Health and Sport Committee

Stage 1 Report on the Food (Scotland) Bill
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Health and Sport Committee

To consider and report on health policy, the NHS in Scotland, anti poverty measures, equalities, sport and other matters falling within the responsibility of the Cabinet Secretary for Health and Wellbeing apart from those covered by the remit of the Economy, Energy and Tourism Committee.

HealthandSport@scottish.parliament.uk
0131 348 5224
### Committee Membership

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Introduction

1. The Food (Scotland) Bill (“the Bill”) was introduced into the Scottish Parliament on 13 March 2014 by Michael Matheson, Minister for Public Health. The Health and Sport Committee was designated as the lead committee by the Parliament on a motion of the Parliamentary Bureau. The lead committee is required, under Rule 9.4.1 of the Parliament’s Standing Orders, to report to the Parliament on the general principles of the Bill.

2. Following the Bill’s introduction, the Committee issued a call for evidence, which ran from 28 March to 7 May 2014. Twenty-five submissions were received, with one further submission received after the closing date.

3. The Committee took evidence on the Bill at its meetings on 27 May and 3, 10, 17 and 24 June. The Committee would like to thank everyone who provided written and oral evidence as part of this inquiry.

4. Members of the Committee participated in a fact-finding visit to Aberdeen as part of their scrutiny work. The first part of the visit was hosted at the Food Standards Agency in Scotland (FSA Scotland) offices and included meetings with FSA officials, presentations and discussions with the Director and staff of the Rowett Institute of Nutrition and Health and Professor Hugh Pennington, Emeritus Professor of Bacteriology at the University of Aberdeen. Members also visited the premises of seafood product manufacturer Joseph Robertson (Aberdeen) Limited, receiving a tour of the operations and holding a discussion with Managing Director, Michael Robertson, his co-directors and staff. Finally, the Committee visited Community Food Initiatives North East, a social enterprise that provides fruit, vegetables and other produce to people in and around Aberdeen, for further discussion on the implications of the legislation. Further detail from this visit programme can be found later in the report. The Committee would like to thank all those who took part in this visit for their valuable contribution to its evidence building.

5. The Bill was also subject to consideration by the Delegated Powers and Law Reform Committee and the Finance Committee. Reports from these committees are addressed later in this report.
Background and main provisions

6. The Bill seeks to:

- Establish Food Standards Scotland (FSS) to replace the Food Standards Agency (FSA) in Scotland

- Allow the scope of FSS’s functions to be wider than that of the FSA, with three key objectives:
  
  - To protect the public from risks to health which may arise in connection with the consumption of food
  
  - To improve the extent to which members of the public have diets which are conducive to good health
  
  - To protect the other interests of consumers in relation to food

- Establish new food law provisions: related to food which does not comply with food information law (e.g. mislabelled food); an offence of failure to report breaches of food information law; a statutory requirement for the mandatory display by food businesses of inspection outcomes; and new administrative sanctions for non-compliance with food law.
Consultation

7. Prior to consultation on the Bill, Former Chief Veterinary Officer, Professor Richard Scudamore, was asked by Scottish Ministers to lead an independent review to assess the feasibility of establishing a stand-alone Scottish Food Standards Agency. The resulting “Scudamore Report” was published in March 2012 and recommended (amongst other things) that a Scottish FSA be established.

8. Two separate consultations were then carried out prior to the introduction of the Bill: *A healthier Scotland: Consultation on creating a new food body* (Scottish Government) and *Consultation on new proposed enabling primary food and feed legislation provision* (FSA Scotland), both running between February and May 2013.

9. In light of the 2013 horsemeat incident, two further reports were commissioned. Professor Richard Scudamore was commissioned by the Minister for Public Health to lead an Expert Advisory Group tasked with looking at food and feed safety and standards in Scotland.

10. An Expert Food Group was separately set up by the Cabinet Secretary for Rural Affairs and the Environment, chaired by Ray Jones, chair of Scotland Food and Drink. It reported in parallel to the Expert Advisory Group on the principles of traceability, labelling, assurance schemes and provenance, associated with primary red meat production and processing.

11. The recommendations of the Scudamore Report, the Expert Advisory Group and the Expert Food Group, to a large extent, form the basis of the Bill.

12. The Committee is satisfied that the Bill has been subject to adequate consultation.
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13. The Committee invited comments on the following areas:

- The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements
- The scope of the objectives and functions of FSS, including whether and how they could support Scotland’s sustainable development
- The proposed administrative and governance arrangements for the FSS
- The proposed powers of the FSS
- The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident)
- The provisions set out in the Bill for non-compliance with food safety and standards
- Any other comments on the Bill that relate to areas not covered above.

Members of the Committee visited Joseph Robertson Ltd., seafood producer in Aberdeen.
Summary of evidence and analysis

14. Evidence received in written form was supplemented by oral evidence taken at the Committee’s meetings. Detailed analysis and summary of the evidence follows.

The establishment of a new food body for Scotland

15. Part 1 of the Bill seeks to create the body “Food Standards Scotland” (FSS) which, following subsequent, associated secondary legislation, will replace the FSA in Scotland and carry out its current functions.

16. Witnesses who submitted written evidence regarding the establishment of the FSS fell into two categories: those who agreed that FSS should be established and those who did not. The majority of those providing written evidence agreed that a stand-alone Scottish food body should be established. Which? argued that this was an “enormous opportunity” to deal with issues such as diet, food standards and food fraud. Most respondents agreed with the Scottish Government’s rationale for creating the new body: that Scotland had unique circumstances related to diet and food-borne illnesses, that changes made in the UK had made it necessary, and that there was a need to have a single body responsible in Scotland for the whole range of food-related policies.

17. However, some of those providing written evidence, mainly those representing the food and retail industries, opposed the creation of the FSS and preferred the status quo. They argued that preservation of the status quo would ensure a consistency of approach, communication and advice across the UK, maintain good links to the EU, and avoid duplication of effort. The Scottish Retail Consortium, for example, noted that its members were “concerned that a move from having a single body that does everything across a single market, which is what the UK is, in effect, might lead to resources and expertise being denuded”.

18. In oral evidence, few witnesses questioned the creation of the new food body and instead sought assurances about its working practices.

19. The Policy Memorandum explains that the new food body will bring the FSA’s existing public health protection role together with the new objective on diet and nutrition. It goes on to explain that this arrangement will simply be an extension of work already undertaken in partnership between the FSA in Scotland, the Scottish Government and NHS Health Scotland. The objective relating to food and diet, “allows for the further development of the present flexible mechanism for sharing and working in partnership between these authorities on issues such as diet and nutrition”.

20. In oral evidence, the Minister said that “the legislation will allow it [the FSS] to work in a coordinated way with the NHS and other organisations with a role to play in the obesity and dietary challenges that we face in Scotland.”
21. The Committee notes some differences of view in the evidence about the need for the new body.

22. However, the Committee also notes the Scottish Government’s arguments that these changes are necessary in light of the so-called UK ‘machinery of Government changes’ and, accepts that the new body will serve to bring together the separate, but closely related policy areas of food safety and diet and nutrition.

23. On balance, therefore, the Committee supports the central proposal of the Bill, to establish Food Standards Scotland, a new food body for Scotland.

Objectives for Food Standards Scotland

24. The Bill sets out three main objectives for the new food body:

   a) to protect the public from risks to health which may arise in connection with the consumption of food,

   b) to improve the extent to which members of the public have diets which are conducive to good health,

   c) to protect the other interests of consumers in relation to food.

25. In addition to assuming the current responsibilities of the FSA Scotland, FSS will be given wider powers under the Bill in the areas of diet and nutritional health. The Policy Memorandum explains that work in these areas is already undertaken in partnership between the FSA in Scotland, the Scottish Government and NHS Health Scotland. This new statutory objective, according to the Policy Memorandum, “allows for the further development of the present flexible mechanism for sharing and working in partnership between these authorities on issues such as diet and nutrition”.5

26. Giving oral evidence supporting the proposed role of FSS in relation to diet and nutrition, Sue Davies of Which? suggested that these new responsibilities would provide an opportunity “to ensure that it [FSS] tackles issues that are specific to Scotland”. In particular, she said, it could “focus more on issues of diet and health than has been possible under the Food Standards Agency”.6

27. The written submission from the MRC/CSO Social and Public Health Sciences Unit at the University of Glasgow welcomed action on improving diet and nutrition, suggesting an approach akin to efforts at curbing alcohol and tobacco use through interventionist measures aimed at the production and marketing of food products. It suggested that this could take place, for example, “through regulation of advertising, rather than simply providing the public with information, advice or encouragement to eat a healthier diet.”7
28. Other submissions, such as those from the Soil Association, James Hutton Institute (JHI), BMA Scotland, the Royal Society of Edinburgh (RSE) and Quality Meat Scotland (QMS), were supportive of the proposals for FSS to have a role in relation to diet and nutrition. JHI and BMA Scotland called for FSS to have a strong co-ordination and leadership role in the area, especially given that there are a number of bodies such as NHS Health Scotland and Health Protection Scotland, whose remit extends into, for example, combatting obesity.

29. Evidence from Health Protection Scotland expressed the hope that FSS would “continue to work and develop in close collaboration with stakeholder agencies such as HPS, as has always been the case with FSA(S) to date”. It continued that although this was implicit in some parts of the Bill, “it could usefully be made more explicit in some areas e.g. the provision of Annual and other reports”8 Professor Marion Bain expanded on this theme in oral evidence, stating that—

“We would need to be clear about the relative responsibilities and how we can build on the best aspects of all the different organisations.”

30. The RSE position in support of the diet and nutrition powers is provisional on FSS being adequately resourced and being well connected to the Scottish Government’s scientific advisors. Some respondents, such as QMS and the British Dietetic Association, were supportive of the inclusion of a diet and nutrition objective in the Bill, but, for example, QMS “note[s] with concern that there appears to be very little detail in support of this objective in the remainder of the draft bill and very little indication of how FSS will deliver this important objective.”9

31. The Committee notes the new powers in respect of diet and nutrition proposed for Food Standards Scotland in comparison to those currently held by the Food Standards Agency.

32. The Committee is aware from much of its other work of the impact of diet and nutrition on general health and wellbeing and their links with obesity (and the health issues that it gives rise to) and health inequalities. The Committee, therefore, considers it appropriate that the new body have these additional powers, as part of the public policy approach to the many and varied dietary and nutritional challenges faced in Scotland.

33. The evidence received calling for FSS to have a strong coordination and leadership role, given that there are a number of other existing bodies which also have a role in this area, is accepted by the Committee. The Committee is aware that much of the detail of how FSS will work alongside other public sector agencies in relation to these new powers will be for negotiation once the new body has been established. Nevertheless, the Committee invites the Minister to set out, in general terms, how the Scottish Government would envisage FSS’s food and nutrition role being carried out in practice. The Committee also seeks an assurance from the Minister that the Scottish Government will take any steps
necesssary to ensure that the work of FSS and the relevant NHS bodies is appropriately co-ordinated in order to ensure that the combined efforts of the different bodies are as effective as possible in progressing agreed objectives.

Scope of FSS objectives and remit

34. The Policy Memorandum states that—

“FSS will develop and implement policy on food safety and standards in Scotland. This includes advising and informing the public and users of feed stuffs.”

35. There was not, however, unanimous agreement on the principal role of the FSS. Some submissions, for example those from the Scotch Whisky Association (SWA) and the Scottish Food and Drink Federation (SFDF), argued that FSS should seek to help grow the food and drink industry in Scotland. However, Nourish Scotland, BMA Scotland and NHS Lothian were concerned about a possible conflict of interests if FSS were to have a role both in promoting Scottish food and drink and in improving diet and health.

36. The Committee notes the views it received to suggest that one of the roles of FSS should be to help grow the food and drink industries in Scotland.

37. The Committee is aware, however, that FSS will have strong regulatory powers to ensure and promote food safety and standards on behalf of the population. As witnesses have pointed out, these may not sit entirely comfortably with a role to help grow the food and drink industries. That said, the Committee would hope that FSS would exercise its powers in a proportionate and appropriate way that would protect the prospect of sustainable growth generated by the industries themselves.

38. The Committee is, therefore, content with the powers and proposed scope of operations for FSS as set out in the Bill.

Financial matters

39. The Committee considered the financial arrangements associated with the Bill. Scrutiny of the Financial Memorandum was also undertaken by the Parliament’s Finance Committee, which sent a letter to the Committee. This letter is contained in the Annexe.
Financial implications of additional responsibilities

40. The Financial Memorandum states—

“The financial grant provided to FSS will exceed that currently provided to the FSA in Scotland by approximately £5 million, as FSS will have to fill roles previously delivered from York and London. The intention is to have this increase offset through a financial transfer from the FSA UK-wide budget to the Scottish Government to represent the activities which will now be delivered in Scotland rather than on a UK-wide basis. The level of that financial transfer is the subject of on-going negotiations.”

41. Concerns were raised with the Finance Committee – which had issued a call for evidence on the Bill – about the uncertainty surrounding the additional budget that will be required by FSS to undertake its new roles. QMS, for instance, noted that—

“It is intended that the increased running costs of FSS will be offset through a financial transfer from the FSA UK-wide budget to the Scottish Government. The level of this financial transfer remains subject to negotiation and is therefore as yet unknown. This unknown creates uncertainty in the financial model.”

42. The Committee questioned the Minister about this. The Minister noted that these negotiations remained on-going. However, he said—

“They have been straightforward in that they have taken place within the machinery of Government…I am confident that we will reach an agreement that reflects what we are satisfied is an appropriate amount to be returned to the Scottish budget.”
43. The Finance Committee received submissions from local authorities (North Ayrshire Council and East Ayrshire Council) concerned about the potential for the role of FSS to be expanded in the future, and highlighting that this risk had not been addressed in the Financial Memorandum.

44. In addition, Renfrewshire Council argued that, if it were found not to be the case that the costs set out in the FM were accurate, “provision should be made through grant funding via the Food Standards Scotland to local authorities who can demonstrate additional costs incurred in implementing the provisions of the Act or in implementing policy changes made as a result of this”.13

45. In evidence, the Minister explained that the Bill had been drafted “in such a way that, if it were decided at some point that the FSS should have additional responsibilities, the legislative framework would allow that to happen”.14

46. The Minister went on to suggest that a cautious approach would be adopted in response to any suggestion that additional resources were required, stating that “due process would be followed before any additional duties were undertaken”.

47. Asked specifically about the financial resources required to support the new role of FSS on diet and nutrition, the Minister said—

> “Because we are not extending the role [of the FSA-Scotland] significantly, there is no need for any additional resource at present”.

48. Further detail of the Finance Committee’s consideration of the Financial Memorandum can be found in the Annexe.

49. The Committee thanks the Finance Committee for its report and notes its comments.

50. The Committee would welcome an update from the Minister on the progress of the budgetary negotiations between the Scottish and UK Governments, in advance of the stage two proceedings.

51. The Committee notes the Minister’s comments that there is no need for additional resource at present because, although the Bill gives the FSA additional responsibilities in respect of diet, these responsibilities do not extend the role currently carried out by FSA Scotland sufficiently significantly for additional resources to be required. Nevertheless, the Committee seeks an assurance from the Scottish Government that any significant future expansion of FSS’s role under the Bill will be appropriately resourced.
Possible future expansion of FSS remit

52. The Policy Memorandum notes that the Scottish Government’s 2013 consultation on the remit and governance arrangements for a new food body identified many suggestions and ideas, including more direct involvement in the regulation of animal health, animal by-products, eggs, poultry meat, organic food labelling and drinking water quality. None of these areas is presently led by the FSA in Scotland. The Policy Memorandum notes that no decisions have been taken on any of these suggestions and each would need to be considered in detail and consulted on specifically.

53. The Committee notes that the 2013 consultation gave rise to a number of suggestions regarding possible expansions of any new Scottish food body. The Committee also notes the comment in the Policy Memorandum that no decisions have been taken on these suggestions and each would need to be considered and consulted on specifically.

54. The Committee accepts that the Bill’s Financial Memorandum sets out the anticipated costs associated with the Bill’s provisions, but notes that any widening of the FSS’s remit would be likely to bring additional financial implications for the body itself, and possibly for local authorities.
Administration and governance of Food Standards Scotland

Size of the board

55. Many respondents were content that the administration and governance arrangements and powers set out in the Bill for FSS were appropriate. However, a common theme of evidence has been that the proposed size of the FSS board is too small. The National Farmers Union Scotland (NFUS), for example, said “the proposed size of the board is too small to ensure a balanced range of views and [we] would suggest a minimum of six and maximum of ten board members.”

The Scottish Salmon Producers Organisation commented—

> “for the FSS to retain public confidence… it will need more than a minimum of 3 Board members and the Chairman. It is suggested the maximum allowable number of Board members should be 9 and that the minimum allowable should be 6. (This would allow for 3-year rotations of 2 or 3 members depending on the actual size of the Board).”

56. The Royal Society of Edinburgh argued that—

> “the proposed minimum board size of 3 appears too small to maintain scrutiny of the operations and allow for rotation of board members. We would suggest that a minimum of 5 would be more appropriate.”

57. When questioned on the size of the board, the Minister told the Committee that the board will have a minimum of four (including the Chair) and a maximum of eight members. He argued that this broadly reflected the board make-up for other non-ministerial-led organisations of that size, such as the Office of the Scottish Charity Regulator and the Scottish Housing Regulator. Bigger organisations such as the Scottish Environment Protection Agency and Scottish Enterprise had a higher number, with a minimum of five and a maximum of 10 members. He acknowledged that, if the number of FSS board members were to drop to four, “that would be too low”. He said that the Scottish Government would want to “manage the numbers to maintain a higher level, as close to eight members as possible.”
58. The Committee notes the Minister’s comments on the proposed size of the board and how it compares with other similarly sized non-ministerial-led regulatory bodies.

59. The Committee agrees with many of the witnesses that a board of three (four including the chair) would probably be too small. However, the Committee also notes the Minister’s observation that the proposed size of the board is in line with those of similar-sized organisations.

60. The Committee also notes the Scottish Government’s intention to manage the numbers to maintain a board membership as close to eight as possible. Given that, and recognising the possibilities of unwieldiness that a higher membership could potentially bring, the Committee is not convinced that the number of members of the board needs to be increased.

**Sectoral representation**

61. A number of stakeholders argued that the board should include specific stakeholder representatives. Perhaps unsurprisingly, Which? argued for a consumer representative, UNISON for a trade union representative and NFUS for a farming industry representative.
On the other hand, a number of witnesses commented that the board's membership should not be drawn up by sector, rather there should be a broad range of knowledge and experience and the board should work in the general interest of the consumer. Dr James Wildgoose commented—

“It is important that the people on the board do not represent their particular sectors. They are working in the public interest, and that is written into the governance of the bill. It is very important that consumers come first. Although people will come from an industry, nutrition or public health interest, they will be working collectively to come to decisions in the public interest, not in the interests of individual sectors. That is how the FSA board works, and I think that that arrangement should apply to the new body, too. Indeed, that is implicit in the bill.”

When the Committee questioned the Minister on this issue, he commented—

“FSS is a consumer protection organisation, so it is important that the board has a clear commitment to that responsibility and to the organisation’s objectives, and the board membership should reflect that. Rather than choosing someone from one sector or another, the choice of members should be based on people’s ability to contribute to achieving those objectives and on their expertise and knowledge, to assist the FSS in achieving its outcomes.”

The Committee is not convinced by the argument that the board should be comprised of sectoral representatives. The role of FSS is to act in protection of consumers and the appointment of individuals to the board should, in the Committee’s view, be broadly in support of that overarching function.

Individuals should be appointed to the board on the basis of their skills, experience and competences and what they can contribute to achieving the organisation's objectives, and not to be narrowly representative of any particular sector.

The Committee is, therefore, content with the membership proposals set out in section 6 of the Bill.

Many witnesses were concerned about the relationship that FSS would have with food-related bodies in Scotland, the UK and EU.

Which? noted “great variation” across Scottish local authorities in the effective enforcement of food law and argued that FSS should oversee and co-ordinate this to ensure consistent standards. Both RSE and the Royal Society of Chemistry...
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were concerned about the number of public analysts (who carry out tests on food samples) and the resources that support them. The Royal Environmental Health Institute Scotland (REHIS) noted the variation in how official controls are executed and recommended a role for FSS in promoting consistency.

FSA and other UK bodies

69. Many witnesses discussed the need for FSS to continue to work closely with the FSA in the rest of the UK. SFDF, for example, noted the need to “ensure a consistent regulatory framework across the UK”\(^{21}\). The Scotch Whisky Association suggested that a memorandum of understanding was needed between the FSS and the FSA.

70. Dr James Wildgoose stressed in evidence that “bugs do not observe borders”\(^{22}\), while Alistair Donaldson (Scudamore Review Panel) agreed that “a collaborative approach will be needed on some major issues”\(^{23}\).

Europe

71. A number of witnesses (such as Nourish Scotland) noted that much food policy was driven by the European Union, and argued that FSS would need an effective voice in Europe. The SFDF noted that the UK was the Member State and argued that there was a need for “a robust mechanism to ensure Scottish views are taken into account”\(^{24}\).

72. The Minister told the Committee that the Scottish Government was “making good progress” in regard to maintaining and developing existing networks. He said that there had been “a very good working relationship with the FSA at a UK level from the outset”. He added that there were “aspects of the current arrangements that it [the FSA] is keen to maintain, because there are areas of research and expertise in Scotland that it wants to continue to be able to make use of, and we are keen to work with it”.\(^{25}\)

73. The Minister also noted that the Scottish Government was developing a memorandum of understanding with the FSA on accessing and sharing expertise and information among the agencies.

74. With regard to the position of FSS in relation to the European Union, the Minister remarked that “opportunities will be opened up for us at a European level that would normally be filtered through the London office and which the FSS will be able to tap into directly.”\(^{26}\) These opportunities would include areas such as research.

75. The body of evidence received by the Committee underlines the importance of FSS quickly developing links with a variety of bodies in Scotland, the UK and Europe.
76. The Committee notes the assurances that relationships with the FSA are cordial and that work is progressing on developing a memorandum of understanding with the FSA, as suggested by some of the Committee’s witnesses.

77. The Minister told the Committee that opportunities would open up for FSS at a European level that would previously have been filtered through the London office and which the FSS would in future be able to tap into directly. While the Committee welcomes this, it would also be interested in hearing more about these opportunities and how they are expected to operate in practice.

Access to research, evidence, science and advice

78. A clear theme from the evidence was the need for FSS to have access to the best science to underpin policy. A number of respondents highlighted the considerable relevant expertise available in Scotland. SFDF’s submission stated that it was—

“important to note that extensive diet and nutrition expertise exists in the food industry and academia. There should be a mechanism to access this based on scientific merit and independence.”

79. The MRC/CSO Social and Public Health Sciences Unit, University of Glasgow submission made reference to the—

“substantial community of public health researchers in Scottish Universities and national bodies such as NHS Health Scotland, with relevant expertise in nutrition, evaluation methods, and economic evaluation.”

80. Some respondents highlighted the need for FSS to have access to expert committees such as the Scottish Food Enforcement Liaison Committee, which exists under the current arrangements. The RSE noted that much of the current research funding for food-related research came from UK Government sources, and stressed the importance of FSS being able to access this.

81. An evidence session held by the Committee on 3 June 2014 heard views from, amongst others, Professor Peter Morgan, representing the Rowett Institute of Nutrition and Health (University of Aberdeen), and Professor Hugh Pennington, speaking for the RSE. Professor Morgan argued in favour of maintaining existing links to the advisory committees to the UK Food Agency, noting that “a lot of work is going on in the UK and across Europe, and the advisory committees can pull it together and give advice through food standards Scotland as an independent body.” In regard to European
opportunities, Professor Morgan spoke of “great opportunities for Scotland coming through the Horizon 2020 funding” and remarked that FSS “should have a definite role in trying to influence what research is done”.

82. Professor Pennington added that FSS should have access to its own research body in order to respond speedily to emerging situations in Scotland.

83. In evidence to the Committee, the Minister indicated that (as previously mentioned) a memorandum of understanding was being drawn up with the FSA “on accessing and sharing expertise and information among the agencies”. Access to European research opportunities and related funding would still be “taken forward on a corporate basis by the FSA at a UK level”.

84. However, in oral evidence to the Committee, Tim Smith from Tesco stated—

“...I encourage more boldness and suggest that the new body will not want just access but influence. Some issues will be more important in Scotland than they are in other parts of the United Kingdom. The new body will need to ensure that those priorities are met with the same enthusiasm as they are now.”

85. The Committee calls on the Scottish Government to provide clearer detail of the proposed research functions and capability of FSS and how the research operations of FSS are expected to relate to UK-funded research bodies. In particular, the Committee asks the Scottish Government to provide a more detailed explanation of how it will seek to secure access and maintain relationships with the UK-funded research bodies.

86. The Committee also notes the expectations expressed by the Minister and other witnesses that the creation of the new food body will lead to improved access to European research funding. The Committee welcomes this but calls on the Scottish Government to provide a more detailed clarification of how it expects that research institutes will gain this improved access to European research funding and opportunities through the new food body.

87. The Committee would also welcome additional detail on the likely content of the proposed memorandum of understanding between FSS and the FSA (UK) ahead of the stage one debate. The Committee invites the Minister to set out how the FSS will have both access to and influence on relevant FSA UK committees.
Sanctions for food law offences

88. Sections 35 to 51 of the Bill provide for a range of new administrative sanctions for use in situations where offences related to Scotland’s food law have been committed. These provisions include fixed penalty notices and compliance notices. The majority of respondents welcomed the administrative sanctions for food law offences set out in the Bill, arguing that they would add to the powers available to officers, increase effectiveness and reassure consumers. The NHS Forth Valley submission, for example, noted that the introduction of the new sanctions was “likely to lead to an increase in the effectiveness of the FSS and Local Authorities in enforcing the food safety laws.”

89. A number of stakeholders, however, in written evidence to the Committee, did not support the sanctions and raised specific objections. SFDF did not support new enforcement sanctions because of concerns about inconsistencies across local authorities and the “uncertainties and burdens” this would create for business. It argued that “creating new hurdles and penalties to be implemented in Scotland uniquely will create complexity, possible additional costs and may deter investment in the sector.”

90. The Scottish Retail Consortium and the Scottish Grocers’ Federation also opposed the new sanctions, arguing that better regulation meant “securing compliance through a risk, evidence and advice based approach.” It argued that the burden of proof should be on the enforcers to prove non-compliance.

91. SFDF argued that the extended powers failed to distinguish between rogue traders and “law-abiding businesses navigating a complex regulatory environment.”

92. A number of other respondents requested clarification on specific areas. For example, SWA sought a list of activities to be covered by fixed penalty notices and compliance notices. SWA also noted the lack of an appeals process for fixed penalty notices. NFUS and SWA highlighted issues related to income from the sanctions. For instance, whilst SWA welcomed the proposal that the income from penalty notices be paid to the Scottish Ministers (section 40) so that the sanctions were not seen as income generation activities, NFUS argued that FSS must be seen to be at arm’s length from government and that income from fines should be paid into the Consolidated Fund, as is currently the case.

93. In oral evidence, William Hamilton from Glasgow City Council stated that—

> “Prosecution is not a great option, so administrative fines or fixed-penalty notices—call them what you will—would be a boon to us. I am familiar with the arguments against such measures—that they could be seen as fundraising—but I believe that the bill would deal with that.”

94. However, David Martin from the Scottish Retail Consortium argued that—
“our members’ experience is that fixed-penalty notices can often lead to a tick-box approach to enforcement that does not really drive better performance or compliance. Such an approach deters retailers from coming forward for advice, because they are worried about more penalties for minor infringements; it makes it easier for a penalty to be imposed. There is also an issue around the burden of proof.”

95. He also made a plea that any fixed penalty notices are “issued not just to the store or store manager but to headquarters” saying that his members wanted “to know if a store is perceived as not being compliant”.

96. REHIS rebutted the points made by the SRC—

“The environmental health ethos is to provide advice, support and guidance to businesses, with the ultimate aim of achieving compliance. Environmental health officers are there to help businesses, and they spend an awful lot of time doing that. Enforcement is rarely the first resort; it is mainly the last resort, and it is always done to protect public safety—we would much rather have compliant, successful businesses, which contribute to the local economy. Only when people are minded not to comply or are minded to be obstructive, and at the end of a particular process, are sanctions applied. We do not do that at the start of the process.”

97. The Committee notes the evidence from Glasgow City Council that the current system, under which local authorities seek prosecution of offenders through the courts, is expensive and not particularly effective or appropriate.

98. The comments of the Scottish Retail Consortium and other retail organisations in opposition to administrative sanctions are noted by the Committee. However, the Committee is more persuaded by the REHIS’ arguments that environmental health officers work closely to support retail business in meeting the required hygiene standards and would normally only seek to use administrative sanctions as a last resort.

99. The Committee, therefore, in principle, supports the Bill’s provisions as regards administrative functions.

100. The Committee notes, however, the point made by the Scotch Whisky Association about the absence of an appeals process for fixed penalty notices. The Committee would invite the Scottish Government to consider the possibility of establishing an appeals process.

101. The Committee also notes differing views about the proposal that income derived by enforcement authorities from fixed penalties will be paid over to the Scottish Ministers and not to the Consolidated Fund as is currently the case.
The Committee invites the Scottish Government to comment on the suggestion by the NFUS that the proposed arrangement might affect the perception of FSS as a non-ministerial body.

**Food fraud**

102. Section 32 creates new provisions related to contravention of food information law. These would be used when the description on a food label did not reflect its contents. Evidence provided to the Committee indicated a good deal of support for the provisions. For example, in written evidence, SWA welcomed the new food information law provisions, arguing that they would fill a regulatory gap and strengthen the protection for food and drink.\(^{39}\)

103. However, *Which?* argued that the powers needed to be strengthened so that FSS would also be able to require food business operators to conduct food testing and disclose the results. Currently, testing can be required if there is a concern about food safety, under the Food Safety Act 1990, but not if there is a concern about food standards only. SFDF, SRC and the Scottish Grocers Federation did not support the new provisions, arguing that they were disproportionate and unnecessary. They argued that the provisions did not fit with the Scottish Government’s “better regulation” agenda. SRC raised a particular concern about the “inability of food businesses to challenge the enforcing officer when goods are ordered to be removed from sale”.\(^{40}\)

104. In oral evidence, Uel Morton from QMS argued that food information provisions must target the right person, stating that—

> “To some extent, the retailer is a soft target, because he is there and he is available. As we know from the horsemeat scandal, the substitution of beef with horsemeat in ready meals and burgers occurred further down the chain. It was not committed in the UK. It happened in Ireland, in the case of the burgers, and in France, with a background in the Netherlands. It was a complicated international food fraud…. We need to target the legislation at the unscrupulous people further back in the chain.”\(^{41}\)

105. In addition, during a fact-finding visit to Aberdeen, the Committee heard concerns from some stakeholders that the new legislation may duplicate existing EU regulations. In evidence, however, the Minister and his officials explained that the Bill would extend responsibility on food fraud, placing a duty to report mislabelling on distributors. He noted that this had been recommended “on the back of the horsemeat scandal as a way of trying to drive forward improvement and clearer responsibility for reporting when someone suspects that there might be mislabelling.”\(^{42}\)

106. Another concern raised with members during the visit to Aberdeen was that the new regulatory regime could impose disproportionate financial penalties on businesses, particularly smaller, independent operations. Scottish Government
Evidence subsequently assured the Committee that it was not intended that FSS would always adopt a punitive approach, suggesting that inspectors may simply request that producers re-label and re-package products which have been deemed to have been mislabelled.

107. Some of these points were put to the Minister and his officials when they appeared at Committee. On the point about possible duplication of EU regulations, Morris Fraser, the Bill team leader, told the Committee—

“The committee may have heard evidence that there might be a perception of duplication, but there clearly is not. Our bill brings forward the duty for someone to report to the central authorities that they think that something is going on; that is an intelligence-gathering tool to try to clamp down on something. The food information regulation relates to situations in which someone who knows something ought to tell their supplier and those to whom the food is being supplied, not the authorities. There is no duplication.”43

108. The Minister told the Committee that the Bill “goes a bit further than what is contained in the regulations”.44 He said that, under the Bill’s provisions, even if someone was not selling the product, they would have a responsibility to report it if they believed that there might be an element of mislabelling.

109. The Committee notes the proposals in respect of food labelling and that they have been proposed, at least partly, in response to the horsemeat incident.

110. The Committee also notes the industry concerns about the risks and extra burdens that could be imposed on businesses should Scotland require a labelling regime different from the rest of the UK. However, the Committee is reassured by the Minister’s assurance that the measures are intended to provide a proportionate response in instances of fraudulent labelling of food and that the Scottish Government does not intend to promote measures that would impact negatively on Scottish food businesses.

111. The Committee, therefore, supports the new food information law provisions in the Bill.
Food hygiene information scheme

112. Section 33 allows the Minister to create (at some point in the future) a mandatory food hygiene information scheme. Under the scheme, the results of inspections of food premises carried out by “a food authority” – usually a local authority – would have to be publicly displayed within the food premises. The vast majority of respondents were in support of the enabling powers related to the food hygiene information scheme.

113. The Policy Memorandum notes that a similar statutory scheme has already been introduced in Wales and is to be introduced in Northern Ireland. The Scottish Government has decided to monitor developments in these two jurisdictions and take time to consider the most appropriate arrangements for introducing a scheme in Scotland.

114. Charles Milne from the FSA Scotland told the Committee—

“The argument is that by…making it mandatory to display certificates you are allowing consumers to make a choice and putting pressure on businesses that require improvement to up their standard...In summary, though, I support the measure.”

115. The Scottish Food Enforcement Liaison Committee recommended that FSS consider introducing a food standards element into food business rating schemes. It argued that this would address an anomaly where food businesses could pass the hygiene standard but at the same time have low food standard compliance.

116. The Committee notes the widespread support in the evidence for a mandatory food hygiene information scheme.

117. The Committee also notes that the Scottish Government is to monitor developments with the statutory schemes in Northern Ireland and Wales before finally committing to such a scheme for Scotland. This seems to the Committee to be a sensible approach.

118. The Committee looks forward to hearing proposals for a mandatory scheme in Scotland in due course.
Consideration by other committees

Delegated Powers and Law Reform Committee

119. The Delegated Powers and Law Reform Committee (DPLRC) is required to report on powers to make subordinate legislation in particular Bills or other proposed legislation.

120. The DPLRC report draws the attention of the lead committee to the width of the power in section 34 of the Bill, which confers a power on the Scottish Ministers to make specific provision for the purpose of regulating any animal feeding stuff, or anything done, or which might be done to, or in relation to, or with a view to the production of, any animal feeding stuff. The DPLRC considers that the Scottish Government has not provided sufficient justification for the taking of a power in such wide terms.

121. The DPLRC also addresses a number of specific suggestions for amendments to the Bill in respect of its subordinate legislation provisions.

122. The DPLRC report can be viewed on the Health and Sport Committee's website (see Annexe C).

123. The Committee thanks the DPLRC for its report and draws the specific recommendations for amendments to the attention of the Scottish Government.

Finance Committee

124. Scrutiny of the Financial Memorandum for the Bill was undertaken by the Finance Committee. Financial matters in relation to the Bill have been discussed earlier in this report. The Finance Committee’s findings are set out in a letter to the Health and Sport Committee, which is available on the Health and Sport Committee’s website (see Annexe C).
Conclusion

125. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

126. The Committee’s evidence during stage 1 found widespread (though not completely unanimous) support for the provisions contained in the Bill. However, a number of specific points and areas where clarification would be helpful have been raised with the Committee and these are covered in the body of the report.

127. Overall, however, the Committee supports the general principles of the Bill and recommends to the Parliament that they be agreed to.
15 National Farmers Union Scotland. Written submission, paragraph 13.
16 Scottish Salmon Producers Organisation, Written submission.
18 Scottish Food and Drink Federation, Written submission, page 1.
26 Scottish Food and Drink Federation, Written submission, page 4.
27 MRC/CSO Social and Public Health Sciences Unit, University of Glasgow, Written submission, page 4.
31 NHS Forth Valley. Written submission, paragraph 5.
32 Scottish Food and Drink Federation. Written submission, page 5.
33 Scottish Retail Consortium. Written submission, page 5.
34 Scottish Food and Drink Federation. Written submission, page 5.
39 Scottish Retail Consortium. Written submission, paragraph 17.
Annexe A

Extracts from the minutes of the Health and Sport Committee and associated written and supplementary evidence

10th Meeting, 2014 (Session 4), Tuesday 25 March 2014
Food (Scotland) Bill: The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

17th Meeting, 2014 (Session 4), Tuesday 27 May 2014
Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Sue Davies, Chief Policy Adviser, Which?;
Dr James Wildgoose, Chair Scottish Food Advisory Committee;
Alastair Donaldson, former member of the Meat and Livestock Commission, member of the Scudamore Review panel.

Written Evidence

Which?

18th Meeting, 2014 (Session 4), Tuesday 03 June 2014
Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Robbie Beattie, Public Analyst, Association of Public Analysts Scotland;
William Hamilton, Business Regulation Manager, Land and Environmental Services, Glasgow City Council;
Professor Marion Bain, Medical Director, NHS National Services Scotland;
Dr S Josephine Pravinkumar, Consultant in Public Health Medicine, NHS Lanarkshire;
Professor Peter Morgan, Director Rowett Institute of Nutrition and Health and Vice Principal, University of Aberdeen;
Hugh Pennington, Royal Society of Edinburgh.

Written Evidence

NHS National Services Scotland
Royal Society of Edinburgh
19th Meeting, 2014 (Session 4), Tuesday 10 June 2014

Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Charles Milne, Director, Food Standards Agency Scotland;
John Lee, Public Affairs Manager, Scottish Grocers Federation;
Laura Stewart, Director, Soil Association;
Dave Watson, Scottish Organiser, UNISON;
Tim Smith, Quality Director, Tesco Group;
Colette Backwell, Director, Scottish Food and Drink Federation.

Written Evidence
- Scottish Grocers Federation
- Soil Association
- UNISON
- Scottish Food and Drink Federation

20th Meeting, 2014 (Session 4), Tuesday 17 June 2014

Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Uel Morton, Chief Executive, Quality Meat Scotland;
David Martin, Head of Policy and External Affairs, Scottish Retail Consortium;
Archie Anderson, President, Association of Meat inspectors;
Colin Wallace, President, Royal Environmental Health Institute of Scotland;
Tony McAuley, Trading Standards Partnership Manager, East Lothian and Midlothian Council.

Written Evidence
- Quality Meat Scotland
- Scottish Retail Consortium
- Royal Environmental Health Institute of Scotland

21st Meeting, 2014 (Session 4), Tuesday 24 June 2014

Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Michael Matheson, Minister for Public Health, Morris Fraser, Bill Team Leader, and Lindsay Anderson, Solicitor, Scottish Government.
22nd Meeting, 2014 (Session 4), Tuesday 12 August 2014
Food (Scotland) Bill: The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its meeting on 19 August.

23rd Meeting, 2014 (Session 4), Tuesday 19 August 2014
Food (Scotland) Bill: The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.
List of other written evidence

- Joyce McLean (Individual)
- Scottish Salmon Producers Organisation
- Nourish Scotland
- Scottish Food Enforcement Liaison Committee
- MRC/CSO Social and Public Health Sciences Unit, University of Glasgow
- Scottish (Managed) Sustainable Health Network
- NHS Lothian
- NFU Scotland
- British Dietetic Association
- James Hutton Institute
- British Medical Association (Scotland)
- Royal Society of Chemistry
- NHS Ayrshire and Arran
- Scotch Whisky Association
- Scottish Association of Meat Wholesalers
- NHS Forth Valley
Annexe B

Note of visit to Aberdeen

The note of the visit to Food Standards Agency Scotland, Joseph Robertson (Aberdeen) Ltd and CFINE can be found on the Scottish Parliament website at the following webpage:

http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/Note_of_Aberdeen_Visit.pdf
Annexe C

Letter from the Finance Committee, Report from the Delegated Powers and Law Reform Committee

Letter from the Finance Committee

The Finance Committee letter on the Food (Scotland) Bill Financial Memorandum can be found on the Scottish Parliament's website at the following webpage:


Report from the Delegated Powers and Law Reform Committee

The Delegated Powers and Law Reform Committee report on the Food (Scotland) Bill can be found on the Scottish Parliament’s website at the following webpage:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/76417.aspx