



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government

29 November 2021

Good Food Nation (Scotland) Bill at Stage 1

Dear James,

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on 16 November 2021 and seeks an explanation of the following matters:

Section 4 – Power to specify functions or descriptions of functions (as regards the effects of national good food nation plans)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative

Paragraph 17 of the DPM provides justification for the power on the basis that the specification of functions or descriptions of functions by the Scottish Ministers will require detailed and lengthy lists which it is considered would be more appropriate to be set out in regulations rather than on the face of the Bill. This, states the DPM, also provides flexibility to update the specified functions when the national good food plan is revised or in response to other changes in circumstance.

While the Committee acknowledges the rationale for taking the power given the ‘detailed and lengthy lists’ required, it would be grateful for an explanation of:

- 1. why there are no functions or descriptions of functions listed on the face of the Bill; and**
- 2. why these are all to be specified by way of subordinate legislation.**

Section 7(2)(c)– Power to specify additional public authorities, thus requiring the authorities to produce plans

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative

The DPM, at paragraph 22, explains that good food nation plans will require to be produced by health boards and local authorities. The reason for taking the power is that in future it may be desired to specify additional public authorities to be required to produce these plans. Further, the need to retain flexibility to add specified authorities promptly and amend the specified authorities in response to changing circumstances makes it appropriate that these matters are covered by subordinate legislation.

It is not however clear from the supporting documents to the Bill in what circumstances a public authority may require to be specified promptly.

In relation to the choice of the negative procedure, paragraph 23 of the DPM highlights that the specification of a public authority would not be a significant change but would be an expansion of the authorities in the public sector required to produce good food nation plans. This, states the DPM, would result in another public authority being required to produce a good food nation plan and to consider it when exercising certain specified functions.

A public authority that is specified under section 7(2)(c) will need to take steps to prepare and publish a good food nation plan. This could be a significant matter for a public authority which may have budgetary, staffing and or other administrative implications. The accompanying [Financial Memorandum](#) refers to these matters in respect of local authorities and health boards.

It is acknowledged that the power is restricted to public authorities, as defined by section 14(1) of the Bill, however there are nevertheless implications as identified above which may arise for a specified authority. Furthermore, there is no formal requirement for the Scottish Ministers to consult with the authority being specified.

It is also noted that the definition of a good food nation plan is relatively limited in the Bill. Furthermore, there appears to be little guidance as to how public authorities might work together in creating such plans to avoid duplication of effort.

The Committee would therefore be grateful for an explanation of:

- 3. why there is no formal requirement to consult a public authority being specified;**
- 4. given the implications outlined above for specified public bodies should they be required to produce good food nation plans and in the absence of an explanation of the circumstances in which a public authority may require to be specified promptly, whether the affirmative procedure would be more appropriate;**
- 5. for clarity as to the intent and scope of such plans in relation to what subordinate legislation may in future specify, what is the formal definition of a good food plan; and**

- 6. given the potential impact on relevant public authorities in relation to the requirement to produce good food nation plans, how might these regulations look to reduce any possible duplication of work and resources?**

Section 10 – Power to specify functions and descriptions of functions (as regards the effect of the good food nation plans)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative

Paragraph 24 of the DPM explains that the intention is that this power can be used to specify subject areas in relation to food-related issues within which functions are exercised by the relevant authorities but also to specify functions exercised by the Scottish Ministers which are included in other legislation. Section 4 of the Bill (referred to above) sets out a similar provision for the Scottish Ministers.

Paragraph 25 of the DPM provides justification for the power on the basis that the specification of functions or descriptions of functions by the Scottish Ministers will require detailed and lengthy lists which it is considered would be more appropriate to be set out in regulations rather than on the face of the Bill. This power also provides flexibility to amend the lists of specified functions when the relevant authorities revise their plans every five years. It is further noted that the need to retain flexibility to update the specified functions in response to changing circumstances makes it appropriate that these matters are provided for in subordinate legislation.

It is acknowledged that it is for the Scottish Government to determine the functions exercised by relevant authorities that will require these authorities to have regard to their good food nation plan. Nevertheless, as with section 4 above, the Committee would be grateful for an explanation of:

- 7. why there are no functions or descriptions of functions listed on the face of the Bill; and**
- 8. why these are all to be specified by way of subordinate legislation.**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Monday 20 December 2021.

Thank you.

Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform Committee