, “We believe that public health policy would be better directed at encouraging more understanding and education about the need to reduce the overall fat, plus saturated fat content in the UK diet, rather than concentrating on trans fats....”

Although, in relation to the some stated concerns about inflated costs, J. D. Wetherspoon plc (an operator of licensed premises in the UK) said, “We anticipate no additional costs in removing ‘added’ trans fats to our food products on the understanding that a transition period is introduced to allow companies to plan and comply.”

**Question 2**

*My proposal seeks to set a legal limit for trans fats contained in ingredients. What would be an appropriate limit and why?*

The consultation document proposes that a limit of 1% on levels of trans fats be applied to oil and fat ingredients delivered direct to the consumer and to be used in food production. The proposal focuses on those trans fats which are not naturally present in food but have been added during the production process.

15 respondents (28%) directly answered this question. Of the 15 respondents, 11 (73%) felt that a limit of 1% would be appropriate whilst two (13.5%) suggested that a 2% limit would be more appropriate. Two (13.5%) of the 15 respondents suggested that a limit of less than 1% should be considered.

Aberdeenshire Council said, “Considering the information available and the current trans fat legal limitations applied in other countries, setting the proposed level of 1g/100g would simply reflect what the food industry is achieving at present....”

The Margarine and Spreads Association commented, “…in Denmark the proposal started off with a level of 1% but this would have had the unintended
consequence that products containing vegetable oil and bottled oils i.e. the healthier oils would have become illegal. In the end, they arrived at a figure of 2% for the oil as an ingredient (which is achievable).”

Question 3

How quickly should legislation be implemented?

The consultation document recognises that food manufacturers and producers may have to, for example, change production methods or source alternative ingredients to comply with a legislative limit. This is balanced against the desire for healthier eating choices to become speedily available to people under the proposed legislation.

For example, UNISON Scotland “…believes that legislation should be implemented as quickly as possible”.

17 (32%) respondents provided suggestions on this issue, with 47% stating that legislation should be implemented as soon as possible (eight respondents). Four respondents (23.5%) suggested a 12-month period; one (6%) suggested 12-18 months and another (6%) suggested 24 months. Three (17.5%) respondents made no specific recommendation but felt that a phased-in period was necessary, with the time period being long enough for the food industry to respond and that consultation would perhaps determine how long that period should be.

Question 4

If there is to be a transition to ‘trans fat free’, how long should that transition period be?

The consultation document suggests that on the date that the proposed legislation takes effect, a six-month ‘period of grace’ would commence. During this period, the limit on trans fat content in oils and fats covered by the legislation would be 5%; after the six-month period the limit would fall to 1%.

Respondents cited several reasons for a transition period. These included; allowing ample time for manufacturers to ensure the industry is ready for change; to re-formulate raw materials; to test finished products; and to run down existing stock.

15 respondents (28%) directly answered this question. Again, as above, there were a range of views on a transition period. Three respondents (20%) suggested ‘as soon as possible’; four (26%) inclined more towards six months; two (13%) said 12 months with another one (7%) expressing a preference for 12 – 18 months; another suggestion (7%) was 24 months and another (7%) said 5 years. One (7%) respondent also suggested an immediate limit of 2% dropping to 1% after a year. Two (13%) respondents were keen for further studies or consultation to take place to help determine a suitable time frame.
National Heart Forum pointed out that, “The Austrian government decided to allow a 12-months grace period allowing producers and retailers to use up their oil and fat stocks if necessary.”

Brakes Group (a supplier of food to catering throughout the UK) added, “Changes in formulation take a long time and then further time to ensure the new product is on sale, at least 2 years.”

Glasgow City Council agreed and went further suggesting, “…a significant run-in period is recommended e.g. 2 years with a staged reduction in limit thereafter. Furthermore, the timescale for the aspiration for Scotland to be ‘trans fat free’ should be in no less than 5 years.”

Question 5

What do you think are the potential costs, economic benefits and other consequences (e.g. to business, to government) involved in legislating as proposed on the use of trans fats in Scotland?

29 respondents (55%) directly answered this question. Many respondents offered several points for consideration, no one point seemed to regularly occur amongst respondents and, as would be expected, any concerns raised generally reflected the nature of the respondent’s business. For example, local government bodies were more likely to raise issues regarding enforcement and the use of environmental health officers and food manufacturers were more likely to discuss the use of different types of oils in the manufacturing process.

The issues commented on in responses are summarised as:

- health benefits felt in the long term but increased costs in short term (5);
- benefit to public health;
- minimal costs involved in implementing the proposal (4);
- increased costs to producers and retailers (4);
- local government increase in officer time (environmental health officers) and sampling time (5) but also some respondents said no problems for officers;
- the benefit to the NHS (2);
- further study of the issues is needed (2);
- a restriction may impact on the use of healthier oils that have a slightly higher TFA level and result in an increase in saturated fat levels instead (7);
- difficulties in sampling products to determine trans fat content (5);
- the need to build in a monitoring procedure;
- possible confusion to the public with labelling/public info campaign required (3);
- compliance with EU law;
- that the manufacturer should be prosecuted, not the retailer (2).
UNISON Scotland commented on the possible effect of increasing costs to local authorities to fund additional staff or training “…but this could be offset by fines given to offenders.”

In relation to the argument that the proposal could add to costs, J. D. Wetherspoon plc, for example, stated, “We anticipate no additional costs in removing ‘added’ trans fats to our food products on the understanding that a transition period is introduced to allow companies to plan and comply.”

West Dunbartonshire Council supported the need for legislation on the issue of ‘trans fats’ and consumers, believing that “confusion around the term and lack of knowledge about trans fats make it unlikely that consumers will check labels/ask retailers for trans fat information. Limiting the trans fat content of food stuffs would be much more effective than improving food labels.”

The Scottish Food and Drink Federation pointed to alternative approaches to legislation saying, “You may be aware that other EU states have chosen not to adopt legislation aimed at reducing the intake of TFA. The Dutch and Belgian governments in particular have instead opted to provide strong support to industry initiatives that promote responsible frying techniques at catering establishments which include moving from cooking fats to lower TFA cooking oils.”

Comments relating to the possible side-effect of requiring a legislative limit on the use of trans fats were offered by a number of organisations. Seed Crushers’ and Oil Processors’ Association (SCOPA) said, “Because of the high levels of polyunsaturated fats in sunflower oil, its levels of TFA will typically be at or over 1% (but below 2%). This will be true of other unsaturated liquid oils. So, perversely, in order to be confident of meeting a 1% TFA maximum, food manufacturers may need to opt for fats higher in SAFA [saturated fat].”

This was also the view expressed by the Margarine and Spreads Association “…in Denmark the proposal started off with a level of 1% but this would have had the unintended consequence that products containing vegetable oil and bottled oils i.e. the healthier oils would have become illegal. In the end, they arrived at a figure of 2% for the oil as an ingredient (which is achievable).”

The practicality of legislation which sets different requirements in different parts of the UK and difficulty in trading across UK were mentioned by some respondents. The Royal Environmental Health Institute of Scotland picked out a recommendation in the report by the Commission on Scottish Devolution¹ that the “Scottish Parliament should not have the power to legislate on matters relating to the labelling and composition of food”.

Several respondents looked at the issue from a European legislative perspective. The British Hospitality Association said, “We have doubts about any proposal which affects imports both from a practical point of view and the position which may be taken by the EC on freedom of movement of goods across the Community.” This was echoed by the British and Scottish Retail

¹ Footnote reference required
Consortium, “…the European Commission has also publicly rejected such bans as in principle disproportionate (subject to specific country intake on trans fats information) and therefore contrary to EU law.” The Scottish Grocers’ Federation was less certain in its opinion but wondered “It is the UK that is a member state of the EU, not Scotland. As a number of products are produced abroad, we question if the Scottish Parliament would be in a position to enforce such legislation.” Although, as mentioned by Dundee City Council, “…there are recent precedents for Scotland taking the lead in tackling Scotland’s health problems namely smoking prohibition and controls; the stated public health objective in the new licensing laws; and the possible minimum pricing of alcohol units.”

Question 6

*How should regulation of trans fats be enforced in Scotland?*

This question was directly answered by 26 (49%) of respondents. Of those who answered, the majority (81%) supported enforcement being carried out through local authorities and the utilisation of the environmental health officer role. The other 19% of respondents commented that they thought the proposal was not practical or too difficult to enforce or that enforcement would not be necessary if there was no legislative limit, just a voluntary one.

Dundee City Council’s Environmental Health and Trading Standards Department noted that “the regulations should be enforced by local councils who act as the food authority in their area. The proposed regulations would fit in with current food standards work. In Scotland this is enforced by Environmental Health Officers, Food Safety Officers and Food Standards Officers. However, if the term ‘authorised officer’ is used in the regulations this would give food authorities the flexibility to use a number of officer types including Trading Standards Officers.”

Question 7

*Are there any equal opportunities or human rights issues that arise from this proposal?*

There were 12 (23%) direct responses to this question. Of those responses, 25% felt that they would need to see more information before providing a full response, arguing that more assessment of the issues was needed, with one respondent (NHS Western Isles) arguing that “many people are unaware that they are consuming trans fats in their foods and also unaware of the health risks associated with this”. tfX added that the proposal “supports the human right of the population as a whole to a safe and wholesome diet.”

One group, National Heart Forum, suggested that the proposal could bring about a reduction of health inequalities stating “…there needs to be better quality information about IPTFA consumption levels within population subgroups. Especially with regard to children and vulnerable subgroups who consume large quantities of fast foods, confectionery, cakes, biscuits and
pastries etc.”. This could be set against the argument that an increase in food prices may disadvantage some people or groups (UNISON Scotland).

West Dunbartonshire Council added, “There may be issues…regarding manufactured food imports that contribute to the diets of ethnic minority groups.”

Alternative oils, such as palm oils to replace hydrogenated oils, require intensive farming, suggested J. D. Wetherspoon plc, wondering about the potential cost to the environment.

The issue of the rights of food importers was touched on. Heart of Mersey added “consideration may need to be given…to imported processed food from those small food businesses that may not have the resources to reformulate”.

Question 8

Do you have any other comments or suggestions in relation to this proposal?

There were 15 (28%) direct responses to this question. A number of respondents offered a summary or conclusion in their response but these have not been attributed as an answer to this question but treated as a re-statement of that submission.

There were several themes that emerged in response to this question. These were:

- broadly, it is a good proposal/the respondents welcomed the proposal (6);
- a good proposal but reductions in trans fats should be achieved through voluntary measures;
- a good proposal but there is a need to look at this issue ‘in the round’ alongside saturated fat and salt intakes (2);
- it was felt that clarification was required on enforcement issues (2);
- respondent had already removed trans fats from their products;
- the proposal was impractical to implement;
- further consideration of the possible effect on importers of foods;
- it would be best to align the whole of the UK, with legislation that did not just cover one part of it (2);
- the possible need for improved labelling (including in food takeways and outlets).

On the legislative versus voluntary approach to limiting the trans fat content of food, one confidential response argued against legislation, stating “After a number of years of investment and work with our suppliers, we successfully managed to remove all added trans fats from our menu. We would support other food manufacturers to do the same where possible”. J. D. Wetherspoon plc echoed this, “We would seek to avoid a legal limit on the overall content of trans fat but would support a requirement to remove added trans fats from prepared food products.”
West Dunbartonshire Council was one organisation which welcomed the proposal for a statutory limit but also suggested that this was only one part of the equation. “While the reduction of trans fats would be beneficial for health, it is only one part of improving the health of the nation. It would also be beneficial to look at the sodium/salt content of processed foods alongside this whilst continuing to promote current healthy eating messages to improve consumer awareness.”

Nestle UK Ltd voiced concerns about the practicality of the proposal, saying “the legislation being proposed…far exceeds that proposed in other European countries. For multinational companies such as Nestle, it is extremely impractical and costly to have to reformulate products specifically for individual countries, especially when TFA reductions are already taking place across Nestle products.”

Cardiovascular disease charity, Heart of Mersey, was in “strong agreement” with the aim of the proposals and made suggestions for further steps to be taken: “Monitoring of progress and health outcomes of those countries that have adopted a range of responses to reducing trans fats levels including Scotland as a result of any changes in legislation. We also think that additional resources should be earmarked for (a) monitoring TFA content in diverse products (b) quantifying changes in cardiovascular hospital admissions and deaths (as successfully done by CSO evaluation of the Smokefree legislation).”

Summary

Some responses included answers to the questions put in the consultation, while others did not. Where a respondent directly answered a question, the response was incorporated into the statistical summary of that question. A large proportion of the responses was unstructured but views expressed in these responses have been reflected in the use of some of the comments throughout the summary. It is important to bear in mind that, for example, health board responses represent collective views. The same is true of trade unions, associations and local authorities.

The proposal is, clearly, aimed at improving the health of the nation. There was much support for the need for legislation in the specific area of trans fats; however, support depended largely on which sector the respondent came from. As would perhaps be anticipated, support came from NHS health bodies, health education and awareness groups and from local authorities. Those opposed to legislating were, by and large, food retailers (supermarkets and shops etc., food manufacturers, producers and associations, restaurant and takeaway groups.

Rather than answer the specific questions in the consultation document, many organisations preferred to set out what action they have taken in relation to the issue of trans fats. These actions, in themselves, could be construed as an acknowledgement that trans fats are perceived as not being a desirable part of our diet.
Conclusions

The responses to the consultation have provided a number of ideas that the Member will consider and use to refine policy before completing any drafting of a bill.

November 2009