

Good Food Nation (Scotland) Bill

[As amended at Stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Good Food Nation (Scotland) Bill (which was introduced in the Scottish Parliament on 7 October 2021) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These revised Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

4. The purpose of the Bill is to provide for the Scottish Ministers and certain public bodies (in the first instance, local authorities and health boards) to produce good food nation plans and to make provision as to the effect of those plans, namely that the Scottish Ministers and specified public bodies must have regard to the plans when exercising certain functions. These plans will set out main outcomes, indicators and policies in relation to food-related issues. A definition of "food-related issue" is provided in section 13 of the Bill and it may therefore be useful to read that section (and paragraphs 37 to 39 of these Notes) at this stage. There will be duties on the Scottish Ministers and the public bodies to have regard to the plans when carrying out certain functions, as well as duties to report on progress in relation to the plans.

National Good Food Nation Plan

Section 1: Requirement to produce plan

5. Section 1 imposes a duty on the Scottish Ministers to publish and lay before the Scottish Parliament a national good food nation plan.

6. Subsections (3) and (4) set out what the plan must and may contain. Subsection (5) requires the Scottish Ministers, in determining the content of the plan, to have regard to the scope for food-related issues to affect outcomes in relation to a number of important matters.

Section 1A: Preparation of plan: principles

7. Section 1A provides that when preparing the national good food nation plan, the Scottish Ministers must have regard to certain principles.

8. The principle in paragraph (d) refers to the concept of “the food business sector”. This is defined in section 14 of the Bill. It means persons carrying out businesses involving any stage of the production, processing or distribution of food or the preparation or service of food for consumers. This is therefore a wide definition including everyone from farmers to café owners.

Section 1B: Requirement to lay proposed plan before the Parliament

9. Section 1B imposes a duty on the Scottish Ministers to lay the proposed national good food nation plan before the Scottish Parliament within 12 months of this section coming into force. The Scottish Parliament is to have a period of 28 days (not taking into account any period during which the Parliament is dissolved or in recess for more than 4 days) to consider the proposed plan.

10. Before finalising the national good food nation plan, the Scottish Ministers are required to have regard to (a) any representations about the proposed plan that are made to them, (b) any resolution passed by the Parliament relating to the proposed plan, and (c) any report published by any committee of the Parliament relating to the proposed plan before the expiry of the 28 day consideration period.

11. When laying the finalised national good food nation plan before the Scottish Parliament under section 1(1), the Scottish Minister must also lay a statement setting out details of any representations, resolutions or reports of the kind mentioned in paragraph 9 above and the changes, if any, which they have made to the plan in response to those representations, resolutions or reports together with the reasons for those changes.

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Section 2: Preparation of plan: consultation

12. Section 2 imposes a duty on the Scottish Ministers to consult those who the Scottish Ministers consider appropriate on a draft of the national good food nation plan and have regard to any consultation responses.

Section 3: Preparation of plan: consideration of international instruments

13. Section 3 imposes a duty on the Scottish Ministers to have regard, to the extent specified, to certain international instruments in preparing the national good food nation plan:

- Article 11 of the International Covenant on Economic, Social and Cultural Rights provides that a right to an adequate standard of living includes, among other things, adequate food;
- Article 24(2)(c) of the United Nations Convention on the Rights of the Child (the “UNCRC”) sets out the right of a child to the enjoyment of the highest attainable standard of health which requires those bound by the UNCRC to combat disease and malnutrition, including through the provision of adequate nutritious foods;
- Articles 27(1) and (3) of the UNCRC require those bound by the UNCRC to recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and to take appropriate measures to assist parents and others responsible for the child to implement this right and, in case of need, provide material assistance and support programmes, particularly with regard to, for example, nutrition;
- Article 12(2) of the Convention on the Elimination of All Forms of Discrimination Against Women requires those bound by the Convention to ensure women are provided with, among other things, adequate nutrition during pregnancy and lactation.

For further reference, the full titles of those instruments are set out in section 14.

14. The Scottish Ministers may by regulations modify the list of international instruments so as to add, remove or vary a reference to an international instrument. Provisions which may be made by such regulations include provisions to limit the extent of an international instrument (similar to the way in which, for example, the instrument referred to in subsection (2)(a) is limited to the extent that it concerns adequate food) and to make clear the version of the international instrument referred to (if, for example, an earlier version of an international instrument did not cover the food-related issue in the terms intended to be had regard to in preparing the national good food nation plan, the version intended to be referred to, which was in operation at a specific date, could be specified in regulations).

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15. A definition of “international instrument” is contained in section 14 and includes any treaty, convention, international legislative instrument or guidance issued by an organisation governed by international law. It includes any provision of such an instrument, so for example it would be possible to specify one article of an international treaty to which the Scottish Ministers must have regard.

Section 4: Effect of plan

16. The Scottish Ministers must have regard to the national good food nation plan when exercising certain functions. Those functions, or the description within which they fall, will be specified in regulations. For example, a description might be the “provision of food in schools” or “all functions of the Scottish Ministers relevant to the provision of food in schools in the Education (Scotland) Act 1980”. This would mean that when exercising any function in relation to the provision of food in schools, or any function of the Scottish Ministers relevant to the provision of food in schools in the Education (Scotland) Act 1980, the Scottish Ministers would have to have regard to the national good food nation plan.

Section 5: Reporting

17. The Scottish Ministers must publish a report on progress against the indicators set out in the national good food nation plan as soon as practicable after each period of 2 years, beginning on the date the first plan is published and laid before the Scottish Parliament. The timing of the reporting requirement runs independently from the timing of the requirement to review and revise the plan provided for in section 6.

Section 6: Review and revision of plan

18. The Scottish Ministers must review the national good food nation plan every 5 years, beginning on the date the first plan is published and laid before the Scottish Parliament. The plan may be revised following a review (but does not have to be).

19. The provisions of section 1 on the content of the plan, section 1A on the principles to which regard must be had in the preparation of the plan, section 2 on consultation and section 3 on the regard to be given to international instruments when preparing the plans apply to the revision of the plan in the same way as they do to preparation of the initial plan.

20. The timing of the review requirement runs independently from the timing of the requirement to report on progress provided for in section 5.

21. For example, the Scottish Ministers must review the plan before the end of year 5. The Scottish Ministers will have to report on progress against the indicators set out in the plan (as revised following that review) as soon as practicable after the end of year 6, and again as soon as practicable after the end of year 8. A further review of the plan must be undertaken before the end of year 10 with the report on progress on that plan (as revised) due as soon as practicable after the end of year 10.

22. Subsection (5) provides that in preparing a revised national good food nation plan, the requirements in section 1B(1) and (3) to (5) to lay (a) the proposed plan before the Parliament for a consideration period of 28 days and (b) a statement setting out details of any representations, resolutions or reports of the kind mentioned in paragraph 9 above and the changes, if any, which they have made to the plan in response to those representations, resolutions or reports together with the reasons for those changes apply in the same way as they do to preparation of the initial plan.

Good Food Nation Plans Of Public Bodies

Section 7: Requirements to produce plans

23. Section 7 imposes a duty on each relevant authority to publish a good food nation plan. A “relevant authority” is a health board, a local authority or a public authority specified by the Scottish Ministers in regulations.

24. Section 14 defines a health board in terms of section 2(1)(a) of the National Health Service (Scotland) Act 1978, under which the area health boards were constituted for the purpose of exercising functions relating to the health service and making arrangements for the provision of healthcare services. The definition does not include special health boards constituted under section 2(1)(b) of the 1978 Act.

25. The term “local authority” is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (which applies to the Bill) as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

26. The Scottish Ministers may by regulations specify other public authorities to which the duty will apply. Section 14 defines “public authority” for this purpose. Any person who is a part of the Scottish Administration would constitute a public authority for the purposes of the Bill. The definition also extends to include any public body (except the Scottish Parliamentary Corporate Body), public office or holder of such an office with functions (in each case) which relates only to matters which are not reserved under the Scotland Act to the UK Parliament or which has mixed functions (i.e. some which relate to reserved matters and some which relate to matters which are not reserved).

27. The relevant authority must publish its good food nation plan within 12 months of this section coming into force. In the case of a public authority specified by the Scottish Ministers in regulations, the regulations which impose the duty for that authority to publish a good food nation plan will also specify the period by the end of which the plan must be published.

28. Subsections (4) to (6) set out what the plan must and may contain, and require the relevant authority, in determining the content of its plan, to have regard to the scope for food-related issues to affect the same outcomes which are relevant to the national good food nation plan (see paragraph 6 of these Notes).

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Section 7A: Preparation of plans: principles

29. Section 7A provides that when preparing the national good food nation plan, relevant authorities must have regard to the same principles as the Scottish Ministers must do in relation to the national good food nation plan under section 1A.

Section 8: Preparation of plans: consultation

30. Section 8 imposes a duty on relevant authorities to consult those the relevant authority considers appropriate on a draft of their good food nation plan and have regard to the consultation responses.

Section 9: Preparation of plans: consideration of national plan

31. Each relevant authority must have regard to the national good food nation plan when preparing their good food nation plan. This will mean that the relevant authorities have to have regard to the most recent national good food nation plan.

Section 9A: Statement accompanying plan

32. When publishing its good food nation plan each relevant authority must publish a statement setting out how, in preparing the plan, it complied with the duty to have regard to the principles set out in section 7A and the national good food nation plan.

Section 10: Effect of plans

33. Each relevant authority must have regard to its good food nation plan when exercising certain functions. Those functions, or the description within which they fall, will be specified in regulations. For example, a description might be the “provision of food in schools” or “all functions of the local authority relevant to the provision of food in schools in the Education (Scotland) Act 1980”. This would mean that when exercising any function in relation to the provision of food in schools, or any function of the local authority relevant to the provision of food in schools in the Education (Scotland) Act 1980, the local authority would have to have regard to its good food nation plan.

Sections 11 and 12: Reporting, review and revision of plans

34. These sections mirror the reporting and review requirements in relation to the national good food nation plan set out in sections 5 and 6 for relevant authorities’ good food nation plans.

35. Section 12(3) states that the provisions of section 7 on the content of the plan, section 7A on the principles to which regard must be had in the preparation of the plan, section 8 on consultation and section 9 on the regard to be given to the national good food nation plan when preparing a relevant authority’s good food plan apply to the revision of the plan in the same way as they do to preparation of the initial plan.

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36. Section 12(3A) provides that, as required under section 9A for the initial plan, relevant authorities must publish a statement when publishing a revised good food nation plan setting out how in revising the plan, the relevant authority complied with the requirement to have regard to the principles set out in section 7A and the national good food nation plan.

Section 13: Meaning of “food-related issue”

37. This section defines “food-related issue” with reference to the definitions of “food” and “food matter” in sections 53(1) and 54 respectively of the Food (Scotland) Act 2015.

38. Section 53(1) refers to the definition of “food” in [Regulation \(EC\) No. 178/2002](#)¹ as at 7 December 2004. This means that the definition is consistent with European legislation and with the interpretation of “food” set out in various sections of schedule 5 of the Scotland Act 1998.

39. Section 54 defines “food matter” as any matter connected with health which may arise in relation to the consumption of food, or other interests of consumers in relation to food.

Section 15: Ancillary provision

40. Section 15 provides for the Scottish Ministers to be able to make by regulations any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it. Such regulations may modify any legislation, including this Act once enacted.

¹ “food”...means any substance or product, whether processed or partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

“Food” includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

“Food” shall not include:

- (a) feed;
- (b) live animals unless they are prepared for placing on the market for human consumption;
- (c) plants prior to harvesting;
- (d) medicinal products within the meaning of Council Directives 65/65/EEC and 92/73/EEC;
- (e) cosmetics within the meaning of Council Directive 76/768/EEC;
- (f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC;
- (g) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;
- (h) residues and contaminants.

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Section 16: Regulations

41. Section 16 provides for the powers of the Scottish Ministers in the Bill to make regulations to include the power to make incidental, supplementary, consequential, transitional, transitory or saving provision, and to make different provision for different purposes. Subsections (1A) to (4) make provision about the parliamentary procedure which applies to different sets of regulations. Further information on the regulation-making powers contained in the Bill can be found in the Delegated Powers Memorandum published at introduction together with the Supplementary Delegated Powers Memorandum published with these Revised Explanatory Notes.

Section 17: Commencement

42. Section 17 provides for sections 13, 14, 16, 17 and 18 to come into force the day after Royal Assent. The Scottish Ministers may commence the other provisions of the Bill by regulations. The power to make commencement regulations includes a power to make different provision for different purposes, and to make transitional, transitory or saving provision.

Section 18: Short title

43. Section 18 provides for the short title of the Bill, by which it may be cited.

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