Passage of the
Food (Scotland) Bill 2014

SPPB 210
Passage of the

Food (Scotland) Bill 2014

SP Bill 48 (Session 4), subsequently 2015 asp 1

SPPB 210

EDINBURGH: APS GROUP SCOTLAND
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## Contents

Foreword

### Introduction of the Bill

<table>
<thead>
<tr>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill (As Introduced) (SP Bill 48)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 48–EN)</td>
<td>39</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 48–PM)</td>
<td>66</td>
</tr>
<tr>
<td>Delegated Powers Memorandum (SP Bill 48–DPM)</td>
<td>79</td>
</tr>
</tbody>
</table>

### Stage 1

<table>
<thead>
<tr>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 1 Report, Health and Sport Committee</td>
<td>101</td>
</tr>
<tr>
<td>Oral evidence and associated written evidence (Annexe A to Stage 1 Report)</td>
<td>138</td>
</tr>
<tr>
<td>Other written evidence (Annexe A to Stage 1 Report)</td>
<td>255</td>
</tr>
<tr>
<td>Note of visit to Aberdeen (Annexe B to Stage 1 Report)</td>
<td>300</td>
</tr>
<tr>
<td>Letter from Convener of Finance Committee to Convener of Health and Sport Committee (Annexe C to Stage 1 Report)</td>
<td>304</td>
</tr>
<tr>
<td>Report on Food (Scotland) Bill, Delegated Powers and Law Reform Committee (Annexe C to Stage 1 Report)</td>
<td>331</td>
</tr>
<tr>
<td>Extract from the Minutes, Delegated Powers and Law Reform Committee, 22 April 2014</td>
<td>344</td>
</tr>
<tr>
<td>Official Report, Delegated Powers and Law Reform Committee, 22 April 2014</td>
<td>345</td>
</tr>
<tr>
<td>Paper for the meeting of the Delegated Powers and Law Reform Committee, 24 June 2014, incorporating Scottish Government response to the Committee’s report at Stage 1</td>
<td>352</td>
</tr>
<tr>
<td>Letter from Lord Advocate to Convener of Delegated Powers and Law Reform Committee, 23 June 2014</td>
<td>358</td>
</tr>
<tr>
<td>Extract from the Minutes, Delegated Powers and Law Reform Committee, 24 June 2014</td>
<td>359</td>
</tr>
<tr>
<td>Official Report, Delegated Powers and Law Reform Committee, 24 June 2014</td>
<td>360</td>
</tr>
<tr>
<td>Scottish Government response to the Stage 1 Report, September 2014</td>
<td>361</td>
</tr>
<tr>
<td>Extracts from the Minutes of the Parliament, 2 October 2014</td>
<td>366</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 2 October 2014</td>
<td>367</td>
</tr>
</tbody>
</table>

### Stage 2

<table>
<thead>
<tr>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshalled List of Amendments for Stage 2 (SP Bill 48–ML)</td>
<td>394</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 2 (SP Bill 48–G)</td>
<td>404</td>
</tr>
<tr>
<td>Extract from the Minutes, Health and Sport Committee, 11 November 2014</td>
<td>406</td>
</tr>
</tbody>
</table>
Bill (As Amended at Stage 2) (SP Bill 48A) 421
Revised Explanatory Notes (SP Bill 48A–EN) 461
Supplementary Delegated Powers Memorandum (SP Bill 48A–DPM) 473

After Stage 2
Report on Food (Scotland) Bill as amended at Stage 2, Delegated Powers and Law Reform Committee 479

Stage 3
Marshalled List of Amendments selected for Stage 3 (SP Bill 48A–ML) 487
Groupings of Amendments for Stage 3 (SP Bill 48A–G) 490
Extract from the Minutes of the Parliament, 9 December 2014 491
Official Report, Meeting of the Parliament, 9 December 2014 492

Bill (As Passed) (SP Bill 48B) 509
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

Written submissions from the Association of Public Analysts Scotland, Glasgow City Council and NHS Lanarkshire (who all gave oral evidence to the Health and Sport Committee on 3 June 2014) and from Tesco Group (who gave such evidence on 10 June 2014) and a supplementary submission from the Soil Association Scotland (who also gave such evidence on 10 June 2014) were not included in the Health and Sport Committee’s Stage 1 Report. Although not therefore listed in Annexe A to the Stage 1 Report, these submissions are included in this volume before the Official Report for the day on which oral evidence was given (along with the submissions which are listed in Annexe A).
CONTENTS

Section

PART 1

FOOD STANDARDS SCOTLAND

Food Standards Scotland

1 Establishment
2 Objectives
3 General functions
4 Governance and accountability
5 Statement on performance of functions

Membership
6 Number and appointment of members
7 Early ending of membership
8 Remuneration and expenses of members

Staff
9 Chief executive
10 Other staff

Operational matters
11 Proceedings
12 Committees
13 Delegation of functions
14 Annual and other reports
15 General powers

Legislation relating to public bodies
16 Application of legislation relating to public bodies

Step-in powers
17 Serious failure

Acquisition of information
18 Duty to acquire, compile and keep under review relevant information
19 Observations with a view to obtaining information
20 Powers for persons carrying out observations
21 Offences in relation to section 20
Enforcement action
22 Setting performance standards
23 Reporting own enforcement activities
24 Reporting on enforcement action by others
25 Power to request information in relation to enforcement action
26 Offences in relation to section 25
27 Powers for persons monitoring enforcement action
28 Offences in relation to section 27

Issuing guidance on food-borne diseases
29 Power to issue guidance on control of food-borne diseases

Information sharing
30 Publication and disclosure of advice and information

Consequential provision
31 Certain functions of Food Standards Agency ceasing to be exercisable

Part 2
Food and feeding stuffs

Food information
32 Food information

Food hygiene information scheme
33 Food hygiene information scheme

Feeding stuffs
34 Regulation of animal feeding stuffs

Part 3
Administrative sanctions

Fixed penalty notices
35 Fixed penalty notices
36 Content and form of a fixed penalty notice
37 Effect of a fixed penalty notice on criminal proceedings
38 Restrictions on issuing of a fixed penalty notice
39 Withdrawal of a fixed penalty notice
40 Income from fixed penalties to be paid to the Scottish Ministers

Compliance notices
41 Compliance notices
42 Content and form of a compliance notice
43 Failure to comply with a compliance notice
44 Effect of a compliance notice on criminal proceedings
45 Restrictions on issuing of a compliance notice
46 Withdrawal of a compliance notice
47 Appeal against a compliance notice
General

48 Power to make supplementary etc. provision
49 Regulations
50 Lord Advocate’s guidance
51 Interpretation of Part

PART 4

INTERPRETATION

52 Meanings of “food” and “animal feeding stuffs”
53 Meaning of “food matter”
54 Meaning of “other interests of consumers in relation to food”
55 Meaning of “animal feeding stuffs matter”
56 Meaning of “food legislation”
57 General interpretation

PART 5

FINAL PROVISIONS

58 Modification of enactments
59 Subordinate legislation
60 Ancillary provision
61 Crown application
62 Commencement
63 Short title

Schedule—Modification of enactments
Food (Scotland) Bill  
[AS INTRODUCED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

PART 1  
FOOD STANDARDS SCOTLAND  
Food Standards Scotland

1 Establishment

There is established a body corporate called Food Standards Scotland or, in Gaelic, Inbhe-Bidhe Alba.

2 Objectives

(1) The objectives of Food Standards Scotland are—

(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.

(2) The risks referred to in subsection (1)(a) include risks caused by the way in which food is produced or supplied.

(3) Food Standards Scotland must so far as reasonably practicable perform its functions in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

3 General functions

(1) The general functions of Food Standards Scotland are—
(a) to develop (and assist the Scottish Ministers and public bodies and office-holders to develop) policies in relation to food matters and animal feeding stuffs matters,

(b) to advise, inform and assist the Scottish Ministers and public bodies and office-holders and other persons in relation to food matters and animal feeding stuffs matters,

(c) to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters,

(d) to keep users of animal feeding stuffs adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about animal feeding stuffs matters, and

(e) to monitor the performance of enforcement authorities in enforcing food legislation.

(2) Food Standards Scotland must so far as reasonably practicable comply with a request by the Scottish Ministers that—

(a) in pursuance of subsection (1)(a), it develops a policy, or assists the Scottish Ministers or a public body or office-holder to develop a policy, in relation to a particular matter,

(b) in pursuance of subsection (1)(b), it gives advice, information or assistance to the Scottish Ministers, a public body or office-holder or another person, in relation to a particular matter,

(c) in pursuance of subsection (1)(c), it informs or advises the public in relation to a particular matter,

(d) in pursuance of subsection (1)(d), it informs or advises users of animal feeding stuffs in relation to a particular matter.

4 Governance and accountability

(1) Food Standards Scotland must so far as reasonably practicable operate in a way which—

(a) is proportionate, transparent and accountable,

(b) constitutes good decision-making practice,

(c) develops and maintains effective links with the persons mentioned in subsection (3), and

(d) is consistent with any other principle of good governance which appears to it to constitute best practice.

(2) “Good decision-making practice” means—

(a) consulting people who may be affected by decisions before taking them,

(b) having good information on which to take decisions and taking decisions based on that information,

(c) recording decisions and the reasons for them, and

(d) making decisions and the reasons for them publicly available.

(3) The persons referred to in subsection (1)(c) are—

(a) the Scottish Ministers,
(b) public bodies and office-holders with functions in relation to food matters or animal feeding stuffs matters.

5 Statement on performance of functions

(1) Food Standards Scotland must prepare for approval by the Scottish Ministers a statement setting out how it intends to perform its functions.

(2) The statement must include information on how Food Standards Scotland intends—

(a) to meet its objectives, and

(b) to operate in accordance with section 4.

(3) The statement must be submitted to the Scottish Ministers by such time as they may direct.

(4) The Scottish Ministers may approve the statement with such modifications as they consider appropriate.

(5) Before approving the statement with modifications the Scottish Ministers must consult Food Standards Scotland.

(6) As soon as practicable after the statement is approved under subsection (4), Food Standards Scotland must—

(a) lay a copy of it before the Scottish Parliament, and

(b) publish it (in such manner as Food Standards Scotland considers appropriate).

(7) Food Standards Scotland—

(a) must review the statement from time to time, and

(b) may in consequence prepare and submit to the Scottish Ministers a revised statement.

(8) Subsections (2) and (4) to (7) apply to a revised statement as they apply to the original statement.

Membership

6 Number and appointment of members

(1) Food Standards Scotland is to consist of—

(a) a person appointed by the Scottish Ministers to chair Food Standards Scotland, and

(b) no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.

(2) A person may not be appointed as a member if the person is—

(a) a member of the Scottish Parliament,

(b) a member of the House of Commons,

(c) a member of the European Parliament,

(d) an office-holder in the Scottish Administration,

(e) a councillor of any local authority,

(f) an employee of any local authority.
(3) The Scottish Ministers must make appointments of members of Food Standards Scotland in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(4) In subsection (3), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998.

(5) Membership is (subject to sections 7 and 17) for such period and on such terms and conditions as the Scottish Ministers may determine.

(6) A member may resign by informing the Scottish Ministers in writing to that effect.

(7) A person may be re-appointed on, or after, ceasing to be a member.

(8) The Scottish Ministers may assign to one of the members appointed under subsection 10(b)—

(a) the function of deputising for the person appointed under subsection 10(a),

(b) the function of chairing Food Standards Scotland during any period when there is no person appointed under subsection 10(a).

(9) A member to whom such a function is assigned—

(a) is assigned the function for such period as the Scottish Ministers may specify in the assignment,

(b) may resign the assignment by informing the Scottish Ministers in writing to that effect,

(c) is assigned and ceases to be assigned the function in accordance with such terms and conditions as the Scottish Ministers may determine.

7 Early ending of membership

(1) A person’s membership of Food Standards Scotland ends if the person becomes—

(a) a member of the Scottish Parliament,

(b) a member of the House of Commons,

(c) a member of the European Parliament,

(d) an office-holder in the Scottish Administration,

(e) a councillor of any local authority,

(f) an employee of any local authority.

(2) The Scottish Ministers may end a person’s membership of Food Standards Scotland if—

(a) the person becomes an undischarged bankrupt, or

(b) the Scottish Ministers are satisfied that the person—

(i) has, without the permission of Food Standards Scotland, been absent from its meetings for a period longer than 6 consecutive months,

(ii) is unable to perform the functions of a member, or

(iii) is unsuitable to continue as a member.

8 Remuneration and expenses of members

(1) A member of Food Standards Scotland is entitled to—
(a) such remuneration as the Scottish Ministers may determine,
(b) such sums as the Scottish Ministers may determine to reimburse or compensate
the member in relation to expenses properly incurred in the exercise of the
member’s functions.

(2) It is for Food Standards Scotland to pay any remuneration and other sums to which its
members are entitled by virtue of subsection (1).

Staff

9 Chief executive
(1) Food Standards Scotland is to have, as a member of staff, a chief executive.
(2) The first chief executive is to be appointed by the Scottish Ministers on such terms and
conditions as they determine.
(3) Before appointing the first chief executive, the Scottish Ministers must consult Food
Standards Scotland.
(4) Food Standards Scotland may, with the approval of the Scottish Ministers, appoint
subsequent chief executives on such terms and conditions as it, with the approval of the
Scottish Ministers, determines.

10 Other staff
(1) Food Standards Scotland may appoint staff other than the chief executive.
(2) Members of staff are to be appointed on such terms and conditions as Food Standard
Scotland, with the approval of the Scottish Ministers, determines.
(3) The number of staff is not to exceed any maximum that the Scottish Ministers may
determine.

Operational matters

11 Proceedings
(1) It is for Food Standards Scotland to regulate its procedure (including any quorum).
(2) The validity of any proceedings or actions of Food Standards Scotland is not affected by—
(a) any vacancy in its membership,
(b) any defect in the appointment of a member.

12 Committees
(1) Food Standards Scotland may establish committees.
(2) A committee established by Food Standards Scotland may include as a member a person
who is not a member of Food Standards Scotland.
(3) Such a person is entitled to—
(a) such remuneration as Food Standards Scotland may determine,
Food (Scotland) Bill
Part 1—Food Standards Scotland

(b) such sums as Food Standards Scotland may determine to reimburse or compensate the person in relation to expenses properly incurred in the exercise of the person’s functions.

(4) It is for Food Standards Scotland to pay any remuneration and other sums to which such a person is entitled by virtue of subsection (3).

(5) It is for Food Standards Scotland to regulate the procedure (including any quorum) of any committee established by it.

13 Delegation of functions

(1) Food Standards Scotland may authorise the exercise of any of its functions by—

(a) one (or some) of its members,
(b) a committee established by it.

(2) Food Standards Scotland may authorise the exercise of any of its functions (subject to subsection (3)) by—

(a) a member of its staff, or
(b) any other person.

(3) Subsection (2) does not apply in relation to—

(a) the function of giving authorisations under section 20(1),
(b) the function of giving authorisations under section 27(1).

(4) Authorisation for the purposes of subsection (1) or (2) may be general or limited to the exercise of the function in specific circumstances.

(5) This section does not affect the responsibility of Food Standards Scotland for the exercise of its functions.

14 Annual and other reports

(1) As soon as practicable after the end of each financial year, Food Standards Scotland must prepare and publish an annual report on the exercise of its functions during that financial year.

(2) An annual report must contain Food Standards Scotland’s assessment of its performance of its functions in relation to—

(a) the statement of performance of functions under section 5 applying during the financial year to which the annual report relates, or
(b) if more than one statement of performance of functions applied during the financial year, each such statement for the period during the financial year when the statement applied.

(3) Subject to subsections (1) and (2), it is for Food Standards Scotland to determine the content of an annual report.

(4) It is for Food Standards Scotland to determine—

(a) the form of an annual report, and
(b) the manner of publication.
(5) As soon as practicable after publishing an annual report, Food Standards Scotland must—
   (a) send a copy of the report to the Scottish Ministers,
   (b) lay a copy of the report before the Scottish Parliament.

(6) Food Standards Scotland may lay a copy of any other report prepared by it before the Scottish Parliament.

15 **General powers**

(1) Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

(2) Food Standards Scotland may not however—
   (a) determine the location of its office without the approval of the Scottish Ministers,
   (b) make charges for facilities or services provided by it at the request of any person which exceed the reasonable cost of providing the facilities or services concerned.

16 **Application of legislation relating to public bodies**

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Crofting Commission insert—
   “Food Standards Scotland”.

(2) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities) after paragraph 22 insert—
   “22A Food Standards Scotland.”.

(3) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities) after paragraph 7A insert—
   “7B Food Standards Scotland.”.

(4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) after the entry relating to the Crofting Commission insert—
   “Food Standards Scotland”.

(5) In the Public Services Reform (Scotland) Act 2010—
   (a) in schedule 8 (information on exercise of public functions: listed public bodies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
      “Food Standards Scotland”,
   (b) in schedule 19 (persons subject to the user focus duty), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
      “Food Standards Scotland”,
   (c) in schedule 20 (persons subject to the duty of co-operation), after the entry relating to the Accounts Commission for Scotland insert—
      “Food Standards Scotland”.

Step-in powers

17 Serious failure

(1) This section applies where the Scottish Ministers consider that there has been a serious failure by Food Standards Scotland to exercise any of its functions.

(2) The Scottish Ministers may give Food Standards Scotland such directions as they consider appropriate to remedy the failure.

(3) But before doing so, the Scottish Ministers must consult Food Standards Scotland.

(4) A direction under this section—
   (a) must be in writing,
   (b) must include a statement summarising the reasons for giving it.

(5) The Scottish Ministers must publish any direction under this section (in such manner as they consider appropriate).

(6) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers may give effect to it (and for that purpose, may exercise any function of Food Standards Scotland in place of it).

(7) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers—
   (a) may end the membership of all its members, and
   (b) may, until new members are appointed, exercise any function of Food Standards Scotland in place of it (or appoint any other person to do so).

Acquisition of information

18 Duty to acquire, compile and keep under review relevant information

(1) For the purpose of enabling it to perform its other functions effectively and to operate in accordance with section 4, Food Standards Scotland is to acquire, compile and keep under review information about food matters and animal feeding stuffs matters.

(2) The function in subsection (1) includes in particular—
   (a) monitoring developments in science, technology and other fields of knowledge relating to food matters and animal feeding stuffs matters,
   (b) carrying out, commissioning or co-ordinating research on food matters and animal feeding stuffs matters.

19 Observations with a view to obtaining information

(1) For the purpose of exercising its function under section 18, Food Standards Scotland may carry out observations (or arrange for observations to be carried out on its behalf by any other person) with a view to obtaining information about—
   (a) any aspect of the production or supply of food or food sources, or the consumption of food, or
   (b) any aspect of the production, supply or use of animal feeding stuffs.
The information which may be sought through such observations includes in particular information about—

(a) food premises, food businesses or commercial operations being carried out in relation to food, food sources or contact materials,

(b) agricultural premises, agricultural businesses or agricultural activities,

(c) premises, businesses or operations involved in fish farming,

(d) premises, businesses or operations involved in the production, supply or use of animal feeding stuffs.

In this section—

“agricultural activity” has the same meaning as in the Agriculture Act 1947,

“agricultural business” has the same meaning as in section 1 of the Farm Land and Rural Development Act 1988,

“agricultural premises” means any premises used for the purposes of an agricultural business.

Powers for persons carrying out observations

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out observations under section 19 in relation to a particular matter.

(2) The powers are—

(a) entering premises (other than a dwelling house) at a reasonable time,

(b) taking samples of any articles or substances on the premises,

(c) taking samples from any food source on the premises,

(d) inspecting and copying any information in a recorded form on the premises which relates to a business which is the subject of the observations (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),

(e) requiring any person carrying on a business which is the subject of the observations to provide such facilities or information and such other assistance as the authorised person reasonably requests.

The reference in subsection (2)(d) to information which relates to a business includes a reference to information which—

(a) relates to the health of a person who has, may have or may come into contact with food or food sources in the course of that person’s work for the business, and

(b) was acquired or compiled for the purpose of assessing, or is kept for the purpose of recording, matters affecting the person’s suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if the person comes into contact with any food or food source).

An authorisation under subsection (1)—

(a) must be in writing.
(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

(5) The powers specified in subsection (2) may be exercised only if it appears to the authorised person to be necessary to do so for the purpose of carrying out the observations concerned.

(6) An authorised person must if so required—

(a) produce evidence of the person’s identity and authorisation before exercising a power in pursuance of the authorisation,

(b) provide a document identifying any sample taken, or information copied, under those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

21 Offences in relation to section 20

(1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 20(2)(a).

(2) This subsection applies if—

(a) the information relates to a trade secret, and

(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 20(2)(a), (b), (c) or (d),

(b) fails without reasonable excuse to comply with any requirement imposed under section 20(2)(e), or

(c) in purported compliance with a requirement imposed under section 20(2)(e)—

(i) provides information which the person knows to be false or misleading in a material way, or

(ii) recklessly provides information which is false or misleading in a material way.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 20(1).

Enforcement action

22 Setting performance standards

(1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.

(2) Different standards may be determined in relation to—
(a) different enforcement authorities (or types of enforcement authorities),
(b) different food legislation (or types of food legislation).

(3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

23 Reporting own enforcement activities

(1) Food Standards Scotland must include in each annual report it prepares a report on—
(a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and
(b) its performance in relation to any standards determined under section 22(1) applying to those activities.

(2) In this section, “annual report” means a report prepared under section 14(1).

24 Reporting on enforcement action by others

(1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.

(2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—
(a) is necessary to enable the enforcement authority to meet any standards determined under section 22(1) which apply, or
(b) otherwise, would help to improve the performance of the authority.

(3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—
(a) to arrange for the publication (in such manner as may be specified) of—
(i) the report, or
(ii) specified information relating to the report, or
(b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.

(4) In subsection (3), “specified” means specified in the direction.

25 Power to request information in relation to enforcement action

(1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—
(a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or
(b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person’s control (and where such information is in electronic form, to make it available in a legible form).

(2) A requirement under subsection (1) may be imposed on—
(a) the enforcement authority, or any member, officer or employee of the authority, or
(b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

26 Offences in relation to section 25

(1) A person commits an offence if the person—
(a) fails without reasonable excuse to comply with any requirement imposed under section 25(1), or
(b) in purported compliance with a requirement imposed under section 25(1)—
   (i) provides information which the person knows to be false or misleading in a material way, or
   (ii) recklessly provides information which is false or misleading in a material way.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

27 Powers for persons monitoring enforcement action

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.

(2) The powers are—
(a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,
(b) taking samples of any articles or substances on the premises,
(c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
(d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.

(3) The premises in relation to which the power in subsection (2)(a) may be exercised are—
   (a) any premises occupied by the enforcement authority (but see subsection (4)),
   (b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,
   (c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.

(5) An authorisation under subsection (1)—
(a) must be in writing,
(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

(6) An authorised person must if so required—
(a) produce the authorisation before exercising a power mentioned in subsection (2),
(b) provide a document identifying any sample taken, or information copied, under any of those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

28 Offences in relation to section 27
(1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 27(2)(a).

(2) This subsection applies if—
(a) the information relates to a trade secret, and
(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—
(a) intentionally obstructs an authorised person in exercising a power in section 27(2)(a), (b) or (c),
(b) fails without reasonable excuse to comply with any requirement imposed under section 27(2)(d), or
(c) in purported compliance with a requirement imposed under section 27(2)(d)—
(i) provides information which the person knows to be false or misleading in a material way, or
(ii) recklessly provides information which is false or misleading in a material way.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 27(1).

Issuing guidance on food-borne diseases

29 Power to issue guidance on control of food-borne diseases
(1) Food Standards Scotland may issue to the persons mentioned in subsection (3) guidance about the exercise, generally, of their functions in relation to matters connected with the management of outbreaks (or suspected outbreaks) of food-borne diseases.

(2) “Food-borne diseases” means diseases of humans which are capable of being caused by the consumption of infected or otherwise contaminated food.

(3) The persons referred to in subsection (1) are—
(a) the Scottish Ministers,
(b) public bodies and office-holders.

(4) Different guidance may be issued to different persons or for different purposes.

(5) Food Standards Scotland must publish any such guidance (in such manner as it considers appropriate).

(6) A person to whom any such guidance is issued must have regard to the guidance in exercising any function to which it relates.

(7) The power to issue guidance under subsection (1) is without prejudice to the other powers of Food Standards Scotland.

Information sharing

10 Publication and disclosure of advice and information

(1) Food Standards Scotland may—

(a) publish (in such manner as it considers appropriate), or

(b) disclose to the Scottish Ministers or a public body or office-holder, any material to which this section applies.

(2) This section applies to—

(a) any advice given by Food Standards Scotland under section 3,

(b) any information obtained by Food Standards Scotland through—

(i) monitoring under section 3, or

(ii) observations under section 19, or

(c) any other information in the possession of Food Standards Scotland (whatever the source).

(3) Subsection (1) does not authorise publication or disclosure of material which—

(a) is prohibited by an enactment, or

(b) would constitute or be punishable as a contempt of court.

(4) But, otherwise, the powers in subsection (1) are exercisable free from any prohibition on publication or disclosure (as the case may be) which would apply.

(5) Before deciding to exercise a power in subsection (1) in relation to any particular material, Food Standards Scotland must consider whether the public interest in the publication or disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.

(6) Where the material relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing food legislation, subsection (5) applies only so far as the material relates to a person other than—

(a) an enforcement authority, or

(b) a member, officer or employee of an enforcement authority acting in that person’s capacity as such.
Consequential provision

31 Certain functions of Food Standards Agency ceasing to be exercisable

(1) The relevant functions of the Agency under the 1999 Act cease to be exercisable.

(2) In subsection (1), “relevant functions of the Agency” has the same meaning as in section 35 of the 1999 Act.

PART 2

FOOD AND FEEDING STUFFS

Food information

32 Food information

After section 15 of the 1990 Act insert—

“Food information

15A Meaning of “food information” etc.

In this Act—

(a) “food information” has the same meaning as it has in Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers;

(b) “food information law” means any enactment relating to food information as the Scottish Ministers may by regulations specify.

15B Contravention of food information law: seizure of food etc.

(1) This section applies where it appears to an authorised officer of a food authority, on an inspection carried out under section 9 above or otherwise, that food information law is being, or has been, contravened in relation to any food intended for human consumption which is placed on the market within the meaning of Regulation (EC) No. 178/2002.

(2) The authorised officer may—

(a) give notice that, until the notice is withdrawn—

(i) the food, or any specified portion of it, is not to be used for human consumption; and

(ii) the food, or any specified portion of it, and any related food information, or any specified part of it, is not to be removed (or is not to be removed except to some place specified in the notice); or

(b) seize the food and remove it in order to have it dealt with by the sheriff.

(3) Notice under subsection (2)(a) above is to be given to—

(a) the person in charge of the food; and

(b) the owner of the food (where not the person in charge of the food).

(4) But notice need not be given in pursuance of subsection (3)(b) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.
(5) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) above commits an offence.

(6) An authorised officer who gives a notice under subsection (2)(a) above must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not food information law has been contravened in relation to the food in respect of which the notice was given.

(7) After making a determination under subsection (6) above, the authorised officer must—

(a) if satisfied that food information law has not been contravened, forthwith withdraw the notice; or

(b) if not so satisfied, seize the food and remove it in order to have it dealt with by the sheriff.

(8) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above may also—

(a) copy, make extracts of or take away any food information relating to the food that has been seized;

(b) where any such food information is in electronic form, require the information to be produced in a legible form in which it may be copied or taken away.

(9) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above must inform the person in charge of the food and the owner of the food (where not the person in charge of the food) of the officer’s intention to have it dealt with by the sheriff.

(10) But the owner of the food need not be informed in pursuance of subsection (9) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.

(11) Any person who might be liable to a prosecution for contravening food information law in relation to any food seized and removed under (2)(b) or (7)(b) above is, if the person attends before the sheriff by whom the food falls to be dealt with, entitled to be heard and to call witnesses.

(12) If it appears to the sheriff that food information law has been contravened in relation to any food seized and removed under subsection (2)(b) or (7)(b) above, the sheriff may make such order as the sheriff considers appropriate in respect of the food and any food information relating to it.

(13) An order made under subsection (12) above may, in particular, order—

(a) that the food be destroyed or otherwise disposed of so as to prevent it from being used for human consumption;

(b) that any food information relating to the food be modified, destroyed or otherwise disposed of;

(c) that any food which is fit for human consumption (and any related food information, modified as the sheriff considers appropriate) be—

(i) returned to the person who was in charge of the food; or

(ii) distributed to such other person as the sheriff may determine.

(14) An order made under subsection (12) above—
(a) must, where the owner of the food is known, require the owner to meet any expenses reasonably incurred in connection with any destruction, modification, disposal, return or distribution of any food or food information which is carried out in pursuance of the order; and

(b) may require the owner of the food to meet any expenses reasonably incurred by the food authority in connection with any action taken by the authorised officer, or otherwise by or on behalf of the authority, in respect of any food or food information to which the order relates.

(15) Subsection (16) below applies if—

(a) a notice under subsection (2)(a) above is withdrawn; or

(b) the sheriff refuses to make an order under subsection (12) above in respect of any food seized and removed under subsection (2)(b) or (7)(b) above (or any food information which relates to it).

(16) Where this subsection applies, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(17) Any disputed question as to the right to or the amount of any compensation payable under subsection (16) above is to be submitted to arbitration for resolution.

(18) Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitration carried out in pursuance of subsection (17) above, that Act applies as if it were in force in relation to that arbitration.

15C Duty to report non-compliance with food information law

(1) A food business operator must as soon as reasonably practicable inform Food Standards Scotland if the food business operator—

(a) is, or has been, in charge of any food which is intended for human consumption and has been placed on the market within the meaning of Regulation (EC) No. 178/2002; and

(b) considers or has reason to believe that food information law is being contravened in relation to the food.

(2) Any person who fails to comply with subsection (1) above shall be guilty of an offence.

(3) For the purposes of subsection (1)(a) above, a food business operator is to be treated as being, or having been, in charge of any food which it has—

(a) received;

(b) imported;

(c) produced;

(d) processed;

(e) manufactured;

(f) distributed; or

(g) otherwise placed on the market within the meaning of Regulation (EC) No. 178/2002.
For the purposes of this Act, “food business operator” is to be construed in accordance with Article 3 of Regulation (EC) No 178/2002.

15D Power to obtain information

(1) This section applies where a food business operator has informed Food Standards Scotland under section 15C(1) above.

(2) The food business operator must as soon as reasonably practicable provide any further information which is reasonably required by Food Standards Scotland which relates to—

(a) the food (and any food information relating to it);

(b) the circumstances which led the food business operator to inform Food Standards Scotland under section 15C(1) above.

(3) Any person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.”.

Food hygiene information scheme

Food hygiene information scheme

(1) In section 16(1) of the 1990 Act, after paragraph (d) insert—

“(da) provision for a food hygiene information scheme;”.

(2) In Schedule 1 to the 1990 Act, after paragraph 7 insert—

“8 (1) Provision for the following in connection with a food hygiene information scheme, namely—

(a) for a food authority—

(i) to assess hygienic conditions and practices in food premises;

(ii) to determine food hygiene ratings for food premises (by reference to criteria specified in or determined in accordance with the regulations);

(iii) to give reasons for, and opportunities to comment on, food hygiene ratings;

(iv) to issue certificates which show food hygiene ratings;

(v) to inform Food Standards Scotland about food hygiene ratings;

(b) for notifying the public of food hygiene ratings (for example, by requiring the display of certificates, or other information, in or on food premises, requiring persons involved in a food business to provide information about food hygiene ratings when asked to do so or requiring food authorities or Food Standards Scotland to publish food hygiene ratings);

(c) for the review or appeal of food hygiene ratings;

(d) for the promotion of the scheme.

(2) Provision for a food hygiene rating to be based on an assessment of hygienic conditions and practices carried out before the regulations come into force.”.
Feeding stuffs

34 Regulation of animal feeding stuffs

(1) The Scottish Ministers may, for the purpose of regulating—
   (a) any animal feeding stuff, or
   (b) anything done, or which might be done, to, or in relation to, or with a view to the
       production of, any animal feeding stuff,

by order make the provision mentioned in subsection (2).

(2) That is provision which—
   (a) applies (with or without modifications), or
   (b) is equivalent to,

any of the provisions of the 1990 Act (including any power to make orders or
regulations or to give directions).

(3) An order under subsection (1) may modify any enactment.

(4) Before making an order under subsection (1), the Scottish Ministers must—
   (a) have regard to any relevant advice given to them by Food Standards Scotland, and
   (b) consult such persons as appear to them to be representative of interests likely to be
       substantially affected by the order.

(5) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any
person that the Scottish Ministers are required to consult under subsection (4)(b), the
Scottish Ministers may treat that consultation as being effective for the purposes of that
subsection as if undertaken by them.

PART 3

ADMINISTRATIVE SANCTIONS

Fixed penalty notices

35 Fixed penalty notices

(1) An authorised officer of the appropriate enforcement authority may issue to a person a
fixed penalty notice in relation to a relevant offence.

(2) In this Part, “fixed penalty notice” means a notice offering the person to whom it is
issued the opportunity to discharge liability to conviction for the relevant offence in
relation to which the notice is issued by paying to the appropriate enforcement authority
a specified sum of money.

(3) The sum of money is to be treated as paid only if it is paid by such method of payment
as the appropriate enforcement authority determines to be acceptable.

(4) An authorised officer may issue a fixed penalty notice to a person in relation to a
relevant offence only if the officer is satisfied to the specified standard that the person
has committed the offence.

(5) A sum specified for the purposes of subsection (2) must not exceed level 4 on the
standard scale.
(6) In this section, “standard scale” has the meaning given in section 225(1) of the Criminal Procedure (Scotland) Act 1995.

36 Content and form of a fixed penalty notice

(1) A fixed penalty notice must include the following information—

(a) a statement of the grounds for issuing the notice, including a statement of—

(i) the relevant offence that is alleged to have been committed, and

(ii) the act or omission giving rise to the offence,

(b) the amount of the sum that is to be paid to the appropriate enforcement authority,

(c) the date of issue of the notice,

(d) an explanation of how payment is to be made to the appropriate enforcement authority,

(e) the period of time within which payment is to be made,

(f) information about any early payment discounts,

(g) information about the person to whom, and as to how and by when, any representations about the notice may be made,

(h) an explanation of the effect of making payment in accordance with the notice and of the consequences of failure to make payment in accordance with the notice.

(2) The reference in subsection (1)(e) to the period of time within which payment is to be made is a reference to such period, beginning with the date on which the notice was issued, as may be specified.

(3) The Scottish Ministers may by regulations make further provision about the form and content of fixed penalty notices including, in particular—

(a) provision about the form and content of any of the information required to be included under subsection (1),

(b) provision about other information that is to be included in addition to that required under subsection (1).

37 Effect of a fixed penalty notice on criminal proceedings

(1) Where a fixed penalty notice is issued to a person in relation to a relevant offence—

(a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the payment period, and

(b) if the person makes payment in accordance with the notice, the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—

(a) constituting the relevant offence, and

(b) by reason of which the fixed penalty notice is issued.
38 Restrictions on issuing of a fixed penalty notice

(1) A fixed penalty notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—

(a) a fixed penalty notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or

(b) criminal proceedings—

(i) have been brought against the person for the same relevant offence arising out of the same act or omission, or

(ii) cannot, because of the expiry of relevant time limits for prosecution, any longer competently be brought against the person for the same relevant offence arising out of the same act or omission.

(2) A fixed penalty notice issued in contravention of subsection (1) is of no effect (and, accordingly, the appropriate enforcement authority must repay any amount paid in respect of the notice).

39 Withdrawal of a fixed penalty notice

(1) An authorised officer of the appropriate enforcement authority may withdraw a fixed penalty notice issued by an authorised officer of the authority.

(2) A fixed penalty notice—

(a) may be withdrawn at any time before payment is made in accordance with the notice, and

(b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the fixed penalty notice was issued.

(3) Where a fixed penalty notice is withdrawn, it is to be treated as if it had never been issued.

40 Income from fixed penalties to be paid to the Scottish Ministers

(1) Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers.

(2) Payments by an enforcement authority under subsection (1) are to be made at such times and by such methods as the Scottish Ministers may determine.

41 Compliance notices

(1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.

(2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.

(3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.
Content and form of a compliance notice

(1) A compliance notice must include the following information—

(a) a statement of the grounds for issuing the notice, including a statement of—

(i) the relevant offence that is alleged to have been committed, and

(ii) the act or omission giving rise to the offence,

(b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,

(c) the date of issue of the notice,

(d) the period of time within which the required steps are to be taken,

(e) information about the person to whom, and as to how and by when, any representations about the notice may be made,

(f) information about the right of appeal, including the period of time within which an appeal may be made,

(g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.

(2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.

(3) That period must not be less than the specified period.

(4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—

(a) provision about the form and content of any of the information required to be included under subsection (1),

(b) provision about other information that is to be included in addition to that required under subsection (1).

Failure to comply with a compliance notice

(1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.

(2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—

(a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and

(b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
44 **Effect of a compliance notice on criminal proceedings**

(1) Where a compliance notice is issued to a person in relation to a relevant offence—
   
   (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and

   (b) if the person—

      (i) complies with the requirements of the notice, or

      (ii) though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice,

   the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—

   (a) constituting the relevant offence, and

   (b) by reason of which the compliance notice is issued.

45 **Restrictions on issuing of a compliance notice**

(1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—

   (a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or

   (b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.

(2) A compliance notice issued in contravention of subsection (1) is of no effect.

46 **Withdrawal of a compliance notice**

(1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.

(2) A compliance notice—

   (a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and

   (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.

(3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

47 **Appeal against a compliance notice**

(1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.

(2) An appeal is to be made by way of summary application.

(3) In subsection (1), the “relevant period” means—
(a) the period of one month beginning with the date of issue of the compliance notice, or
(b) the compliance period,
whichever expires earlier.

(4) In an appeal under this section, the sheriff may—
(a) cancel the compliance notice, or
(b) affirm the notice, either with or without modifications.

(5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.

(6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.

General

48 Power to make supplementary etc. provision

(1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.

(2) Regulations under this section may, in particular, include provision—
(a) facilitating, prohibiting or restricting—
(i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,
(ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,
(b) for early payment discounts in relation to fixed penalty notices,
(c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—
(i) section 20 (offences due to fault of another person),
(ii) section 21 (defence of due diligence),
(iii) section 30(8) (documentary evidence in proceedings for offences),
(iv) section 32 (powers of entry),
(v) section 33 (obstruction etc. of officers),
(vi) section 34 (time limit for prosecutions),
(vii) section 36 (offences by bodies corporate),
(viii) section 36A (offences by partnerships),
(ix) section 40 (power to issue codes of practice),
(x) section 45 (regulations as to charges),
(xi) section 49(3) to (5) (authentication of documents),
Food (Scotland) Bill
Part 3—Administrative sanctions

(xii) section 50 (service of documents).

(3) Regulations under this section containing provision under subsection (2)(a) may also make such modifications of sections 37 and 44 as the Scottish Ministers consider necessary or expedient in connection with the provision.

(4) In subsection (2)(a), “another sanction” means—

(a) a fixed penalty notice (in relation to a compliance notice),
(b) a compliance notice (in relation to fixed penalty notice),
(c) an improvement notice under section 10 of the 1990 Act,
(d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and
(e) an emergency control order under section 13 of the 1990 Act.

(5) The Scottish Ministers may by regulations modify subsection (4).

49 Regulations

(1) Before making any regulations under this Part, the Scottish Ministers must—

(a) have regard to any relevant advice given by Food Standards Scotland, and
(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.

(2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

(3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

50 Lord Advocate’s guidance

(1) The Lord Advocate may issue, and from time to time revise, guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.

(2) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance or revised guidance in exercising those functions.

51 Interpretation of Part

In this Part—

“appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises,

“authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,

“compliance notice” has the meaning given in section 41(2),

“compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 42(1)(d),
“fixed penalty notice” has the meaning given in section 35(2),
“payment period”, in relation to a fixed penalty notice, means the period stated in
the notice in accordance with section 36(1)(e),
“relevant offence” means a specified offence under food legislation,
“specified” means specified in regulations made by the Scottish Ministers.

PART 4
INTERPRETATION

52 Meanings of “food” and “animal feeding stuffs”
(1) The Scottish Ministers may by order specify articles or substances, or descriptions of
articles or substances, which are to be considered to be included in, or excluded from,
the meaning of “food”, or the meaning of “animal feeding stuffs”, for the purposes of
this Act.
(2) An order under subsection (1) may modify this Act.

53 Meaning of “food matter”
In this Act, “food matter” means any matter connected with—
(a) health which may arise in relation to the consumption of food, or
(b) other interests of consumers in relation to food.

54 Meaning of “other interests of consumers in relation to food”
In this Act, “other interests of consumers in relation to food” includes in particular
interests in relation to—
(a) the labelling, marking, presentation or advertisement of food,
(b) the descriptions which may be applied to food.

55 Meaning of “animal feeding stuffs matter”
(1) In this Act, “animal feeding stuffs matter” means any matter connected with—
(a) animal health which may arise in connection with the consumption of animal
feeding stuffs, or
(b) other interests of users of animal feeding stuffs.
(2) “Other interests of users of animal feeding stuffs” includes in particular interests in relation to—
(a) the labelling, marking, presentation or advertisement of animal feeding stuffs,
(b) the descriptions which may be applied to animal feeding stuffs.

56 Meaning of “food legislation”
(1) In this Act, “food legislation” means legislation for the time being in force—
(a) relating to food, including in particular legislation relating to—
(i) the protection of the public from risks to health which may arise in connection with the consumption of food,
(ii) the production, processing, importing, exporting or distribution of food,
(iii) the labelling, marking, presentation or advertisement of food, or
(iv) the descriptions which may be applied to food, or
(b) relating to food sources or animal feeding stuffs, but only so far as the legislation relates to food matters.

(2) In subsection (1), “legislation” means any enactment, or any obligation or restriction to which section 2(1) of the European Communities Act 1972 applies.

57 General interpretation

(1) In this Act—

“the 1990 Act” means the Food Safety Act 1990,
“the 1999 Act” means the Food Standards Act 1999,
“advertisement” includes—
(a) any notice, circular, label, wrapper, invoice or other document,
(b) any public announcement made orally or by any means of producing images or sound,
“article” includes a live fish which is used for human consumption while it is alive, but does not otherwise include a live animal,
“business” includes (except in “agricultural business”—
(a) a canteen, club, school, hospital or institution, whether carried on for profit or not,
(b) an undertaking or activity carried on by a public body or office-holder,
“commercial operation” means—
(a) in relation to food or contact material—
(i) selling, possessing for sale or offering, exposing or advertising for sale,
(ii) consigning, delivering or serving by way of sale,
(iii) preparing for sale (including packaging) or presenting, labelling or wrapping for the purpose of sale or for purposes connected with sale,
(iv) storing or transporting for the purpose of sale,
(v) importing or exporting,
(b) in relation to a food source, deriving food from it for the purpose of sale or purposes connected with sale,
“contact material” means any article or substance which is intended to come into contact with food,
“enforcement authority” means an authority having functions under food legislation in relation to the enforcement of food legislation,
“food business” means any business in the course of which commercial operations with respect to food or food sources are carried out,

“food premises” means any premises used for the purposes of a food business,

“food source” means any growing crop or live animal from which food is intended to be derived (by, for example, harvesting, killing, milking or collecting eggs),

“premises” includes any place, vehicle, stall or moveable structure (and, for this purpose, “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a description specified by the Scottish Ministers by order),

“presentation”, in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising,

“sale” has the extended meaning given by section 2 of the 1990 Act (and “selling” is to be construed accordingly),

“substance” includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour,

“undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors and has not been discharged in respect of it,

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

(e) who has been adjudged bankrupt and has not been discharged, or

(f) who is subject to any other kind of arrangement or undertaking, anywhere in the world, which is analogous to those described in paragraphs (a) to (d).

(2) The reference in subsection (1) to preparing for sale is to be construed, in relation to a contact material, as a reference to manufacturing or producing for sale.

(3) Before making an order under subsection (1) (see the definition of “premises”), the Scottish Ministers must—

(a) have regard to any relevant advice given by Food Standards Scotland, and

(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(4) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (3)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.
PART 5

FINAL PROVISIONS

58 Modification of enactments

The schedule (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

59 Subordinate legislation

(1) Each power of the Scottish Ministers to make an order or regulations under this Act includes power—
   (a) to make different provision for different purposes,
   (b) to make any supplementary, incidental, consequential, transitory, transitional or saving provision which they consider appropriate.

(2) The following are subject to the affirmative procedure—
   (a) an order under section 34(1),
   (b) an order under section 52(1),
   (c) an order under section 60 which adds to, replaces or omits any part of the text of this or any other Act.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(4) Subsections (1) and (3) do not apply to an order under section 62(2).

60 Ancillary provision

The Scottish Ministers may by order make—
   (a) any supplementary, incidental or consequential provision which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act,
   (b) any transitional, transitory or saving provision which they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

61 Crown application

(1) Nothing in this Act affects Her Majesty in Her personal capacity.

(2) The Crown is not criminally liable in respect of any contravention of a relevant provision.

(3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown in contravention of a relevant provision.

(4) Despite subsection (2), a relevant provision applies to persons in the public service of the Crown as it applies to other persons.

(5) In this section, “relevant provision” means provision in or under this Act.
62 Commencement

(1) This Part (except section 58) comes into force on the day after Royal Assent.

(2) The rest of this Act comes into force on such day as the Scottish Ministers appoint by order.

(3) Such an order may include transitional, transitory or saving provision.

63 Short title

The short title of this Act is the Food (Scotland) Act 2014.
SCHEDULE
(introduced by section 58)
MODIFICATION OF ENACTMENTS

Food and Environment Protection Act 1985

1  (1) The Food and Environment Protection Act 1985 is amended as follows.
(2) In section 1(12) the words “or is made on their behalf by the Food Standards Agency in accordance with an arrangement made under section 17 of the Food Standards Act 1999” are repealed.
(3) In section 2, after subsection (6) insert—
“(7) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

Food Safety Act 1990

2  (1) The 1990 Act is amended as follows.
(2) In section 1—
(a) in subsection (1), after “178/2002” insert “(except where subsection (2A) applies)”,
(b) after subsection (2) insert—
“(2A) “Food”, for the purposes of the following provisions, is to be construed in the same way as it is for the purposes of the Food (Scotland) Act 2014—
(a) sections 15A to 15D below;
(b) paragraph (da) of section 16(1) below;
(c) paragraph 8 of Schedule 1 to this Act.”.
(3) In section 33—
(a) in subsection (2), after “with” insert “section 15C(1) above or”,
(b) in subsection (3), after “subsection (1)(b)” insert “, section 15C(1) or section 15D(2)”.
(4) In section 34, for “section 35(2)” substitute “section 35(A1), (A2) or (2)”.
(5) In section 35, before subsection (1) insert—
“(A1) A person guilty of an offence under section 15B(5) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
(A2) A person guilty of an offence under section 15C(2) or 15D(3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.
(6) In section 35, after subsection (1) insert—
“(1A) A person guilty of an offence under section 33(2), in so far as it relates to section 15C(1) or 15D(2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.
(7) In section 53(2), after the entry for “food business” insert the following entries—
Food Standards Act 1999

3 (1) The 1999 Act is amended as follows.

5 (2) The following sections are repealed—

section 17,

section 27,

section 30.

(3) In section 43—

(a) in subsection (5), after “Scotland” insert “(subject to subsection (6))”,

(b) after subsection (5), insert—

“(6) Sections 17, 27 and 30 do not extend to Scotland.”.

Water Environment and Water Services (Scotland) Act 2003

4 In section 11(6)(fa) of the Water Environment and Water Services (Scotland) Act 2003, for “the Food Standards Agency” substitute “Food Standards Scotland”.

Gaelic Language (Scotland) Act 2005

5 Section 10(3) of the Gaelic Language (Scotland) Act 2005 is repealed.
Food (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

Introduced by: Alex Neil
Supported by: Michael Matheson
On: 13 March 2014
Bill type: Government Bill
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

FOOD (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Food (Scotland) Bill introduced in the Scottish Parliament on 13 March 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 48–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These 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.

2. 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

3. The Bill is structured in the following Parts:

   - **Part 1** establishes Food Standards Scotland (FSS) as a body corporate and sets out its core objectives to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and FSS. The Scottish Ministers may request advice and assistance from FSS in relation to particular matters and may give FSS directions in certain circumstances.

   - **Part 2** introduces specific provisions in relation to food and feed law. These include provision for a food hygiene information scheme, to make regulations on animal feeding stuffs, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain or seize and remove such food and for a sheriff to determine the treatment of such food.

   - **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.

   - **Part 4** sets out interpretation provisions for the Bill.

   - **Part 5** sets out general provisions on coming into force and modification of enactments.

PART 1: FOOD STANDARDS SCOTLAND

Section 1: Establishment

4. This section establishes Food Standards Scotland (FSS) as a public body. Outwith the scope of this Bill, a section 104 order will be made under the Scotland Act 1998 to designate FSS as a non-ministerial office of the Scottish Administration. That will be the basis of its operational autonomy from the Scottish Ministers. FSS will be accountable to the Scottish Parliament and its employees will be civil servants.
Section 2: Objectives

5. Section 2 lists FSS’ three objectives: to protect the public from risks arising from consuming food, to improve the diet of the public and to protect consumers’ other interests with regards to food. These objectives are deliberately wide in scope. This gives FSS flexibility to be involved in a very broad range of policies, too numerous to try to define. For example FSS, under these objectives could contribute to policies on animal health or to policies which would be marginal to food itself such as food sustainability or food poverty. The general nature of the objectives gives FSS the flexibility and authority to act in relation to a wide range of food matters.

Section 3: General functions

6. The general functions of FSS are designed to focus effort and expertise on delivering the objectives, above. The functions are set out in detail, but in summary they are to develop (and assist public bodies or office-holders to develop) policies, provide advice and assistance to public bodies or office-holders, to keep the public and users of animal feeding stuffs informed about significant matters which concern them about food and feeding stuffs and to monitor the performance of the authorities who enforce food law. The reference to public bodies and office-holders covers any such body or office-holder; it is not limited to public bodies and office-holders in Scotland e.g. it could include, and therefore enable FSS to work with, UK or European public bodies and office-holders. As with the objectives, these functions are deliberately wide so as not to be overly restrictive. It is intended that FSS as the independent body with policy responsibility in Scotland for food matters is seen to be able to operate without overly prescriptive boundaries.

7. FSS must comply with requests from the Scottish Ministers where reasonably practicable. This is designed to provide public assurance both on the operational independence of FSS and that the Scottish Ministers can still influence FSS transparently, in the public interest. In short, this provision allows flexibility in the relationship between the Scottish Government and FSS – allowing them to work together across food policy areas in a way that does not put the independence of FSS at risk.

Section 4: Governance and accountability

8. This provision will ensure that, as a public body, FSS must work in a proportionate, transparent and accountable manner. This is consistent with its other general statutory duties of sustainable growth, efficiency, effectiveness and economy from the Public Services Reform (Scotland) Act 2010.

Section 5: Statement on performance of functions

9. FSS must develop a statement setting out how it will carry out its functions in order to meet its objectives and operate in accordance with section 4. This needs to be approved by the Scottish Ministers (with or without modifications) and laid before the Scottish Parliament. Having a published statement such as this will ensure transparency and public accountability, as

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1 Section 32 of the PSR Act 2010, Public functions: duty to provide information on exercise of functions
it will be clear how FSS is aiming to perform its functions and how it intends to demonstrate that transparently. FSS must review the statement from time to time and consequently may submit a revised statement to the Scottish Ministers for approval and laying before the Scottish Parliament.

Section 6: Number and appointment of members

10. This section sets out the number of members FSS can have (which includes a chair) and lists certain office-holders who are automatically excluded from being a member. Members are appointed by the Scottish Ministers for such a period and under such terms and conditions as the Scottish Ministers may determine. Members will normally be referred to collectively as “the board”. The Scottish Ministers may assign one of the members to deputise for the chair which includes giving that member the function of chairing the board during any period where a chair has not been appointed. Subsection (3) specifies that during a recruitment process to appoint members, equal opportunity requirements must be followed.

Section 7: Early ending of membership

11. This section sets out situations when a person’s membership of FSS will end. This is to prevent a conflict of interest and to maintain FSS’ independence. For example, membership will end if the person becomes a member of the Scottish Parliament. It is also to enable the Scottish Ministers to end a person’s membership in the circumstances set out in subsection (2).

Section 12: Committees

12. Section 12 allows FSS to create committees as and when required and to regulate their procedures. These committees could be set up to address specific issues on a case-by-case basis. This approach is more flexible than having a set of statutory committees in place permanently when there was no need for them for most of the time.

Section 14: Annual and other reports

13. FSS must publish an annual report on its functions and performance and lay it before the Scottish Parliament who it will be accountable to. As an independent body not accountable to the Scottish Ministers, this section provides for transparency and public accountability on its work and performance.

Section 15: General powers

14. Section 15 gives FSS a general power to do anything it deems necessary in order to carry out its functions. This provision gives FSS operational independence and wide-ranging autonomy to take action on things like training and direct stakeholder engagement for example. This freedom is subject to two exceptions: moving office premises without approval of the Scottish Ministers and charging for services at a profit. These restrictions will ensure FSS acts in accordance with wider Scottish Administration principles.
Section 16: Application of legislation relating to public bodies

15. Section 16 inserts reference to FSS into various pieces of legislation that confer duties and responsibilities on listed public bodies in Scotland. For example, FSS will have to adhere to the Freedom of Information (Scotland) Act 2002. These individual enactments confer particular duties on FSS, and these are commonly applied to public bodies in Scotland.

Section 17: Serious failure

16. This section provides the Scottish Ministers authority to step-in where there has been a serious failure by FSS to meet its functions. Subsection (2) allows the Scottish Ministers to give FSS directions in order to remedy the failure. If FSS fails to comply with a direction, the Scottish Ministers can end the membership of all of FSS’ members and carry out their functions until replacements are appointed. This provision demonstrates how important independence will be for FSS as well as providing assurance to consumers that ultimately in extreme circumstances, the Scottish Ministers will be able to step in to protect consumers.

Section 18: Duty to acquire, compile and keep under review relevant information

17. In order for FSS to carry out its functions – developing policy and giving advice – and come to sound decisions, it has a duty to keep up-to-date with, and review, developments in food matters and animal feeding stuffs matters. It can also carry out or commission research on food matters and on animal feeding stuffs. The meaning of a “food matter” and an “animal feeding stuff matter” is set out in Part 4 of the Bill.

Section 19: Observations with a view to obtaining information

18. To assist FSS in carrying out its duty to compile and review information, section 19 allows it to carry out observations, for example, through visits and inspections either routine or unannounced, of businesses in any part of the supply chain in order gain information about food or animal feeding stuffs. This provision extends to all aspects of food production (e.g. farms and production plants), food supply (e.g. wholesale or retail) or food consumption (e.g. food outlets and restaurants).

Section 20: Powers for persons carrying out observations

19. Section 20 confers powers on a person authorised by FSS to carry out observations. An authorised person can be a FSS employee or any other individual, for example, a local authority employee. The powers are to enter premises, take samples, inspect and copy documents and require the person under observation to provide documents and information. These powers can only be used if it is necessary to carry out an observation. Documents can include the health records of individuals held by the business to assess an individual’s suitability for working in the production or supply of food. For example, in order to prevent a public health risk, employers may need to obtain medical certificates about their employees’ suitability to carry out certain duties with food. This section does not allow FSS access to the personal health records of an individual.
Section 21: Offences in relation to section 20

20. Section 21 makes it an offence for an authorised person carrying out an observation to disclose or use information gathered which relates to a trade secret, outwith the course of their duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during an observation to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out their duty to gather information as part of an observation.

Section 22: Setting performance standards

21. FSS may set standards of performance for enforcement authorities (as defined in section 57), which would include FSS itself and local authorities’ trading standards and environmental health departments, to enforce “food legislation” (as defined in section 56). Who the enforcement authorities are for particular pieces of food legislation is designated in food legislation (mostly in regulations made by the Scottish Ministers). This provision gives FSS the role of setting the performance standards for the enforcement authorities in respect of all food legislation in Scotland.

Section 23: Reporting own enforcement activities

22. FSS must include information about enforcement action it has taken in its annual report. As an autonomous office in the Scottish Administration, the intention of this provision is for FSS to be open about its own activities.

Section 24: Reporting on enforcement action by others

23. Section 24 allows FSS to make a report on any enforcement authority’s performance and provide them with guidance on how to make improvements and meet any standards set out by FSS. This open and transparent system is designed to provide public assurance on the performance of authorities.

Section 25: Power to request information in relation to enforcement action

24. This section gives FSS the power to require information from enforcement authorities and others to help it make an assessment of the performance of enforcement authorities.

Section 26: Offences in relation to section 25

25. This provision makes it an offence to fail to comply with the requirement to provide information to FSS under section 25. It also makes it an offence to provide or knowingly or recklessly provide false or misleading information. Having an offence of failing to provide information will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.
Section 27: Powers for persons monitoring enforcement action

26. Section 27 provides FSS the power to allow an authorised person to enter premises (other than a dwelling house), take samples and copy documents in order to monitor enforcement action. It includes a power to require any person present on the premises to provide assistance to an authorised officer which is reasonably requested. The detail of these powers is set out in the section, and the intention is to help ensure FSS has access to all the information it needs to be able to assess the performance of enforcement authorities. An authorisation issued by FSS must be made in writing and it may contain such limitations or conditions as FSS determine (e.g. hygienic precautions to be taken by an authorised officer in exercising powers under the authorisation).

Section 28: Offences in relation to section 27

27. Section 28 makes it an offence for an authorised person monitoring enforcement action to disclose information or use information gathered outwith the course of that person’s duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during monitoring to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out that person’s powers under section 27 to monitor enforcement action. This subsection will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.

Section 29: Power to issue guidance on control of food-borne diseases

28. FSS may issue guidance to the Scottish Ministers and Scottish public bodies about their general responsibilities for the control and management of food-borne diseases. Any such guidance must be published. This will ensure transparency and public accountability for measures that should be taken to combat food-borne disease. The Scottish Ministers and Scottish public bodies have to have regard to this guidance as required.

Section 30: Publication and disclosure of advice and information

29. Section 30 gives FSS a right to publish or disclose information. This power is subject to that publication or disclosure not being prohibited by another law, not being in contempt of court and not being outweighed by considerations of confidentiality attaching to it. Otherwise FSS will be free to publish information as it sees fit. This power applies to information gathered from observations and monitoring (or obtained from any other source). The intention is for this to safeguard the autonomy of FSS. This power could be used to publish advice and information unrestrained by the Scottish Ministers or other stakeholders.

Section 31: Certain functions of Food Standards Agency ceasing to be exercisable

30. This section withdraws all the functions the Food Standards Agency exercises in or as regards Scotland under the Food Standards Act 1999 i.e. the functions are withdrawn in Scotland to the extent made possible by the legislative competence of the Scottish Parliament. These functions through this Bill will now be conferred on FSS.
PART 2: FOOD AND FEEDING STUFFS

Section 32: Food information

31. Section 32 inserts 4 new provisions into the Food Safety Act 1990. Section 15A defines “food information” as having the same meaning as the European definition contained in EU Regulation 1169/2011 on the provision of food information to consumers, and provides the Scottish Ministers with a power to define “food information law” by regulations. Giving this power to the Scottish Ministers builds in flexibility to be able to redefine food information law as and when new enactments are made in Scotland which relate to food information e.g. where the Scottish Ministers make regulations in future to give effect to requirements in EU law on food information.

32. Section 15B creates a new power for authorised officers to issue a notice to detain food which contravenes food information law – for example, where the description on the label does not match the content. This applies where it appears to an authorised officer (in the course of carrying out an inspection or otherwise) that food information law is being, or has been, contravened in relation to food intended for human consumption which is placed on the market within the meaning of EC Regulation 178/2002. A definition of “placing on the market” is contained in Article 3 of that Regulation. A notice can be given to a person in charge of the food or the owner of the food (if different and if known). It will be an offence for anyone to contravene a detention notice. The notice may require the food not to be removed from where it is or that it is not to be removed from a place specified in the notice. The officer must determine as soon as reasonably practicable and in any event within 21 days of the notice being issued whether or not food information law has been contravened, after which time the notice must be lifted. The officer may seize the food at any time and refer the case to the sheriff to determine if food information law has been contravened.

33. Where food is seized the authorised officer may copy or take away food information related to the food (including information held in electronic form). An authorised officer must inform the person in charge of the food of the officer’s intention to have the matter dealt with by the sheriff; the owner of the food (if different) must also be informed unless, after making reasonably inquiries, it is not possible to identify the owner. Anyone who might be prosecuted for breaching food information law in relation to the seized food is entitled to be heard and call witnesses if that person attends before the sheriff. If food information law has been breached, the sheriff has the discretion to have the food destroyed or disposed of or to require the information to be corrected so the food can be distributed for consumption; and the sheriff must require the owner of the food to meet any expenses reasonably incurred in connection with any disposal etc. of the food.

34. Where a detention notice is withdrawn by an authorised officer or where a sheriff refuses to make an order about the seized food (or any related food information), the food authority must pay the food owner compensation. The term “food authority” has the same meaning it does in section 5(2) of the Food Safety Act 1990 and will usually be local authorities. Any dispute about the amount of compensation is to be determined by arbitration in accordance with the Arbitration (Scotland) Act 2010.
35. These arrangements are modelled on existing arrangements for food which is believed to contravene food safety requirements, which are contained in section 9 of the Food Safety Act 1990. This section will help guard against food which is mislabelled entering the food chain, as happened in the horse meat food fraud incidents in 2013.

36. Section 15C inserts a new duty on food business operators to inform FSS where food information law is or has been contravened, i.e. where a food business operator is in charge of any food intended for human consumption and that food has been placed on the market. A person who fails in this duty is guilty of an offence, and this is a new offence. “Food business operator” is to be construed in accordance with Article 3 of EC Regulation 178/2002.

37. Section 15D sets out a duty on food business operators who have informed FSS about contraventions of food information law to then provide such relevant information FSS reasonably requests. Failing to do so will be an offence.

38. In sections 15A to 15D reference to “food” means food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

Section 33: Food hygiene information scheme

39. This section inserts provisions into section 16(1), and Schedule 1 to, the Food Safety Act 1990 which allows the Scottish Ministers to establish by regulations a food hygiene information scheme. Section 16 (food safety and consumer protection) is the primary regulation-making power contained in the 1990 Act and is relied on to make many regulations in food law in Scotland, including on food hygiene. The new provisions inserted into Schedule 1 (provisions of regulations made under section 16(1)) elaborate on what the power to establish the scheme in section 16(1) can, in particular, be used to do. The intent is to make mandatory a food hygiene information scheme based on an existing Scottish voluntary scheme. The aim of the scheme is to improve hygiene standards and therefore make food safer for the consumer. The references to “food” in the amendments made here to the 1990 Act mean food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

Section 34: Regulation of animal feeding stuffs

40. This section allows the Scottish Ministers to make regulations in relation to animal feeding stuffs. This is a general power which the Scottish Government anticipates would be used only if existing powers (largely contained under section 2(2) of the European Communities Act 1972) could not be relied on to make regulations on animal feeding stuffs. A similar power is currently available in the 1990 Act, and although it has not been used in the past it may still be prudent to retain it as a fall-back power. The Scottish Ministers must consult widely and take advice from FSS before making any such regulations.
PART 3: ADMINISTRATIVE SANCTIONS

Section 35: Fixed penalty notices

41. This section provides for fixed penalty notices for relevant offences, as an opportunity for the person who is believed to have committed the offence to discharge liability by paying a specified sum of money. The Scottish Ministers, by regulations, will specify the sum of money to be paid as a penalty for the fixed penalty notice. The sum of money which the Scottish Ministers can specify for a fixed penalty notice (or different sums in respect of notices for different relevant offences) cannot exceed level 4 on the standard scale (currently £2,500). Setting this by regulation allows for the sum to be changed over time in line with the cost of living and inflation without having to amend primary legislation.

42. These fixed penalty notices can be issued by authorised officers to someone who they believe has breached a relevant offence. The standard of proof to be used to satisfy authorised officers that a relevant offence has been committed before they can issue a fixed penalty notice – i.e. beyond reasonable doubt or on the balance of probability etc. – is also to be set by regulations. This allows for changes to be made to the standard to reflect changing circumstances without having to amend primary legislation. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the fixed penalty scheme by regulations. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences.

43. Setting sums of money payable, the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of fixed penalty notices. Enforcement authorities must comply with that guidance.

Section 36: Content and form of fixed penalty notice

44. This section describes the information which must be included in a fixed penalty notice, and gives the Scottish Ministers power to make regulations to set the period of time within which payment is to be made, and to make any further provisions about the form and content of the notice by regulations.

Section 37: Effect of fixed penalty notice on criminal proceedings

45. Criminal proceedings for a relevant offence cannot be initiated if a fixed penalty notice has been issued and is still in force. If the person to whom the notice is issued makes payment in accordance with the notice then that person may not be convicted of a relevant offence in respect of the relevant act or omission.
Section 40: Income from fixed penalties to be paid to the Scottish Ministers

46. This section states that sums received by enforcement authorities for payment of fixed penalty notices must be paid over to the Scottish Ministers. This will ensure that enforcement authorities are not seen to be using fixed penalty notices to pay for services they provide.

Section 41: Compliance notices

47. This section enables authorised officers of enforcement authorities to issue compliance notices in relation to a relevant offence. The notice will stipulate steps that need to be taken to rectify the offence.

48. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences. As with fixed penalty notices, the Scottish Ministers will by regulation set what the specified standard of proof will be for a relevant offence – i.e. beyond reasonable doubt or on the balance of probability etc. In practice, a compliance notice could be issued for minor offences where either a fixed penalty notice or a report to the Procurator Fiscal Service would be disproportionate to the offence.

49. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the compliance notice scheme by regulations.

50. Setting the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of compliance notices. Enforcement authorities must comply with that guidance.

Section 42: Content and form of compliance notice

51. This section describes what information needs to be contained in a compliance notice, including details on a right of appeal and the consequences for failure to comply with the notice. Scottish Ministers have a power to make any further provisions about the form and content of the notice by regulations.

Section 43: Failure to comply with a compliance notice

52. It is an offence to fail to comply with a compliance notice and within the compliance period. The penalty on summary conviction is a fine not exceeding level 5 (£5,000) on the standard scale.

Section 44: Effect of compliance notice on criminal proceedings

53. Criminal proceedings for the relevant offence cannot be initiated, and if the person on whom the notice is served complies with the notice, then that person may not be convicted in
Section 48: Power to make supplementary etc. provision

54. This section gives the Scottish Ministers power to make supplementary, incidental or consequential provision for the administrative sanctions regime, by regulation. This covers both fixed penalty and compliance notices as well as how enforcement authorities carry out their functions under Part 3 of the Bill. This is a general power, but the section gives particular reference to regulations for facilitating, prohibiting or restricting the use of sanctions where another sanction has already been imposed or issued for the same act or omission. These sanctions could be fixed penalty notices, compliance notices or another sanction.

55. The section also refers to regulations providing for early payment discounts in relation to fixed penalty notices. The section also provides for regulations being made to modify certain provisions of the 1990 Act. These include modifying provisions on offences and defences, on powers of entry and powers to issue codes of practice. This section in particular also provides for the effect of fixed penalty notices and compliance notices on criminal proceedings.

Section 50: Lord Advocate’s guidance

56. This section gives the Lord Advocate, as head of the Crown Office and Procurator Fiscal Service, the right to issue guidance to enforcement authorities about how they exercise their functions with regards to fixed penalty notices and compliance notices. The content of the guidance will be a matter for the Lord Advocate, but it may, for example, set conditions for certain offences to be treated administratively. Enforcement authorities must comply with this guidance.

Section 51: Interpretation of Part

57. Part 3 introduces administrative sanctions; this section describes the key terms used. This section includes a power to make regulations to specify what “relevant offences” are in respect of fixed penalty and compliance notices. Determining what constitutes a relevant offence by regulation rather than on the face of the Bill allows greater flexibility to amend the list of offences over time and following further consultation. This means not having to amend primary legislation if another type of offence is identified or where particular offences are to be treated differently, as may be the case following Lord Advocate’s guidance being issued from time to time under section 50 of the Bill.

PART 4: INTERPRETATION

58. Part 4 sets out interpretation provisions, definitions and meanings of key terms used in the Bill. In particular, section 52 gives the Scottish Ministers, by order, the power to modify the definition of “food”. Section 54 makes it clear that the term “other interests of consumers in relation to food” which is found in section 2 regarding FSS’ functions, includes the labelling and advertisement of food.
PART 5: FINAL PROVISIONS

Section 58: Modification of enactments

59. Section 58 introduces the schedule which makes various amendments to Acts including the Food Safety Act 1990 and Food Standards Act 1999. In particular, it sets out the maximum penalty for those found guilty of an offence under food information law, failing to report non-compliance of food information and failing to give an enforcement authority further information with regards to non-compliant food information.

Section 59: Subordinate legislation

60. The Scottish Ministers are given powers under this Bill to make regulations and orders. Section 59(2) lists which of these will be subject to the affirmative procedure. Section 59(3) provides for all other regulations and orders under the Bill are to be made by the negative procedure. The powers inserted into the 1990 Act by sections 32 and 33 of the Bill are also subject to negative procedure. Those subject to affirmative procedure must get approval from the Scottish Parliament before becoming law and those subject to negative procedure mean they will become law when they are made unless there is an objection from the Scottish Parliament.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum relates to the Food (Scotland) Bill (“the Bill”). It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and it has not been endorsed by the Scottish Parliament. The Memorandum summarises the cost implications of the Bill.

2. The Scottish Government has an overarching ambition to help people in Scotland live longer, healthier lives. The Scottish Ministers are committed to improving public health and have taken decisive action to tackle smoking and reduce alcohol consumption. Ensuring people are eating safe, healthy food and improving diet offers similar potential to improve public health.

3. The purpose of the Bill is to improve and protect public health and other interests of consumers, in respect of food. The Bill seeks to achieve this by creating Food Standards Scotland (FSS) and establishing new food law provisions and administrative sanction options for dealing with breaches of specific aspects of food law.

4. Food Standards Scotland is being established to carry out functions in relation to food and feed safety and standards. These functions will include all functions currently carried out by the UK-wide Food Standards Agency (FSA) in Scotland. It includes provisions to enable FSS to work with and on behalf of the public to provide clear and accessible evidence-based advice and guidance. FSS will be empowered to develop and implement policies on food and animal feeding stuffs safety, standards and other food and feed matters.

OVERVIEW OF THE BILL

5. The provisions in the Bill are set out in five Parts. The following provides a brief overview of these Parts.

- **Part 1** establishes Food Standards Scotland as a body corporate and sets out its core objective to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and Food Standards Scotland. The Scottish Ministers may request advice and assistance from Food Standards Scotland in relation to particular matters and may give Food Standards Scotland directions in certain circumstances.

- **Part 2** introduces specific provisions in relation to food law. These include provision for a food hygiene information scheme, the power to regulate animal feeding stuffs, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain or seize and remove such food and for a sheriff to determine the treatment of such food.

- **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.

- **Part 4** sets out interpretation provisions for the Bill.
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

- **Part 5** sets out general provisions such as the arrangements for the Bill coming into force and modification of enactments.

6. The following sections of the Memorandum consider the cost implications of Parts 1 to 3 and of secondary legislation. Parts 4 and 5 do not have specific cost implications so they are not discussed here.

**PART 1: FOOD STANDARDS SCOTLAND**

**Background**

7. The FSA is a UK-wide body with three devolved offices. Those devolved offices are largely funded by the relevant devolved administration (in the case of Scotland, directly through payments out of the Scottish Consolidated Fund under authorisation in the annual Budget Acts). However, the central FSA retains the bulk of direction, expertise and decision-making as well as all responsibility for official controls of meat hygiene inspections across Great Britain.

8. Following the UK Government’s decision in 2010 to move responsibility for nutrition and food labelling and standards in England from the FSA to the Department of Health and the Department of Environment, Food and Rural Affairs (Defra), the Scottish Ministers asked Professor Jim Scudamore to lead an independent review to assess the feasibility of establishing a stand-alone Scottish Food Standards body[^2], including a Scottish meat inspection delivery body, and maintaining the FSA’s existing statutory objective to protect consumers.

9. The Scudamore Review adopted two principles. Firstly, as Scotland has unique and complex problems in relation to diet, obesity and certain food borne diseases, food safety should not be divorced from nutrition, labelling and standards. Secondly, advice on food safety, nutrition and labelling should be independent and transparent and should be provided by an organisation at arm’s length from Ministers. The Scottish Ministers announced their decision to accept recommendations in the Scudamore report on 27 June 2012.

**Costs on the Scottish Administration**

10. The figures at Table A show the most robust estimate for the FSS’s budget over the first year of its operation[^3]. Costs have been provided for one year only based on the assumption that once the new body is functioning as a public body it will develop new ways of working distinct from those currently operated by the FSA. Therefore the proposed budget is based on existing arrangements to secure food standards and safety in Scotland, April 2012, [http://www.scotland.gov.uk/Publications/2012/04/6141/0](http://www.scotland.gov.uk/Publications/2012/04/6141/0)

[^2]: Future arrangements to secure food standards and safety in Scotland, April 2012, [http://www.scotland.gov.uk/Publications/2012/04/6141/0](http://www.scotland.gov.uk/Publications/2012/04/6141/0)

[^3]: These have been based on a number of figures and assumptions: (a) existing FSA in Scotland costs; (b) calculated shares of the cost of those centralised functions which will transfer to FSS and which are currently funded through the Westminster Budget; (c) additional staff salary and costs where we have been able to estimate the number of likely additional staff required for the new body; (d) increases of certain of those costs attached to staff, where we have been able to estimate the number of likely additional staff; (e) estimates of the costs for shared services which are anticipated will be available from the Scottish Government; and (f) assumptions which have been made, in consultation with FSA in Scotland, as to where efficiencies can be made and where costs may marginally increase. These costs do not take account of any additional functions (not currently performed by the FSA anywhere in GB/UK) and which may transfer to Food Standards Scotland. None of the potential transfers would require further primary legislation.
functions and practices, which will naturally evolve and seek to produce greater efficiencies as FSS moves to a Scotland-only remit.

Table A: Estimated Food Standards Scotland Budget 2015/16

<table>
<thead>
<tr>
<th>Description</th>
<th>Including</th>
<th>(£000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>Staff and Board: Remuneration of 8 members and staff costs for 75 HQ staff</td>
<td>4,000</td>
</tr>
<tr>
<td></td>
<td>Non-Staff Cash: Corporate services: HR, IT, legal and financial etc.; and Accommodation and utilities</td>
<td>1,650</td>
</tr>
<tr>
<td>Programme</td>
<td>HQ Based: Monitoring enforcement by food authorities</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td>Research</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Field Operations: FSS field inspections (e.g. meat processing plants etc.) 65 staff and equipment costs</td>
<td>5,600</td>
</tr>
<tr>
<td>Annually Managed Expenditure</td>
<td></td>
<td>900</td>
</tr>
<tr>
<td>Capital</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td>Total Budget</td>
<td></td>
<td>19,200</td>
</tr>
<tr>
<td>Income</td>
<td>Industry: Charges for services (e.g. meat charging)</td>
<td>3,300</td>
</tr>
<tr>
<td></td>
<td>Government Depts.: Fees paid for work done on behalf of UK Government Departments (e.g. Defra)</td>
<td>200</td>
</tr>
<tr>
<td>Total Income</td>
<td></td>
<td>3,500</td>
</tr>
<tr>
<td>Net Running Cost</td>
<td></td>
<td>15,700</td>
</tr>
</tbody>
</table>

Staffing

11. The skills, knowledge and professionalism of the FSA in Scotland’s (FSAS) employees are highly valued by the Scottish Government. FSAS employees, including the staff operating in the field in Scotland, will be transferred directly into the employment of Food Standards Scotland. Cabinet Office Statement of Policy (COSOP) provisions will apply to that transfer. This means that the rights and existing terms and conditions of FSAS staff will be protected on transfer to FSS.

12. The Scottish Government aims to ensure that the creation of FSS is achieved with minimal additional cost to the Scottish Government and with minimal disruption to the staff working with the existing FSA in Scotland.

13. The staff numbers are around 140. These staff, including field-based staff in Scotland, will transfer to become Scottish civil servants working in the FSS. During the consultation some stakeholders expressed concern about the need to maintain the independence of the new body.

14. The intention is to make Food Standards Scotland a non-Ministerial office in the Scottish Administration\(^4\). This will allow FSS staff to remain as civil servants without compromising the

\(^4\) The status of non-Ministerial office of the Scottish Administration is not conferred in this Bill. Such status is a matter for the UK Parliament as it requires an amendment by order to the Scotland Act 1998. The amending order will be sought at the conclusion of the Bill’s passage.
body’s independence. The direct transfer of existing staff will also ensure business continuity and reduce the risk to food safety and standards during the transition. There is a programme of work in the Scottish Government taking forward the transition.

Senior management

15. The existing post of Director for Scotland will transfer to the new body as FSS Chief Executive. The appointment will be at Senior Civil Service Grade 2 level with a pay range of £82,900 to £162,500.\(^5\)

16. It is likely that other members of the current senior management team will also transfer to equivalent roles in the new body. Further senior management team posts will be recruited for, to include functions related to strategy, corporate services and including a member of the team to act as Deputy Chief Executive.

Recruitment of new staff

17. FSS will require additional staff to oversee roles currently performed corporately across the UK from London and York. This will require an increased Private Office to service the Chief Executive and the Board, corporate functions including finance and business planning, communications and organisation of delivery of field operations.

18. The appointment of such staff may be made through redeployment or internal advertising within the Scottish Government, but recruitment costs of £20,000 have been included in the estimated transition costs\(^6\). On-going recruitment costs beyond vesting day will be met from the FSS’s budget from 2015/16 onwards.

19. As a non-Ministerial office in the Scottish Administration, FSS will have the option of accessing specialist services through the Scottish Government’s shared services arrangements for HR, IT, purchasing and accounts system and procurement expertise. This will mean that although FSS will be losing those services currently provided centrally by the FSA it may opt to buy into existing streamlined corporate services as part of the Scottish Administration rather than employ new staff to fulfil those roles.

20. Drawing on these shared services will incur a cost, the details of which are subject to negotiation with the relevant shared services. Estimates for these costs are included in the overall administration budget – assumed to be around 10% of the FSS budget – reflected in the Administration “non-staff cash” line at Table A.

Appointments to the FSS Board

21. The Bill provides for four to eight non-executive members, one of whom will chair FSS. The members will make up the Board. Appointments to the Board will be regulated according to the code of the Commission for Ethical Standards in Public Life. The cost of advertising,\(^5\) Cabinet Office, SCS Scales, [www.gov.uk/government/organisations/cabinet-office/about/recruitment](http://www.gov.uk/government/organisations/cabinet-office/about/recruitment)\(^6\) Based on information from SG HR with regard to the approximate cost of advertising and recruitment in similar exercises.
interviewing and making the appointments, based on recent similar exercises, is estimated at £30,000.7

22. The Scottish Government will meet the costs of subsequent appointments when they fall due. Members will serve for terms of three and four years, with their appointment terms staggered to ensure business continuity.

Remuneration of Board members

23. The continuing costs of payments to Board members will be met from FSS’s budget. Estimates for this cost assume that there will be one Chair, one Deputy Chair, and six Board members. The members will attend six Board meetings and six committees during the financial year. Financial estimates assumed are based on Board members and Chair being remunerated at the lowest, medium and highest ranges of the relevant scale (€161 to €241 per day for members including the Deputy Chair, and €193 to €337 per day for Chair).8

24. Members will also be remunerated for any preparatory work they do prior to board meetings at the daily rate. The estimates assume an approximate total of 52 days’ work per year for Members, 78 days’ work per year for the Deputy Chair and 104 days’ work per year for the Chair.9

Table B: Annual costs of FSS Board remuneration

<table>
<thead>
<tr>
<th>Role</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chair</td>
<td>£20,072</td>
<td>£27,560</td>
<td>£35,048</td>
<td>£27,560</td>
</tr>
<tr>
<td>Deputy Chair</td>
<td>£12,558</td>
<td>£15,678</td>
<td>£18,798</td>
<td>£15,678</td>
</tr>
<tr>
<td>Member</td>
<td>£8,372</td>
<td>£10,452</td>
<td>£12,532</td>
<td>£62,712</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>£105,950</td>
</tr>
</tbody>
</table>

25. It will be for the Scottish Ministers to determine the most appropriate range for members, taking account of the range of responsibilities FSS will have following the passage of the Bill. It is most likely that the place on the range will be in the “medium” category, as the number of staff and the budget is relatively low for a public body but as public health is being protected there is a high level of responsibility attached.

26. Assuming that the medium range is conferred, with a Chair, Deputy and six further members, the annual cost will be around £105,950.

Delivery of official controls

27. Official controls are arrangements put in place in regulations by Ministers to ensure that food business operators and enforcement authorities are comply ing with European Union food and feed regulations and complying with specified, related national measures. Official controls

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7 Based on information from SG HR with regard to the approximate cost of advertising and recruitment in similar exercises, including the Scottish Housing Regulator.
8 Based on the current Board costs of the UK Food Standards Agency.
9 Based on the number of days work on average of current Board members of the UK Food Standards Agency.
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

are currently delivered by the FSA in abattoirs and cutting plants. These will now be delivered by FSS. Businesses are charged an hourly rate for delivery of these controls but do receive a discount as set out in separate meat charging regulations10.

28. The Scottish Ministers intend to continue to offer a discount and work is currently underway to determine a model which will incentivise more efficient use of resources and a more equitable distribution of the discount.

29. The forecast gross cost of delivering official controls in Scotland is approximately £5.2 million plus the cost of central operational support currently provided by FSA UK. Estimates are that the gross running cost of operations in Scotland will be approximately £6 million.11 Based on the current charging mechanism income from industry is forecast to be approximately £3.3 million and from other government departments around £0.2 million,12 resulting in a net running cost for Field Operations of around £2.5 million.

Pension arrangements for transferring staff

30. The majority of staff in FSA in Scotland are existing members of the Principal Civil Service Pension Scheme (PCSPS). Liability for future employer contributions for those members will transfer to the FSS. No additional costs will be incurred as a result of the transfer.

31. Fifty one staff employed to deliver official controls in Scotland are members of a Local Government Pension Scheme (LGPS) operated by the London Pension Fund Authority (LPFA). This arrangement is as a result of those members historically being local government employees who became part of the Meat Hygiene Service, which itself later merged into the FSA in 2010. In 2010 the FSA avoided crystallising the deficit that fund was running by joining the Local Government Pension Scheme as an “admission member” and retaining those employees within their existing pension scheme.

32. Crystallisation is the amount required by a new scheme to which employees are transferring, in order to accept accrued rights from a different scheme as fully funded.

33. Actuarial valuations place the potential crystallisation and cessation costs for all active Scottish members at £13.4 million were they all to be given an option, and take it, to transfer their accrued rights into the PCPS. Given the high cost of this transfer, and the resultant requirement that an exception would have to be made to allow relevant staff to be admitted to the PCSPS on a final salary scheme equivalent to their current scheme, the Scottish Government has sought an alternative arrangement to allow staff to remain in their LGPS scheme as active members.

34. The Scottish Ministers will request that the Secretary of State for Communities and Local Government certify FSS as an admission body under the Local Government Pension Scheme

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10 The Meat (Official Controls Charges) (Scotland) Regulations 2009
11 Based on known current costs of the Scottish Operations Branch of the GB-wide operations, and a calculated addition of the costs of centralised support – based on a proportionate share of the existing GB operations central support.
12 Current 2014/15 forecast for income relevant to Scotland in GB-wide FSA Operations.
Regulations pursuant to provision 5(2)(a)(ii) of those regulations by which “a body…..provides a public service in the United Kingdom otherwise for the purposes of gain” may be so approved by the Secretary of State.

35. Current FSA members of the LGPS pension scheme working in Scotland will therefore continue to be members of the LGPS pension scheme. The FSS will acquire liability for the 51 active Scottish members of the scheme and, subject to negotiation, the 83 deferred and pensioner members.

36. Separating these members from the remainder of the FSA fund, but keeping them within the LPFA, will also avoid incurring a crystallisation and cessation cost of between £12.5 million and £13.4 million. The Scottish portion of the FSA fund can be shown to currently running a deficit of £1.8 million; that liability will transfer to FSS and appear on the balance sheet as an on-going liability calculated in accordance with IAS19 standards; as at March 2014 that figure would be £9.5 million.

37. Given the closed nature of the fund, it is foreseeable that a cessation payment, either a one off or structured with a Government Guarantee over a number of years, would have to be made within 15 years when the number of active members diminishes. That payment will likely be between £1.8 million and £12.5 million, dependent upon the demographic profile of the members and the market conditions at the time.

**Assets and liabilities transferred from the FSA to Food Standards Scotland**

**Assets to be transferred**

38. All assets held by FSA in Scotland, or within the Scottish Operations Branch, will transfer to Food Standards Scotland. The impact of this transfer on depreciation and amortisation costs is taken account of in the figures used above at Table A.

**Liabilities to be transferred**

39. These liabilities include balance sheet liabilities as at point of transfer which are associated with annual leave and flexi payable for staff who are transferring. These liabilities also include the transfer of Early Departure Provision associated with the FSAS staff (including operations staff). The impact of this transfer on costs is taken account of in the figures used above at Table A.

**Costs on the Scottish Administration – summary**

40. It is anticipated that the budget for Food Standards Scotland will be met from existing resources: the Scottish Consolidated Fund, industry charges and through a budget transfer arrangement with the FSA in respect of central costs associated with running the FSA in Scotland.

41. In 2013/14 the Scottish allocation to the Food Standards Agency was £10.9 million.\(^{13}\) The budget for the new Food Standards Scotland in 2015/16 is expected to be £19.2 million

\(^{13}\) Food Standards Agency in Scotland provision 2013/14 and 2014/15, Scottish Government Health Finance.
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

gross, taking account of the projected income from Field Operations the net running costs fall to approximately £15.7 million.

42. 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.

Costs on local authorities

43. The provisions in Part 1 of the Bill have no direct, immediate, financial implications for local authorities. No significant net impact on costs is therefore anticipated for local authorities.

Costs on other bodies, individuals and businesses

Other bodies

44. Currently, the Scottish Government and the FSA work in partnership with each other and with other relevant agencies, in particular NHS Health Scotland, on diet and nutrition. The provisions of this Bill will make no direct changes to that arrangement and will therefore have no direct financial implications for those other bodies.

Business

45. The provisions in Part 1 of the Bill have no direct financial implications for businesses.

Individuals

46. The provisions in Part 1 of the Bill have no direct financial implications for individuals.

PART 2: FOOD AND FEEDING STUFFS

Contravention of food information law: seizure of food (section 32 (inserted section 15B))

47. Part 2 of the Bill includes new food law provisions. The first new provision will allow enforcement officers from FSS or from local authorities to detain or seize and remove food which does not comply with food information law. This provision will help guard against mislabelling and formulation issues which have come to light in particular through the horsemeat DNA scandal in 2013. Officers currently have powers to detain or seize and remove food deemed unsafe, but have no such powers for food which is safe but which does not meet food information requirements.

Duty to report non-compliance with food information law (section 32 (inserted section 15C))

48. The second new food law provision in the Bill creates an offence of failing to report suspicions of where food may not comply with food information law and an offence to fail to
comply with a request for information. There are currently matching offences of failing to notify authorities where food may not meet food safety requirements, but nothing for food information requirements. There are very few prosecutions for the existing food safety arrangements and so costs for enforcing the new food information offences are likely to be very low.

49. Part 2 also contains provisions for introducing food hygiene information scheme (section 33) and provisions for regulating animal feeding stuffs. These provisions provide enabling powers for these to be introduced by regulations. The costs associated with these are considered below, in the Secondary Legislation section.

Costs on the Scottish Administration

50. The only significant costs on the Scottish Administration from these provisions will be in respect of raising awareness of the implications with food businesses and in providing authorised officers with training. The notification will be through food law guidance, and the cost of this is estimated to be around £50,000, based on the costs of raising awareness of other changes the FSA has recently handled. The cost for training will be included within the current on-going training programme currently provided for authorised officers. These costs will be met from within the FSS budget.

Costs on local authorities

51. There will be very little additional cost on local authorities associated with the detention or removal of food which does not comply with food information law. The cost of seizing and removing food may be on average around £700 per incident and the cost of detaining it could be £300 per incident. Detention has a lower cost as the food remains with the business operator. These are the averages reported by local authorities and the FSA which are currently used to estimate costs for the removal or detention of food which is unsafe.

52. However, in practice there is unlikely to be any significant cost. There were 24 seizures for food safety reasons in 2012/13 by local authorities. Almost all resulted in voluntary surrender at no cost. There were 20 incidents of food standards breaches in the same period and these also resulted in voluntary surrender.¹⁴

53. There is no anticipated significant additional cost to local authorities associated with the new duty to report non-compliance with food information.

Costs on other bodies, individuals and businesses

Other bodies

54. The provisions in Part 2 of the Bill have no direct financial implications for other bodies.

¹⁴ Figures based on joint FSA and local authority estimates.
Business

55. Costs to business associated with the new power of seizure etc. and the duty to report non-compliance will only fall to businesses which contravene food information law. There will be no costs for compliant businesses.

Individuals

56. The provisions in Part 2 of the Bill have no direct financial implications for individuals.

PART 3: ADMINISTRATIVE SANCTIONS

57. Part 3 of the Bill contains provisions for administrative sanctions as an alternative to seeking prosecution for relevant offences. The administrative sanctions are fixed penalty notices and compliance notices. These are intended to simplify and streamline the food regulation process. The compliance notice is intended for minor transgressions as a less severe level of sanction. For more serious offences the option is created here to apply fixed monetary penalties as an alternative to prosecution for breaches of food law.

58. This will reduce the effort and costs of seeking prosecution through the courts, relieving the burden on courts and offering speedier resolution.

Costs on the Scottish Administration

59. Fixed monetary penalties would cost around £50,000 to implement as a one-off expense for training and forms. This estimate is based on experience at the FSA of introducing other changes to practice. This would be made up of spending on a small number of awareness events (could cost around £30,000) and developing notices for administrative sanctions (could cost around £20,000). This cost will be off-set over time by consequential savings that will be made by avoiding prosecution (see below).

60. There are around 15 reports made to the Procurator Fiscal on food hygiene or food standards each year. Almost all result in a guilty verdict. The costs to the Scottish Court Service and to the Crown Office and Procurator Fiscal Service are around £1,200 and £600 per case respectively. Assuming these average costs and that there are around 15 reports and prosecution per year, applying the new sanctions instead could save the Scottish Administration around £10,200 each year.

61. There will be little by way of on-going costs, other than the production of notices. Administration for the sanctions scheme will largely be covered by local authorities. Income which arises from any monetary penalties imposed will be paid to FSS who will transfer the money annually to the Scottish Ministers.

62. The level of penalty and the offences to which penalties will be deemed appropriate will be set by regulations and not in the Bill. So any estimate of income from penalties must be regarded as speculative at this stage.

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15 Based on recent figures from FSA
63. However, for the purposes of illustration, assuming the average penalty was to be £250 and assuming that there were even just 15 offences found per year (although it is very unlikely the number would be anywhere as low as that) the income would be £3,750 per year. However, if the average penalty set as high as £2,500 (which would be within the range set in the Bill) the income could be £37,500 per year.

**Cost on local authorities**

64. The current cost to local authorities for bringing each report is around £1,700. Again assuming there are 15 reports and prosecutions per year, it is estimated that the new sanctions will save local authorities £25,500 per year.

65. The introduction of administrative sanctions will cost local government a one off sum of around £25,000 for familiarisation and forms. It is anticipated this will be absorbed into existing work streams. The complexity of the reporting and prosecution process for the 15 reports made per year at the moment is a significant cost to local authorities. It would not be unreasonable to assume that transferring that resource to the administration of a relatively seldom used administrative sanction option could be achieved without any significant additional overall cost.

66. No significant net impact on costs is therefore anticipated for local authorities.

**Costs on other bodies, individuals and businesses**

*Other bodies*

67. The provisions in Part 3 of the Bill have no direct financial implications for other bodies.

*Business*

68. The introduction of administrative sanctions to take the place of criminal prosecutions will reduce the costs on businesses associated with court proceedings. As long as food business operators comply with existing food safety, hygiene and standards they should not incur penalty costs.

*Individuals*

69. The provisions in Part 3 of the Bill have no direct financial implications for individuals.

**SECONDARY LEGISLATION**

**Food hygiene information scheme**

70. Section 33 in Part 2 of the Bill includes an enabling power for the Scottish Ministers to create a mandatory food hygiene information scheme in Scotland by regulations made under the Food Safety Act 1990.

71. The scheme will include a requirement that Scottish food authorities issue a certificate on food hygiene to food businesses, which in turn will be required by existing powers to display the certificate. It is intended that the regulations will impose a requirement on food authorities to
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

inspect food businesses for the purposes of issuing and re-issuing a certificate in accordance with a procedure to be set out in the regulations.

72. The power will also provide the opportunity for consultation on providing the option to require re-inspections where requested by a food business and under what conditions such a request may be fulfilled.

73. Consultation will include thorough cost analysis. It would not be possible to give accurate costs for the scheme without consultation and further development. However, for the purposes of this Financial Memorandum the following costs could be indicative estimates. Costs are likely to fall to:

(a) local authorities
(b) food business operators
(c) the Scottish Administration.

Costs on local authorities
74. The costs associated with informing businesses will fall to local authorities. Using experience from other mailshots it is estimated that there will be around £20,000 of mailing and £5,000 cost for administration of the scheme in the first year spread across all local authorities.

75. On-going running costs, taking account of the number of new food businesses that start up each year in Scotland are likely to be also around £25,000. However, almost all local authorities already operate the voluntary scheme and so will have been spending sufficient level to maintain that. Therefore it is thought that there should be very little running cost required – recurrent costs should be met from local authorities’ existing resources.

Costs on food business operators
76. Food business operators must already comply with the existing legislation relating to hygiene standards and a rating is already provided as part of the existing process. As this option proposes creating a similar (but mandatory) scheme it is considered that there will be no additional costs to food business operators associated with the rating of the business. Similarly, the additional costs to businesses associated with the physical process of displaying the rating is expected to be minimal.

Costs on the Scottish Administration – including Food Standards Scotland (FSS)
77. The most significant cost is likely to relate to marketing. The costs for marketing the scheme could be as high as £100,000. This would be a matter for FSS and would have to be met from existing resources. The next most significant cost would be training for local authority staff. Early estimates suggest this could be around £50,000, based on the costs of training for introducing other recent changes.

78. Food hygiene stickers will have to be issued to businesses at a cost of around £3,000 (including postage and administration costs). The cost of the sticker will fall to FSS.
Regulation of animal feeding stuffs

79. Section 34 in Part 2 of the Bill also includes an enabling power for the Scottish Ministers to make provision for the regulation of animal feeding stuffs. This power is a fall-back power only, and it is only included in the Bill to guard against any unforeseen circumstances in which other existing animal feeding stuffs regulations based on European requirements are insufficient for Scotland’s needs. This power has been in place since 1999 but has never been used and so no costs have ever arisen as a result. So it is unlikely there will be financial costs associated with this power.
These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 13 March 2014, the Cabinet Secretary for Health and Wellbeing (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Food (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 13 March 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Food (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
FOOD (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Food (Scotland) Bill introduced in the Scottish Parliament on 13 March 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 48–EN.

BACKGROUND

2. The Scottish Government is committed to ensuring people in Scotland live longer, healthier lives. Making sure we eat a good, nutritious diet of safe food is vital to achieving that ambition. Food-borne disease costs Scotland £140 million per year. More significantly, of the 130,000 consumers contracting food borne disease each year, around 2,000 will be hospitalised and around 50 will die. Bad eating habits are one of the most significant causes of ill health in Scotland and a major factor in obesity. Scotland is positioned near the top of the league tables for obesity among OECD countries. The public cost of dealing with obesity is likely to rise to £3 billion per year by 2030. Even relatively minor improvements to the safety and standards of food in Scotland will have significant social and economic benefits.

3. Currently in Scotland food safety and food standards responsibilities are for the most part set out either in the key Acts or in regulations made by the Scottish Ministers. The key Acts are the Food Safety Act 1990 (“the 1990 Act”) and the Food Standards Act 1999 (“the 1999 Act”).

4. The 1990 Act sets out the meaning of food, and defines food authorities and authorised officers. The authorities (local authorities and Food Standards Agency (FSA) in the case of Scotland) enforce and execute the food safety provisions in the 1990 Act or any regulations made under it, unless the Scottish Ministers decide they should discharge any functions or that the FSA should do so. One of the Act’s key sections (section 16) gives the Scottish Ministers power to make regulations for food safety and consumer protection. Other provisions in the Act cover food safety requirements, inspection and seizure in respect of food safety, as well as improvement notices and prohibition orders.

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1 Food-borne Disease Strategy 2010-2015, FSA, May 2011
2 Scottish Public health Observatory, NHS Health Scotland, March 2013
3 Preventing overweight and obesity in Scotland, SG, February 2010
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

5. The 1999 Act established the FSA, and gave the Scottish Ministers appropriate authority to direct the FSA in the exercise of its activities in Scotland. The Act gives FSA authority to develop food policy, make observations – auditing food enforcement carried out by enforcement authorities (usually local authorities). The Act gives FSA authority to carry out research and publish and give advice on food and feeding stuffs.

6. For our activities in respect of food standards (food information, formulation etc.) and food safety in Scotland we rely mostly on European regulations to determine what activities are carried out. The Scottish Ministers make regulations on food hygiene, meat charging, import and export control etc. to implement these European regulations. Currently the Scottish Ministers nominate the FSA and local authorities as the relevant food authorities either for all or some of the provisions in each of the Scottish food or feed regulations.

7. Across the UK responsibility for developing policy on, and regulating, food safety and food standards currently rests with the UK-wide FSA. When it was created in 2000 the agency also had policy responsibility for food information (including labelling) and diet and nutrition. In 2010, the UK Government decided to remove responsibility for nutrition and labelling for England. These responsibilities were passed to the Department of Health and Defra. This division of responsibility was seen by the Scottish Government as a mistake.

8. The Westminster Environment and Rural Affairs Committee identified this division of responsibilities as a factor that hindered the UK Government’s response to the horsemeat scandal. The horsemeat scandal has demonstrated the importance of having a single body with clear responsibility for all aspects of food safety and standards (which also covers the safety and standards of feed and food sources).

9. In response to the 2010 changes, the Scottish Government commissioned an independent review of the work of the FSA in Scotland. The review was led by Professor Jim Scudamore. In March 2012 the review recommended that food safety should not be divorced from nutrition and labelling and that advice on these subjects should be independent, evidence-based and consumer-focused. Advice on food safety, nutrition and meat inspection should come from a body at arm’s length from the Scottish Ministers.

10. The Scottish Government agreed with these recommendations and decided to create a food body for Scotland which delivers all necessary food safety, food standards, nutrition, food information and meat hygiene advice and regulation. The new food body will maintain the important principle that advice on food safety, nutrition and food information should be independent and transparent.

11. The Scottish Ministers saw this as an opportunity to reform how food safety and standards are assured in Scotland. In 2013, the Scottish Ministers consulted on ambitious

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5 Future arrangements for securing food standards and food safety in Scotland [http://www.scotland.gov.uk/Publications/2012/04/6141/0](http://www.scotland.gov.uk/Publications/2012/04/6141/0)
proposals for reform. That ambition was supported in responses to the consultation and from targeted stakeholder events last year. There is now broad support for widening the scope of policy areas in which the new body can exercise its functions and responsibilities beyond those covered by the FSA. The full range of policy areas will be developed through 2014 and will be set out in the new body’s strategic objectives and corporate plan as it begins its work in 2015. Having a distinct, local Scottish food body focused on Scottish needs will also bring clear advantages to Scottish consumers and industry.

BENEFITS OF THE BILL

12. The objectives of the Bill will contribute to the Government’s Purpose across a range of National Outcomes:

- making sure food in Scotland is safe so people lead longer, healthier lives;
- improving the diet and nutrition of people in Scotland, so people lead longer, healthier lives;
- being more efficient and more responsive to Scottish circumstances than the current UK-wide FSA, helping to ensure that our public services are high quality, continually improving, efficient and responsive to local people’s needs;
- supporting the growth of the Scottish food and drink industry by providing a strong, international reputation for safe, quality food and through proportionate and responsive regulation, thus helping to make Scotland an attractive place for doing business with, and securing inward investment from, our European neighbours and other trading partners at a global level.

13. In Scotland we have already taken radical action to improve public health through tackling smoking and alcohol. The creation of FSS gives us the opportunity to take action to improve diet and nutrition. Obesity and food-borne disease are arguably as significant a cause of poor health as smoking in Scotland, so there is potential to make very significant impacts and savings in the long term by improving diet and protecting the public from food-borne disease to improve health in Scotland.

POLICY OBJECTIVES OF THE BILL

14. The first step towards meeting the Scottish Ministers’ ambitions is marked by the introduction of this Bill. This creates Food Standards Scotland and sets out a wider set of objectives for it and sets out a fresh and transparent relationship between FSS and the Scottish Government. The provisions in the Bill are drafted widely to help unlock the new body’s potential to take on a wider set of functions from 2015 and to develop new, improved and streamlined relationships with consumers, local authorities, Government and industry.

15. The policy proposals can be summarised as being to:

a) establish Food Standards Scotland (FSS) to replace the UK-wide Food Standards Agency (FSA) in Scotland;

b) allow for the scope of the body’s functions to be widened beyond the FSA’s current remit. The Bill gives FSS a new key objective and builds the foundations for expanding
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

its involvement in policy areas not covered previously by the FSA. The full extent of that scope will be developed with stakeholders up to and beyond the 2015 vesting date and will take account of the wide range of suggestions made in the 2013 consultation on scope. No further primary legislation would be required for any of the expansions suggested (see paragraph 22). By setting the roles and powers of FSS as widely as possible in the Bill, any of the expansions considered at paragraph 22 that would require legislation would be achieved by secondary legislation;

c) establish new food law provisions. These are designed to protect and improve public health by: driving up hygiene standards and reducing the incidence of food-borne disease; providing safeguards against food standards incidents such as horsemeat food fraud; and strengthening and simplifying the penalties regime for breaches of food law. These arrangements will increase consumer and investor confidence and will help make Scotland an even more attractive place for food businesses.

Food Standards Scotland

16. Food Standards Scotland is to be created as a body corporate. Subsequent subordinate legislation (made under section 104 of the Scotland Act 1998) will then designate its status as a non-ministerial office of the Scottish Administration. Accountability for policy delivery, compliance with statutory duties and performance against agreed strategic objectives will be to the Scottish Parliament. FSS will lay reports such as its annual report in Parliament covering how it has performed. The Parliament and Committees will be able to invite the Chair or Chief Executive to explain any matter.

17. Upon being established 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. FSS will also have powers designed to ensure it has access to sufficient information to be able to exercise its functions and duties effectively – especially engaging in, co-ordinating and sharing research and gathering information. Another key function for FSS will be making observations with a view to acquiring information.

18. As the statutory authority for food policy in Scotland as set out in the Bill, FSS will set the performance standards for itself and other enforcement authorities and carry out education and training activities. Over and above this, the Scottish Ministers intend to identify FSS in other Scottish food regulations as the “competent authority”. Having such an authority is a requirement in European food and feed regulations. That competence will give FSS the responsibility for ensuring compliance in Scotland with food regulations currently overseen by the FSA.

Widening the remit

19. The new objectives, functions, duties and powers of FSS will build on the current arrangements in place for the Food Standards Agency in Scotland. However there are important additions which reflect the ambitions of the Scottish Ministers. For example, the existing objective FSA has is to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food. The objectives for FSS will be:
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

(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 consumers have diets conducive to good health; and
(c) to protect the other interests of consumers in relation to food.

20. The scope of FSS is to be significantly widened through the creation of the new objective on diet.

21. This gives FSS a specific statutory basis for the policy work on diet and nutrition that the FSA in Scotland, the Scottish Government and NHS Health Scotland already carry out in partnership. This new objective is included here explicitly so that FSS will not have to rely on the current more general FSA objective of developing policy “on other interests of consumers in relation to food”. Clarity on the respective roles of these partners was a significant theme raised in consultation. As this concerns the dynamics of the relationship between public authorities and how they communicate their joint objectives rather than a statutory relationship, we have not attempted to be prescriptive about that in the Bill. However, this new statutory objective 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.

22. The Scottish Government’s 2013 consultation on the remit and governance arrangements for a new Scottish food body identified many suggestions and ideas. These included more direct involvement in the regulation of animal health, animal by-products, eggs, poultry meat, organic food labelling, and drinking water quality. All of these policy areas relate to food and the interests of consumers, but are presently not led by the FSA in Scotland. No decisions have yet been taken on any of these suggestions for widening the remit – each would need to be considered in detail and consulted on specifically. The Scottish Government will begin work on this once the Bill has been introduced.

23. The strategic operation of FSS will also be different because of the Scottish context and duties set out in other Scottish legislation. For example, the Bill will amend schedules to the Public Services Reform (Scotland) Act 2010 so that provisions there will apply to FSS. As a result FSS will have statutory duties to report openly, pursue sustainable growth and be efficient, effective and economic in exercising all of its functions and be required to involve service users in the design and implementation of its public service regulation and inspection activities. The detail of these and other important operational and cultural changes in how FSS will operate – compared to how the FSA currently operates – are not for the Bill.

New food law provisions

24. The Bill provides for powers to seize and detain food which does not comply with food information law (section 32 (inserted section 15B)). These powers will more closely align food information powers with existing food safety powers. Currently if food is unsafe it can be seized or detained. Where food is unsafe, courts must order destruction of the food. However, there are no such powers for food which is safe but does not comply with food information requirements. In light of the horsemeat food fraud incidents, the power to seize or detain food that does not

Section 6(1)(a) Food Standards Act 1999
meet food information requirements in respect of labelling for example will help eliminate food fraud. Without such a power being available, at the moment a food business may still be able to pass on food which does not comply with food information law.

25. The Bill also provides for the creation of a statutory offence of failure to report breaches of food information law (section 32 (inserted section 15C)). This would more closely align with the existing requirement to report breaches of food safety requirements. Under the suggested arrangements it would become an offence to fail to notify FSS if any person suspected that food did not comply with food information law. The Bill also provides a corresponding power (section 32 (inserted section 15D)) for FSS to obtain further information on notifications made.

26. The Bill provides for a statutory scheme to be introduced at some future point by regulation for the mandatory display by food businesses of inspection outcomes (section 33). This is intended to drive up food hygiene standards and reduce the incidence of food-borne disease. A voluntary scheme, the Food Hygiene Information Scheme, is already in place and almost all local authorities have launched it locally. A statutory scheme is thought to be beneficial, but it has been decided to take time to consider the most appropriate arrangements for introducing a scheme. A similar statutory scheme has already been introduced in Wales and is being introduced in Northern Ireland. In Scotland we wish to monitor developments there before committing to the shape of a statutory scheme. For this reason this new food law provision in the Bill is restricted to giving the Scottish Ministers powers to introduce such a scheme after fuller consultation.

27. The Bill also includes provision (section 34) for the Scottish Ministers to regulate animal feeding stuffs and their production (retaining the existing power which Ministers have in the 1999 Act). This is included as a delegated power for Ministers to use for specific but as yet unknown issues. The intention of this provision is to offer some scope for future proofing against unforeseen circumstances where regulations could be appropriate. This power has been in force since 1999 but has not been previously used.

28. The Bill will also streamline Scotland’s food law enforcement regime by offering a range of new administrative sanctions so that offences will be dealt with more quickly and at less cost (Part 3 – sections 35 to 51). This administrative sanction regime, comprising of compliance notices and fixed penalties will allow enforcement officers more flexibility to deal appropriately with food offences. The use of administrative penalty options will reduce the burden on the courts and reduce the costs of local authorities in respect of prosecuting through the court system.

29. These new enforcement and improvement arrangements have been recommended to the Scottish Government by an independent Expert Advisory Group in a report on the lessons learned for Scotland from the 2013 horsemeat food fraud scandal7. The recommendations on seizure of food, the food hygiene information scheme and administrative sanctions had already been suggested by the FSA in Scotland following the consultation referred to in paragraph 48 below.

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7 Expert Advisory Group chaired by Professor Scudamore, July 2013
Updating the definitions of “food” and “feeding stuffs”

30. Food is a devolved matter. It is currently possible to introduce a Bill, creating a new food body for Scotland, which is within the legislative competence of the Scottish Parliament; and the Scottish Government is confident this Bill is within competence.

31. The competence of the Parliament and the competence of the Scottish Ministers are at present however slightly different. In practical terms the Scottish Ministers have a wider (executive) competence than the Parliament. This is the result of changes put in place in 2005 and 2006.

32. In 2005 changes were made to ensure that the Scottish Ministers were able to implement EU obligations relating to food (as defined in EU legislation). These changes were achieved through a transfer of additional functions to the Scottish Ministers in addition to those already devolved to the Scottish Ministers relating to food safety and standards for all substances considered to be food under regulation (EC) 178/2002 (see SI 2005/849).

33. The EU definition differed from the domestic definition found at that time in the 1990 Act. Although a definite list of substances included in the EU definition, but not included in the domestic definition, could not be collated with any certainty, there remained at least a theoretical risk that the two definitions covered different substances. The transfer of functions was made by means of an order made under section 63 of the Scotland Act 1998 (“the 1998 Act”), in order to cure these doubts and to ensure that the Scottish Ministers could continue to fully implement EU rules in relation to food.

34. In relation to animal feeding stuffs, it was agreed between the Veterinary Medicines Directorate (an executive agency of the Department for Food, Environment and Rural Affairs) and the Food Standards Agency that certain functions should be transferred to the Scottish Ministers (also by means of an order made under section 63 of the 1998 Act made in 2006) with respect to substances fed to animals which are not veterinary medicinal products or specified feed additives. The substances concerned were “zootechnical additives” which do not have a medicinal effect upon the animal to which they are fed, and it was agreed that their regulation should be brought within the framework of animal feed rather than veterinary medicines legislation (see SI 2006/304).

35. The Scottish Government is seeking a minor amendment to Schedule 5 to the 1998 Act to achieve alignment of the Parliament’s competence. This amendment is being sought through an order made under section 30(2) of the 1998 Act and will be laid in the Scottish Parliament and at Westminster in both Houses. This should be considered by both Parliaments and resolved by the summer of 2014.

36. The Scottish Government believes that this Bill is within the legislative competence of the Scottish Parliament and its introduction is not dependent on the section 30 order being made. Once the section 30 order has come into force, it is intended that amendments will be brought forward (either at stage 2 or 3) which will reflect the changes made to Schedule 5 to the 1998 Act. These amendments will be connected to the way in which “food” and “feeding stuffs” will be defined in the bill. It is the Scottish Government’s intention to provide the Parliament with
draft amendments during stage 1, to allow proper consideration of the provisions concerned and in light of evidence given to the Parliament during the stage 1 process.

ALTERNATIVE APPROACHES

37. The majority of the Bill’s provisions are intended to replace existing legislation – establishing a food safety and standards regime for Scotland mirroring the UK regime and taking away the functions exercised in Scotland by the UK-wide Food Standards Agency and making these the responsibility of Food Standards Scotland. In all instances where a policy decision was required careful consideration has been given to the policy alternatives and a decision has been made on the basis of available evidence and on the basis of efficiency, economy and effectiveness.

Food Standards Scotland

38. The policy decision to establish Food Standards Scotland as a body corporate, and to thereafter establish the body as a non-ministerial office of the Scottish Administration (NMO)\(^8\), was taken after consideration of all the alternatives. The NMO status was chosen over Non Departmental Public Body or Executive Agency as it delivered on the desire to have the body established as independent of the Scottish Ministers to ensure impartiality. The decision to expand the functions of FSS in the Bill (to include a duty to prepare a consumer engagement strategy for example\(^9\)) beyond the current range of FSA functions was based on the views of stakeholders and the desire to join up the regulation of a wider range of policies, to streamline the regulation of food related businesses. There was very strong support for this alternative as expressed through the consultation and stakeholder events.

New food law provisions

39. The decisions to introduce new food law provisions beyond those currently operated in Scotland were taken on the basis of these providing the best way forward for protecting and promoting public health as opposed to other options which included leaving the status quo. The Business and Regulatory Impact Assessment (BRIA) for the provisions covered\(^10\) included alternative approaches in each case. The alternative approaches considered were as follows.

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\(^8\) The status of non-ministerial office of the Scottish Administration is not conferred in this Bill. Such status is a matter for the UK Parliament as it requires an amendment by order to the Scotland Act 1998. The amending order will be sought at the conclusion of the Bill’s passage.

\(^9\) Public Services Reform (Scotland) Act 2010 – section 112

\(^10\) The Business and Regulatory Impact assessment covered all these provisions except the provision to allow for regulating animal feeding stuffs. This is an existing provision from the 1999 Act and so no consideration was required in the BRIA.
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

<table>
<thead>
<tr>
<th>Provision</th>
<th>Alternative options considered</th>
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<tbody>
<tr>
<td>Seizure or detention of food not being compliant with food information law</td>
<td>Do nothing – allow food products incorrectly labelled (e.g. horse meat labelled as beef) to be placed on the market; Introduce statutory seizure or detention scheme in Bill.</td>
</tr>
<tr>
<td>Duty to notify where food does not comply with food information law</td>
<td>Do nothing – allow food products incorrectly labelled (e.g. horse meat labelled as beef) to be placed on the market; Introduce offence for failure to notify in the Bill.</td>
</tr>
<tr>
<td>Food hygiene information scheme</td>
<td>Do nothing – bolster voluntary scheme; Give Scottish Ministers delegated power to introduce mandatory scheme later; Introduce mandatory scheme on face of Bill.</td>
</tr>
<tr>
<td>Regulation of animal feeding stuffs</td>
<td>Do nothing – retain existing back-up provision in case of unforeseen circumstances; Refresh existing 1999 Act provision in the Bill.</td>
</tr>
<tr>
<td>Administrative sanctions</td>
<td>Do nothing; Introduce administrative sanctions in the Bill.</td>
</tr>
</tbody>
</table>

40. The consultation responses and views expressed at stakeholder events showed strong support for the new arrangements included in the Bill. There was very little support for alternatives, other than from business interests.

41. There were many recommendations made by stakeholders through consultations and by the Scudamore Expert Advisory Group on learning lessons from the horsemeat scandal in 2013. Careful consideration was given to all of these to assess their impact, effectiveness and their relevance for the Bill. As a result of considering these and alternatives, we have the most effective and practicable recommendations in the Bill and other recommendations will be for FSS to take forward itself after it is established.

CONSULTATION

42. The content of the Bill has been based on two separate consultations described in the paragraphs below.

Food Standards Scotland

43. Following the decision in 2012 to create the new food body, informal consultations were undertaken with a wide range of stakeholders. These concluded by the end of 2012. This
informed a full public consultation on creating the new food body which ran from 28 February to 22 May 2013: “A Healthier Scotland: Consultation on Creating a new Food Body”.\textsuperscript{11}

44. This consultation on the role of the new food body was an opportunity for consumers as well as industry to express what they thought about what the new food body should do, and how food safety and standards should be addressed in Scotland in the future. The aim of the consultation was to ensure that the Scottish Government delivered an effective and efficient food safety regime, and through that, consumers in Scotland would be given confidence in the food they eat.

45. The consultation process was supported by comprehensive stakeholder events and round-table discussions with the food industry, public health professionals, local government, and third sector and consumer groups. The consultation generated 126 responses\textsuperscript{12} which were analysed independently. That analysis\textsuperscript{13} was published in August 2013.

46. There was little resistance to the idea of the new food body being created. A significant (two thirds) majority of responses supported a broadening of scope for the new body and supported the proposal to reconsider the distribution of specific roles currently performed either by FSA or local government. That redistribution would not require primary legislation, and so is not a matter for the Bill. The consultation responses also provided suggestions for better use of evidence and science and highlighted the need for clarity in specific areas such as responsibility for diet and nutrition policy in Scotland.

47. The consultation supported the creation of FSS through legislation, supported its independent status and supported the adoption of all FSA functions exercised in Scotland and supported the widening of the new body’s scope. These are all being taken forward in the Bill.

\textbf{New food law provisions}

48. A full public consultation on new enabling powers for enforcement was carried out by the FSA in Scotland between 28 February and 22 May 2013: “Consultation on New proposed Enabling Food and Feed legislation Provisions”.\textsuperscript{14} This consultation provided interested parties with the opportunity to comment on proposed additional new statutory powers which the new food body and food authorities (local authorities) might need in the future and which might be included in this Bill. This consultation focused on potential new powers which were been identified in discussion with stakeholders (and local authorities in particular).

49. The proposed enabling powers consulted on were to provide: a statutory basis for a scheme to enable the Scottish Ministers to make food business operators display the outcome of an official food inspection; new enforcement sanctions such as administrative penalties or forms

\textsuperscript{11}http://www.scotland.gov.uk/Topics/Health/Healthy-Living/Food-Health/NewFoodBody/NewFoodBodyConsultation
\textsuperscript{12}http://www.scotland.gov.uk/Topics/Health/Healthy-Living/Food-Health/NewFoodBody/NewFoodBodyConsultation
\textsuperscript{13}http://www.scotland.gov.uk/Publications/2013/08/7854
\textsuperscript{14}http://food.gov.uk/news-updates/consultations/consultations-scotland/2013/foodandfeed-consult-scot
of restorative justice in relation to food and feed law; and to enable the detention of any food, where there are reasonable ground to suspect that it does not meet the requirements of food law in relation to food standards or labelling, similar to those which already exist for foods not complying with food safety legislation.

50. The introduction of a duty to report non-compliance with food information law and the corresponding power to obtain information in this regard were not the subject of that consultation. This proposal was made as a recommendation from the Expert Advisory Group which considered the lessons learned from the horse meat scandal. Whilst their evidence gathering process would not be considered a full public consultation, the recommendation was widely supported by stakeholders from whom they took evidence.

51. The Bill also includes provision to make secondary legislation to regulate broadly for animal feeding stuffs. This power already exists in the 1999 Act and so was not part of any consultation for this Bill.

52. Thirty three responses were received and these have been summarised and published on the FSA website. Generally, the majority of respondents to the consultation were supportive of the proposals. This aligned with early stakeholder feedback and identified a strong preference for robust enforcement. However, the proposals in the consultation were for enabling powers to be created, to allow for further consideration once more detailed arrangements had been drafted.

53. Support for these proposals was also voiced at targeted stakeholder events run by the Scottish Government where representatives from stakeholder groups such as local government and business were given the opportunity to discuss and feedback on proposals for additional legislative powers. At these events there was strong support. Further, these proposals were considered in more detail with industry representatives and regulators by the Expert Advisory Group (EAG) led by Professor Scudamore. Following consideration, the EAG recommended these powers should be included in the Bill.

54. These powers have been included in the Bill.

EFFECTS ON EQUAL OPPORTUNITIES

55. The proposals do not discriminate on the basis of age, gender, race, religion, disability or sexual orientation.

56. As part of the consultation process, the Scottish Government held stakeholder engagement events and the opportunity was provided for equality organisations and others to make their representations known on the impact of the Bill’s proposals. No equality issues or concerns were raised by stakeholders in either written responses or at the stakeholder events.

57. The Bill includes a new duty in relation to the appointment of members. The appointments made by the Scottish Ministers must be made in a manner which encourages equal opportunities.

**EFFECTS ON HUMAN RIGHTS**

58. The measures in the Bill are compatible with rights under the European Convention on Human Rights (ECHR).

**EFFECTS ON ISLAND COMMUNITIES**

59. The Bill has no differential impact on island or rural communities. The provisions of the Bill apply equally to all communities of Scotland.

**EFFECTS ON LOCAL GOVERNMENT**

60. The Bill itself has no significant direct effect on local government. Local authority Trading Standards and Environmental Health officers play a key role in monitoring compliance with food and feed regulations. There is a very good relationship between these officers and the FSA. The agency sets performance standards and audits the enforcement activities of officers. The performance standard and audit roles will transfer to Food Standards Scotland, but there will be no associated impact on the work of local authority officers as a result.

61. However, the new food and feed law provisions in Parts 2 and 3 of the Bill will give local authorities new functions in respect of: detaining or seizing food that does not comply with food information law; promoting a mandatory food hygiene information scheme; and administering a sanction scheme of fixed penalty notices and compliance notices. This impact will be relatively minor. There is unlikely to be any increase in the number of seizure or detention incidents under the new regime. Costs associated with the new administrative penalty regime will be offset by savings as a result of not having to prepare for court prosecutions for all but the most serious breaches of food law.

**EFFECTS ON SUSTAINABLE DEVELOPMENT ETC.**

62. The Bill will have no negative impact on sustainable development. The Scottish Government’s focus on sustainability is explicit within the National outcomes and associated National Indicators. As our Government Economic Strategy highlights, as well as being a desired characteristic of growth, sustainability is also an important long-term driver of sustainable economic growth and will be key if we are to maximise Scotland’s economic potential.

63. This is the context in which the provisions of this Bill are likely to lead to largely positive economic and societal effects. Effective regulation of food and feed safety and standards will protect public health. Protection from food borne disease and from bad eating habits will contribute to the health of the population. This will ensure fewer days are lost to sickness and therefore increase or sustain productivity. Also, having effective regulation of food safety and
standards will further enhance the Scottish food industry’s international reputation, which will contribute towards the growth of the industry in Scotland.

64. Strategic Environmental pre-screening has been carried out on the proposals. The position, supported by the Consultation Authorities, was that the Bill does not lead to any significant environmental effects.
FOOD (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Food (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

OUTLINE OF BILL PROVISIONS

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The purpose of the Food (Scotland) Bill is to improve and protect public health and other interests of consumers in respect of food. The Bill establishes Food Standards Scotland (FSS) to carry out functions in relation to food safety and standards. It includes provisions to enable FSS to work with and on behalf of the public to provide clear and accessible evidence-based advice and guidance.

4. The Scottish Government has an overarching ambition to help people in Scotland live longer, healthier lives. The Scottish Ministers are committed to improving public health and have taken decisive action to tackle smoking and reduce alcohol consumption. Ensuring people are eating safe, healthy food and improving diet offers similar potential to improve public health.

OUTLINE OF BILL PROVISIONS

5. The Bill is structured in the following parts:

   - Part 1 establishes Food Standards Scotland as a body corporate and sets out its core objectives to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and Food Standards Scotland. The Scottish Ministers may request
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

advice and assistance from Food Standards Scotland in relation to particular matters and may give Food Standards Scotland directions in certain circumstances.

- **Part 2** introduces specific provisions in relation to food law. These include provision for a food hygiene information scheme, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain, seize and remove food and for a Sheriff to determine the treatment of such food.

- **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.

- **Part 4** sets out interpretation provisions for the Bill.

- **Part 5** sets out general provisions on coming into force and modification of enactments.

**APPROACH TO USE OF DELEGATED POWERS**

6. The Scottish Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

**DELEGATED POWERS**

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

**PART 2 - FOOD AND FEEDING STUFFS**

**Section 32 – Food Information**

8. Section 32 sets out four food information provisions to be inserted as sections 15A to 15D of the Food Safety Act 1990 (“the 1990 Act”). The new provisions cover: the meaning of “food information”; contravention of food information law; duty to report non-compliance with food information law; and power to obtain information. These introduce powers for authorised officers of food authorities to detain, seize and remove food which contravenes food information law and places a requirement on food business operators to report suspected non-compliance with food information law. For the purposes of defining the meaning of “food information law”
this section includes within the 1990 Act a provision to specify by regulations any enactment relating to food information. The provision is as follows.

To specify any enactment relating to food information as “food information law”.

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<th>Power conferred on</th>
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<tr>
<td>Procedure</td>
<td>Negative procedure of the Scottish Parliament</td>
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**Reason for taking the power**

The regulation of food is substantially harmonised at EU level. At present the EU regularly makes new laws on food. EU food law is given effect to in Scotland by regulations made by the Scottish Ministers within devolved competence. It is likely that EU legislation on food information will be revised or added to in future. It is therefore likely that there will be new domestic regulations needed in future to give effect to developments in EU legislation on food information e.g. new labelling requirements for importing and exporting certain foods.

This power enables flexibility to respond to developments in EU law which are given effect to by changes made in domestic law: provisions of new domestic regulations which give effect to EU law in relation to food information can be included within the meaning of “food information law”. It also leaves open the possibility of including any enactments related to food information which are purely domestic in nature.

Furthermore, the power allows for public consultation and advice from Food Standards Scotland before deciding which provisions in domestic law related to food information ought to be the subject of the new enforcement powers for food information in the Bill. Going forward the power allows for these provisions to be varied to take account of the experience gained from using the new powers; in this respect any change to the meaning of “food information law” continues to require a public consultation and regard to be had to any relevant advice from Food Standards Scotland (who, as part of its functions, is required to monitor enforcement action).

**Choice of procedure**

Negative procedure.

This power concerns a procedural matter, essentially giving administrative flexibility for, and future proofing of, a definition. The scope of the definition of “food information law” is narrow: it is limited to “enactments” within the meaning of schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 which must relate to “food information” within the meaning of Regulation (EU) No. 1169/2011. The power is being inserted into the Food Safety Act 1990. Negative procedure aligns the handling of this provision with the existing powers to make subordinate legislation on food in that Act (section 48(3)).
Further, under the 1990 Act the Scottish Ministers will be required to have regard to relevant advice given by Food Standards Scotland and must consult publicly before making any new regulations (section 48(4) to (5)).

For these reasons negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny. It strikes a balance between the importance of making the appropriate provisions of food information law subject to the new enforcement measures against the need for flexibility in the meaning of food information law, in the context of the limitation on which pieces of legislation can be specified as food information law (i.e. enactments which relate to food information), the fact that food regulations are almost exclusively made by way of the negative procedure and the safeguards in the 1990 Act which require public consultation and regard to be had to advice from Food Standards Scotland before regulations can be made.

Section 33 - Food Hygiene Information Scheme

9. Section 33 of the Bill amends section 16 of, and Schedule 1 to, the Food Safety Act 1990 (“the 1990 Act”) to include an enabling provision to create a mandatory food hygiene information scheme in Scotland. At present a voluntary food hygiene information scheme is in place across nearly all local authorities in Scotland with an estimated 28,000 participating food businesses. The scheme was developed by the Food Standards Agency in Scotland, consumer organisations, industry and local authorities in response to consumer concern about the lack of information publically available on compliance with food hygiene requirements.

10. A mandatory scheme will serve to improve and maintain the observance of hygienic conditions and practices by food businesses that sell or supply food to consumers. This will be achieved by providing public information on compliance with hygienic conditions and practices so that consumers can make informed choices about where they shop for and eat food. It will create an incentive for food businesses to meet the highest standards of hygienic practices on the basis that consumers will be inclined to eat and shop in those premises compared to premises which, whilst safe, require improvement.

11. Section 33(1) inserts a specific power to create the scheme into section 16(1) (food safety and consumer protection) of the 1990 Act. Section 16 is the main regulation making power in food law. Schedule 1 to the 1990 Act refers to particular matters which regulations made under section 16(1) may make provision on; that Schedule is amended by section 33(2) to refer to matters which the new power inserted into section 16(1) may in particular make provision on by regulations, such as the way in which a food hygiene information scheme is enforced and provision for a review or appeal system for ratings. The provision is as follows.

To make provision for a food hygiene information scheme

*Power conferred on* The Scottish Ministers
*Power exercisable by* Regulations made by statutory instrument

SP Bill 48-DPM Session 4 (2014)
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

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<tr>
<td>Reason for taking the power</td>
<td>Consultation responses on this proposal suggested that more detail on how the mandatory scheme would work would be helpful. Taking time to consider how new schemes in Northern Ireland and Wales impact on food businesses and food hygiene practices before deciding on the detail in Scotland seems sensible. So, the detail of the scheme should be developed further in light of experience elsewhere and then consulted on before regulations are prepared. This gives stakeholders another opportunity to comment on more detailed proposals, and for detailed impact assessments to be made. New section 16(1)(da) in the 1990 Act ensures that the Scottish Ministers have the power to create a food hygiene information scheme. Arguably section 16(1)(d) could be used to create a scheme but the general width of that power may give rise to some doubt. In any event, it is arguable that existing powers in section 16(1) are limited to regulating the activities of food businesses in terms of the enforcement measures already laid out in the 1990 Act (e.g. making offences, allowing improvement notices to be issued and creating a licensing or registration scheme); a question therefore arises whether food authorities can be required by regulations made under section 16(1) to enforce regulations other than in a way which is presently conceived of under the 1990 Act. A food hygiene information scheme requires new kinds of enforcement activity (in the context of food law) such as issuing ratings and carrying out re-inspections in accordance with the requirements of a process to review a rating. The amendments made to Schedule 1 ensure that provision can be made for a food hygiene information scheme which places requirements on food authorities to determine ratings in accordance with specified criteria, give reasons for the rating, issue certificates showing the rating, publicise ratings and to partake in a review and appeal process. The amendments made to Schedule 1 ensure that provision can be made about the review and appeal of ratings generally e.g. provision could be made allowing an appeal to the sheriff. The amendments also ensure that transitional provision can be made allowing ratings under the existing voluntary scheme to satisfy an obligation to have and display a rating under the new scheme, at least for an initial period of time.</td>
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<tr>
<td>Choice of procedure</td>
<td>Negative procedure.</td>
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Improving hygienic conditions and practices is not a controversial aim; the response to the consultation demonstrated broad support for the measure. The aim of the scheme is to allow the public to make a choice based on this rating. Any disadvantage to food businesses (who do not have high food hygiene standards) are in the interests of promoting public health.
There is already a voluntary food hygiene inspection regime in place, and most local authorities (the “food authorities” under the 1990 Act) operate this scheme. A mandatory scheme is not expected to have a significant impact on local authorities.

The power is being inserted into the Food Safety Act 1990. Negative procedure aligns the handling of this power with the existing powers to make subordinate legislation under the 1990 Act (section 48(3)). This requires the Scottish Ministers to have regard to relevant advice given by Food Standards Scotland and consult publicly before making new regulations. This gives food businesses and other stakeholders the opportunity to contribute to forming the detail of the scheme.

For these reasons negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny. It strikes a balance between allowing the detail of a mandatory food hygiene rating scheme to be scrutinised and the fact that the aim of the measure is not controversial, such a scheme albeit mandatory will not be novel, the fact that food regulations are almost exclusively made by way of the negative procedure and that the safeguards in the 1990 Act which require public consultation and regard to be had to advice from Food Standards Scotland will apply before regulations can be made.

Section 34 – Regulation of animal feeding stuffs

12. Section 34(1) introduces an enabling power giving the Scottish Ministers authority to make provisions by order for the regulation of animal feeding stuffs and connected purposes by applying (with or without modifications), or making provision equivalent to, provisions of the 1990 Act (see section 34(2)). The order can also modify any enactment (section 34(3)). Before an order can be made there must be a consultation and regard must be had to any relevant advice from Food Standards Scotland (section 34(4) and (5)). The provision is as follows.

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<tr>
<td>Power exercisable by</td>
<td>Regulations made by statutory instrument</td>
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<td>Procedure</td>
<td>Affirmative procedure of the Scottish Parliament</td>
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<td>Reason for taking the power</td>
<td>The Bill repeals section 30 of the Food Standards Act 1999 together with the other provisions of that Act which are being repealed in order to remove from it matters which fall within the legislative competence of the Scottish Parliament. Section 34 of the Bill is largely a restatement of the Scottish Ministers’ powers under section 30.</td>
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Most legislation on animal feeding stuffs is made by regulations made by the Scottish Ministers in order to give effect to EU law within devolved competence and the powers relied on to do this are contained in section 2(2) of the European Communities Act 1972. Some
secondary legislation related to animal feeding stuffs in limited respects is made within devolved competence under powers contained in the Agriculture Act 1970. The power under section 30 of the 1999 Act, and now contained in section 34 of the Bill, is a fall back power in the event that it is necessary or desirable to regulate the safety of animal feeding stuffs where there is no European vires to do so and the powers under the 1970 Act are insufficient.

**Choice of procedure**

Affirmative procedure.

Although the exercise of this power is limited to making provision akin to the 1990 Act it does enable the modification of primary legislation and therefore, for this reason, it is considered that the affirmative procedure is appropriate.

### PART 3 – ADMINISTRATIVE SANCTIONS

#### Section 35 - Fixed Penalty Notices

13. Section 35 introduces an enabling power giving the Scottish Ministers the power by regulations to make existing offences in food law subject to administrative sanctions in the form of a fixed penalty notice. Authorised officers of enforcement authorities will be able to use such notices as an alternative to making a report to the Procurator Fiscal. The Scottish Ministers will have discretion (see the meaning of “relevant offence” in section 51) to determine which existing offences in food law should be made subject to a fixed penalty notice and in what circumstances. Section 50 allows the Lord Advocate to issue guidance to enforcement authorities on the exercise of their functions in this regard.

14. The Scottish Ministers will be able to determine the basis upon which an authorised officer will be entitled to assert that an offence has been committed and therefore issue a fixed penalty notice. Different standards of proof may be required in respect of the range of offences. A higher standard may be necessary in the case of more serious offences which would entail more serious sanctions.

15. The Scottish Ministers will also be able to introduce detail for issuing of fixed penalty notices and their content. The provisions under section 35 are as follows.

**To make provision to specify the sum of money to be paid under a fixed penalty notice (section 35(2)).**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Regulations made by statutory instrument
- **Procedure:** Negative procedure of the Scottish Parliament
- **Reason for taking the power:** Consultation responses were largely in favour of the introduction of fixed penalty notices as a means to provide authorised officers with an alternative sanction to seeking prosecution. The amount of the sum of money comprising the penalty needs to be flexible to allow for changes
from time to time e.g. brought about by guidance issued by the Lord Advocate on appropriate fine levels. It would be too restrictive to set out the sum of money for fixed penalty notices in the Bill as it is highly likely that the amount set will need to be varied in future in accordance with living costs. Additionally, different levels will need to be set depending on the seriousness of the offence (or the seriousness of a particular act or omission giving rise to an offence) and this level of detail is better suited to secondary legislation.

**Choice of procedure**  
Negative procedure.

This power does not introduce a new offence. The Bill provides for the basis of the fixed penalty notice scheme as an alternative to seeking prosecution. The power to make regulations provides for some of the operational details and builds in flexibility for future changes. Fixed penalty notices are now a common enforcement measure used by public authorities for a wide range of offences, and this provision is a reasonable requirement. Furthermore, the Scottish Ministers must consult widely and seek advice from FSS before making regulations.

Section 35(5) limits the exercise of this power so that the Scottish Ministers cannot specify a sum exceeding level 4 on the standard scale. Level 4 is deemed to be suitable for offences which are not minor but nonetheless not serious enough to warrant level 5 on the standard scale. Subject to consultation and advice from Food Standards Scotland it is intended that minor offences will attract a sum below level 4; but setting the limit at level 4 allows flexibility for this to be increased in future.

Setting a limit on the face of the Bill balances the need for flexibility with ensuring the appropriate level of scrutiny by Parliament and use of Parliamentary time which is considered to merit the negative procedure, in the context that this power does not introduce any new offences, fixed penalty notices are not novel and the safeguards in the 1990 Act which require public consultation and regard to be had to advice from Food Standards Scotland will apply before regulations can be made.

For these reasons, it seems reasonable for this provision to be bound by the negative procedure.

**To make provision to specify the standard to which an authorised officer must be satisfied before issuing a fixed penalty notice (section 35(4))**

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<td>Procedure</td>
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| Reason for taking the power | Different standards may be set for different offences which are to be specified for the purposes of issuing a fixed penalty notice (including |
offences which are yet to be created and which may be specified in years to come). A specified standard could, for example, be reasonable belief, on the balance of probabilities or beyond reasonable doubt. This power allows for the appropriate standard to be selected for each specific existing offence by allowing the matter to be consulted on in detail before regulations are made. But this also allows flexibility going forward as the use of fixed penalties is informed by practice, which might mean changing the standard for some offences; in this regard FSS has powers which enable it to observe, and monitor the performance of, enforcement action.

**Choice of procedure**  
Negative procedure.

This power does not introduce a new offence. The Bill provides for the basis of the fixed penalty notice scheme as an alternative to seeking prosecution. This power to make regulations provides for some of the operational details and builds in flexibility for future changes. Furthermore, the Scottish Ministers must consult widely and seek advice from FSS before making regulations. Fixed penalty notices are now a common enforcement measure used by public authorities for a wide range of offences, and as this provision is a reasonable procedural element, the negative procedure is suitable.

**Section 36 - Content and form of fixed penalty notice**

16. Section 36(1) sets out the information which must be included in a fixed penalty notice, which is to include the period of time within which a fixed penalty notice must be paid. Section 36(2) provides for the Scottish Ministers specifying in regulations the period of time within which a fixed penalty notice must be paid beginning on the date of issue. Section 36(3) provides that the Scottish Ministers may make regulations which make further provision about the form and content of information to be contained in fixed penalty notices, including any additional information which is to be included in the notice. The powers found in section 36 are as follows.

**To make provision specifying the period of time within which payment of a fixed penalty notice is to be made (section 36(2)).**

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<td>Procedure</td>
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<td>Reason for taking the power</td>
<td>Setting a period of time is a technical detail best implemented by regulation as it gives flexibility to vary the period of time to make payment in the future. Also, this provision can be considered in further detail once the power below regarding the content and form of fixed penalty notices has been exercised. Furthermore, the Scottish Ministers must consult widely and seek advice from FSS before making regulations.</td>
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SP Bill 48-DPM  
Session 4 (2014)
Choice of procedure

Negative procedure.

This power does not introduce a new offence. The Bill provides for the basis of the fixed penalty notice scheme as an alternative to seeking prosecution. This is a minor provision and given that there needs to be consultation as referred to above, it is appropriate for it to be implemented by the negative procedure.

To make provision about the form and content of fixed penalty notices (section 36(3)).

Power conferred on
The Scottish Ministers

Power exercisable by
Regulations made by statutory instrument
Procedure
Negative procedure of the Scottish Parliament

Reason for taking the power
This is a procedural and technical provision which will allow for the content and form of a compliance notice to be updated as and when required to take into account administrative changes. It would also give flexibility to make such minor changes without the need to amend primary legislation.

Choice of procedure
Negative procedure.

This power does not introduce a new offence. The Bill provides for the basis of the fixed penalty notice scheme as an alternative to seeking prosecution. This power to make regulations provides for some of the operational details and builds in flexibility for future changes. This is a reasonable provision for a fixed penalty sanction: it does not raise any contentious issues and as such it is appropriate to have by negative procedure. Again, like all the regulation-making powers in Part 3, the Scottish Ministers have to first consult widely and have regard to advice from FSS.

Section 41 – Compliance Notices

17. Section 41 gives the Scottish Ministers the power to make existing offences in food law subject to administrative sanctions in the form of a compliance notice. Authorised officers of enforcement authorities will be able to use such notices as an alternative to fixed penalty notices or making a report to the Procurator Fiscal. Offences for which a compliance notice would be considered appropriate are likely to be minor in nature, and therefore not merit more punitive sanctions. The Scottish Ministers will have discretion to determine which offences (see the meaning of “relevant offence” in section 51) in food law should be made subject to a compliance notice and in what circumstances. Section 50 allows the Lord Advocate to issue guidance to enforcement authorities on the exercise of their functions in this regard.

18. The power will enable the Scottish Ministers to determine the basis upon which an authorised officer will be entitled to assert that an offence has been committed and therefore
issue a compliance notice. Different standards may be required in respect of the range of offences.

19. The power also enables the Scottish Ministers to introduce detail for issuing of compliance notices and their content.

**To make provision to specify the standard to which an authorised officer must be satisfied before issuing a compliance notice (section 41(3)).**

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**Reason for taking the power**

It would be inappropriate to set out a standard on the face of the Bill to which an authorised officer needs to be satisfied before issuing a compliance notice because this will vary for the different offences. Furthermore, the Scottish Ministers must consult widely and seek advice from the FSS before making regulations under this section.

**Choice of procedure**

Negative procedure.

This authority does not introduce a new offence. The Bill provides for the basis of the compliance notice scheme as an alternative to fixed penalty or seeking prosecution. This delegated authority merely provides for some of the operational details and builds in flexibility for future changes, and therefore the negative procedure is suitable.

**Section 42 – Content and form of compliance notice**

20. Section 42(1) sets out the information which must be included in a compliance notice, which is to include the period of time within which steps are required to be taken. Section 42(3) provides for an enabling power by which the Scottish Ministers must specify in regulations the minimum period of time which may be specified in a compliance notice as the time within which steps must be taken. Section 42(4) provides that the Scottish Ministers may make regulations which make further provision about the form and content of information to be contained in compliance notices, including any additional information which is to be included in the notice. These provisions are accounted for here.

**To make provision specifying a minimum period of time within which a compliance notice may be complied with (section 42(3)).**

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**Reason for taking the power**

It is not known yet which offences in food legislation will be made relevant offences and it may be that different minimum periods of time for compliance may be suitable for different relevant offences. Setting a minimum period of time is a requirement that would be best
implemented by regulations because it will allow flexibility to vary the length of time depending on the nature of the offence. It will also allow for a minimum period of time to be set for any new offences, without the need to amend primary legislation.

**Choice of procedure**

Negative procedure.

A minimum period of time to comply with a notice must be specified by the Scottish Ministers in regulations. It is a standard provision of a compliance scheme as it guarantees the recipient of a notice a minimum period of time within which to comply and thereby acts as a control on the powers of authorised officers to determine the period for compliance when issuing a notice. There is such a provision in section 10(1)(d) of the Food Safety Act 1990 in relation to improvement notices which requires compliance with particular food regulations within such a period – not being less than 14 days - as an authorised officer may specify. For the purposes of the Bill a range of offences in food legislation could be specified as relevant offences and it may be that a period less than, or more than, 14 days may be an appropriate minimum period depending on the nature of the offence.

However, despite the need for flexibility, it may be that most relevant offences will attract the same minimum period of time for compliance. It is not anticipated that the exercise of this power will result in complicated provision being made. It should be a relatively straightforward matter. Essentially, this is a narrow power which is limited to specifying a minimum period (or periods) of time in relation to requiring compliance with food legislation. This is legislation which largely, if not exclusively, will apply to food businesses. Food businesses should already be complying with food legislation. It is not expected to be controversial. Specifying the minimum period (or periods) will be informed by practice through consultation with food businesses and enforcement authorities. Indeed, before regulations can be made the Scottish Ministers must run a consultation and have regard to advice from Food Standards Scotland.

For these reasons negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny.

**To make further provision about the form and content of compliance notices (section 42(4)).**

**Power conferred on**
The Scottish Ministers

**Power exercisable by**
Regulations made by statutory instrument

**Procedure**
Negative procedure of the Scottish Parliament

**Reason for taking the power**
Section 42(1) provides for the information that must be included in a compliance notice; the information required by that section is
fundamental to the operation of the compliance notice scheme and the obligation to provide it in a notice cannot be varied by regulations. This power supplements that requirement by allowing the Scottish Ministers to make provision by regulations about the detail of the information required by section 42(1) and the form it is to take in the notice. It also allows for additional, nonessential, information to be required in notices.

The exercise of this power is administrative in nature. It will be used to take care of the detail in a notice and ensure that notices are issued in a clear and consistent form across Scotland. It may be desirable to change the form and detail of the information provided in a notice from time to time, as practice develops. It seems appropriate to have the flexibility to do this by regulations.

Choice of procedure

Negative procedure.

This authority does not introduce a new offence. The Bill provides for the basis of the compliance notice scheme as an alternative to fixed penalty notices or seeking prosecution. This delegated authority merely provides for some of the operational details and builds in flexibility for future changes. This is a reasonable provision for compliance notice schemes and does not raise any contentious issues; as such it is appropriate to have by negative procedure. Again, like all the regulation-making powers in Part 3, the Scottish Ministers have to consult widely and have regard to advice from FSS.

Sections 48 – Power to make supplementary etc. provision

21. Section 48(1) gives the Scottish Ministers a general power to make by regulations, supplementary, incidental or consequential provisions in relation to administrative sanctions in the form of a fixed penalty notice or compliance notice, and in relation to the execution by authorised officers of their functions in that regard. Section 48(2) sets out what, in particular, provision made under section 48(1) can include.

22. Section 48(2)(a) refers to the power to introduce provisions for facilitating, prohibiting or restricting the imposition of fixed penalty notices or compliance notices in cases where another sanction has been issued in respect of a relevant offence arising out of the same act or omission. Likewise regulations may facilitate, prohibit or restrict the imposition of other sanctions where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission. Section 51 contains the meaning of “relevant offence”.

23. Section 48(2)(b) refers to the power to make regulations providing for early payment discounts with regard to fixed penalty notices.

24. Section 48(2)(c) refers to the power to make regulations to apply with modifications, or make equivalent provision to, the following sections of the 1990 Act:
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

a. section 20 (offences due to fault of another person),
b. section 21 (defence of due diligence),
c. section 30(8) (documentary evidence in proceedings for offences),
d. section 32 (powers of entry),
e. section 33 (obstruction etc. of officers),
f. section 34 (time limit for prosecutions),
g. section 36 (offences by bodies corporate),
h. section 36A (offences by partnerships),
i. section 40 (power to issue codes of practice),
j. section 45 (regulations as to charges),
k. section 49(3) to (5) (authentication of documents),
l. section 50 (service of documents).

25. Sections 48(3) allows for regulations under section 48(2)(a) to make modifications to sections 37 and 44 on the effect of fixed penalty notices and compliance notices on criminal proceedings.

26. Section 48(4) expands on the meaning of “another sanction” and section 48(5) allows the Scottish Ministers to modify subsection (4).

To make supplementary, incidental or consequential provision as considered appropriate in connection with fixed penalty notices and compliance notices and provision on the carrying out of functions under Part 3 of the Act by enforcement authorities and authorised officers (section 48(1)).

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<tr>
<th>Power conferred on</th>
<th>The Scottish Ministers</th>
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<tr>
<td>Power exercisable by</td>
<td>Regulations made by statutory instrument</td>
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<td>Procedure</td>
<td>Regulations made by statutory instrument</td>
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<tr>
<td>Procedure</td>
<td>Negative procedure of the Scottish Parliament</td>
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<tr>
<td>Reason for taking the power</td>
<td>This power enables technical provision to be made supplemental, incidental or consequential to provision in the Bill on administrative sanctions and on the functions of enforcement authorities in relation to administrative sanctions, in order to enable the administrative sanctions scheme to function in practice as desired and to allow for a degree of future-proofing. It would not be possible to foresee every eventuality that would require a change or addition in relation to compliance and fixed penalty notices.</td>
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</table>

SP Bill 48-DPM

Session 4 (2014)
Sections 59 (subordinate legislation) and 60(a) (ancillary provision) also include powers to make supplementary, incidental or consequential provision.

Section 59 attaches to powers the Scottish Ministers already have to make orders or regulations under the Bill; whereas section 48 is a free-standing power.

Section 60(a) is a free-standing power commonly found in one form or another in many pieces of primary legislation: it is a general power to make ancillary provision by order. However, section 48 is a specific regulation making power (which allows it to be easily combined with other regulation making powers in Part 3 of the Bill) to make supplemental etc. provision in connection with administrative sanctions and the functions of enforcement authorities and authorised officers in that regard. It has been made clear in section 48(2) that this specific power includes the power to make provision about some particular matters; without section 48(2) it is possible that there could have been some debate about the extent of the power in section 48(1) to make provision on these particular matters. In that respect section 48 may go further than the broadly expressed powers in section 60(a). Essentially, section 48 makes clear that the Scottish Ministers can make the provision needed to allow an administrative sanctions scheme to function properly and it seems beneficial for the reader to place a specific power such as this within the Part of the Bill to which it relates.

Choice of procedure

Negative procedure.

The fundamental mechanics of how administrative sanctions are to work are set out in the Bill; that includes, for example, defining what a fixed penalty notice is, who can issue a notice, what it means to pay a fixed penalty, what the basic restrictions are on issuing a notice and the effect of a notice being withdrawn. This power enables further provision to be made in order to ensure that what is set out in the Bill can be properly given effect to in practice. It also specifically allows regulations to make provision about how enforcement authorities are to carry out their functions in relation to the administrative sanctions scheme: again, this is to ensure that what is in the Bill can be given effect to in practice. Therefore the exercise of this power is constrained by what is in the Bill since the power can only be used to make supplemental, incidental or consequential provision and provision about how enforcement authorities are to carry out their functions in Part 3 of the Bill.

Although this may be a power which is wider than section 60 (mentioned above) it is intended to be exercised for a similar purpose. It is essentially concerned with the detail needed to give effect to provisions in the Bill – in this case, specifically the implementation of the administrative sanctions scheme. Section 60 is a power commonly
found in primary legislation and in the usual way it is subject to negative procedure (unless it is used to amend primary legislation).

In addition, before making any regulation under this section, the Scottish Ministers must consult widely and take advice from FSS.

For these reasons it is considered appropriate to follow negative procedure

**To make particular provision under section 48(1) to facilitate, prohibit or restrict: (1) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission; or (2) issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission (section 48(2)(a)).**

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<th>Scottish Ministers</th>
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<tr>
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**Reason for taking the power**

The very detailed nature of regulating the circumstances in which a fixed penalty notice, a compliance notice and other sanctions in food law (e.g. an improvement notice under section 10 of the 1990 Act) could relate to one another and how that relationship should work is best left to be made in regulations after consultation and with regard to advice from Food Standards Scotland. It may be, for example, that a prohibition on issuing a compliance notice in respect of an act or omission giving rise to a relevant offence is not appropriate where that act or omission is the subject of an improvement notice.

The list of other sanctions is contained in section 48(4) and after consultation this may be expanded further; it may also be varied in future depending on any new sanctions which might be introduced into food law e.g. contained in regulations which apply with modifications provisions of the 1990 Act. That means there is a need for flexibility to take account of views on how administrative sanctions should relate to one another and to other sanctions in food law, and going forward to take account of developments in the law and lessons learned once the administrative sanctions scheme has been commenced.

**Choice of procedure**

Negative procedure.

This strikes a balance between the importance of ensuring that provision needed to allow the administrative sanctions scheme to function properly is scrutinised and the fact that this provision will comprise highly technical detail made only after public consultation and with regard to advice from Food Standards Scotland as required by section
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

49 (regulations).

Furthermore, it will likely be considered appropriate to make provision under this power where that provision is not otherwise covered by guidance (which must be complied with) issued by the Lord Advocate to enforcement authorities on the exercise by them, and their authorised officers, of functions in relation to administrative sanctions under section 50 (Lord Advocate’s guidance); it is also possible, should section 40 of the 1990 Act be applied (under section 48(2)(c)) that a recommended code of practice issued to enforcement authorities by the Scottish Ministers may make provision on aspects of the relationship between sanctions and how authorised officers should exercise their functions in respect of administrative sanctions and other sanctions. Given the scope for dealing with these matters in guidance and/or a recommended code of practice it is anticipated that the use of this power will be limited.

For these reasons negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny.

To make particular provision under section 48(1) for early payment discounts in relation to fixed penalty notices (section 48(2)(b)).

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<td>Negative procedure of the Scottish Parliament</td>
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</table>

Reason for taking the power

This power allows for detailed provision to be made which is best left to regulations (if it is to be made) after consultation and with regard to advice from Food Standards Scotland. That consultation and advice from Food Standards Scotland will help determine whether provision for early payment discounts is appropriate and if it is appropriate then how that ought to work e.g. what the reduced sum of money is to be for early payment, to which relevant offences it should relate and the time period in which early payment should be permissible (different periods of time and different discounts may be applied for different relevant offences). The power also enables, going forward, any provision on early discount payments to be varied to take account of how it is working in practice.

Choice of procedure

Negative procedure.

Provision for early payment discounts is largely technical and is, of course, confined to matters concerning a reduction in the sum payable under a fixed penalty notice. It essentially comprises providing for a reduced sum of money which is to be accepted as payment for discharging liability, the relevant offences to which it should relate and the period of time which early payment is permissible before the sum
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

specified under section 35(2) becomes the amount payable.

It is also not a controversial measure: it does not create any additional burdens as it in fact provides for the reduction of the sum of money payable under a fixed penalty notice.

For these reasons negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny.

To make particular provision under section 48(1) to apply with modifications or make provision equivalent to certain provisions of the Food Safety Act 1990 (section 48(2)(c)).

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<td>Procedure</td>
<td>Negative Procedure of the Scottish Parliament</td>
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<tr>
<td>Reason for taking the power</td>
<td>The provisions of the 1990 Act referred to in section 48(2)(c) are relevant to administrative sanctions and it may be desirable to apply them with modifications or make equivalent provision using secondary legislation for the purposes of Part 3 of the Bill. This gives flexibility to apply some or all of the respective sections of the 1990 Act and permits this to be varied in future, without resorting to primary legislation.</td>
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<tr>
<td>Choice of procedure</td>
<td>Negative procedure.</td>
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These provisions of the 1990 Act apply to many regulations in food law made subject to negative procedure. They are often expressly applied to regulations (e.g. regulation 5 of S.S.I. 2009/435) or they apply to regulations by virtue of regulations being made under sections 16 or 17 of the 1990 Act (e.g. section 50 applies to any document which is required or authorised “under this Act” which includes documents provided for in regulations made under section 16 or 17). They are standard procedural and administrative provisions found throughout food law.

Furthermore, as with the other regulation-making powers in Part 3, the Scottish Ministers have to first consult widely and have regard to advice from FSS before making regulations.

Therefore the negative procedure is considered appropriate.

To make particular provision for the modification of sections 37 and 44 (section 48(3)).

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This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

Reason for taking the power

This provision specifically allows for regulations made under section 48 (2)(a) above, to modify sections 37 and 44 which relate to the effect of a fixed penalty notice and compliance notice on criminal proceedings. This gives flexibility if any changes to those sections are required in certain circumstances where those sections would otherwise prohibit or restrict the issuing of administrative sanctions.

Choice of procedure

Negative procedure.

This power is limited to making modifications in relation to the effect of administrative sanctions on criminal proceedings so as to facilitate, prohibit or restrict the issuing of administrative sanctions (including as between fixed penalty notices and compliance notices) with other sanctions (“another sanction” is defined in section 48(4)). Should this power be used it would be for limited and highly technical reasons in order to streamline the relationship between such sanctions.

Any regulations will need to be consulted upon and advice from FSS taken into account before being made.

Negative procedure is therefore considered appropriate.

To make particular provision to modify section 48(4) (section 48(5)).

Power conferred on

The Scottish Ministers

Power exercisable by

Regulations made by statutory instrument

Procedure

Negative procedure of the Scottish Parliament

Reason for taking the power

This section provides for the meaning of “another sanction” and as new sanctions could be created, it is sensible to allow provision for the list of sanctions to be amended to take account of developments in the law and lessons learned once the administrative sanctions scheme has been commenced.

Choice of procedure

Negative procedure.

The Scottish Ministers have to consult widely and have regard to advice from FSS. This strikes a balance between the importance of ensuring that provision needed to allow the administrative sanctions scheme to function properly is scrutinised and the fact that this provision will comprise detail made only after public consultation and with regard to advice from Food Standards Scotland as required by section 49 (regulations).

Section 51 – Interpretation of Part 3

27. Section 51 sets out the definitions of key terms in Part 3 of the Bill. In particular, there is one definition which provides for a delegated power. It allows the Scottish Ministers to specify
which offences under food legislation are to be “relevant offences” for the purposes of the administrative sanctions scheme set out in Part 3 of the Bill. Section 56 defines “food legislation”.

To specify which offences in food legislation are “relevant offences” in Part 3 of the Bill

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Reason for taking the power

Flexibility is needed so that relevant offences can be specified after consultation and can be varied in future to take account of practice, and to include new offences created in food legislation in future. If desirable this power can also be exercised in combination with powers in section 59 so that different administrative sanctions (i.e. fixed penalty notices or compliance notices) can be applied to different relevant offences.

Choice of procedure

Negative procedure.

Only an offence in food legislation can be made a relevant offence. The exercise of this power is therefore limited; the power cannot be used to specify an offence which is not found in food legislation nor can it be used to create a new offence.

Exercising this power (to specify relevant offences) does not allow enforcement authorities to issue administrative sanctions for relevant offences unrestricted. An authorised officer must be satisfied to the specified standard that the person has committed the relevant offence and the Lord Advocate may issue guidance (under section 50) to enforcement authorities on the exercise of their functions which must be complied with e.g. guidance may cover the circumstances in which an administrative sanction should be issued and the circumstances where the matter should instead be reported to the fiscal.

For these reasons, and considering the requirement to consult and to have regard to advice from FSS before making any regulations (under section 49), negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny.

PART 4: INTERPRETATION

Section 52(1) (meanings of “food” and “animal feeding stuffs”)

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<th>Power conferred on</th>
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<td>Procedure</td>
<td>Affirmative procedure of the Scottish Parliament</td>
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SP Bill 48-DPM Session 4 (2014)
This document relates to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014

Reason for taking the power

The Bill does not contain definitions of food or animal feeding stuffs and therefore where these terms appear in the Bill they must be given their ordinary meanings having regard to the context and where appropriate section 101 of the Scotland Act 1998 (interpretation of Acts of the Scottish Parliament etc.). This power is intended to be temporary pending highly technical adjustments which are being sought to the legislative competence of the Scottish Parliament. The adjustments require an order under section 30 of the Scotland Act 1998. Should that order be obtained before stage 3 the intention of the Scottish Government is to bring forward amendments to section 52 to insert definitions of these terms. If, however, a section 30 order is not obtained (or not obtained in time) then this power allows for the meaning of these terms to be varied within legislative competence as it currently stands. The power offers flexibility by enabling articles or substances to be included in or excluded from the ordinary meanings of these terms should that prove to be desirable.

Choice of procedure

Affirmative procedure.

The meanings of food and animal feeding stuffs are central to the Bill yet any adjustment made to those meanings by this power is likely to be highly technical in nature and unlikely to have a wide impact. However, section 52(2) enables an order made under section 52(1) to modify the Bill. For that reason it seems appropriate that this power is subject to affirmative procedure.

Section 57 (in relation to the definition of “premises”)

Power conferred on

The Scottish Ministers

Power exercisable by

Regulations made by statutory instrument

Procedure

Negative procedure of the Scottish Parliament

Reason for taking the power

This provision is akin to the definition of “premises” contained in section 1(3) of the Food Safety Act 1990 including the order making power contained within it. The definition of premises in the 1990 Act includes any ship or aircraft of a description specified by order. The definition of premises in the Bill includes any aircraft or ship, boat or other water-going vessel, other than one of a description specified by order. The power in the Bill enables regulations to exclude certain ships and aircraft etc from being included in the definition of premises and thereby removes them from being subject to the provisions of the Bill e.g. it may be undesirable for Food Standards Scotland to carry out observations on board certain types of ship visiting Scotland from other states. The classifications and categories of ships and aircraft etc may require to be updated from time to time and it therefore seems appropriate to make this provision by order, in keeping with the
approach taken by the 1990 Act.

Choice of procedure Negative procedure.

In keeping with the 1990 Act, the negative procedure is considered to be appropriate. This is a very narrow order making power: it is limited to describing certain aircraft, ships, boats or other water-going vessels which are to be excluded from the meaning of “premises” for the purposes of the Bill. Before making any such order consultation is required and regard to be had to any relevant advice from FSS.

PART 5: FINAL PROVISIONS

Section 60 (ancillary provision)

Power conferred on The Scottish Ministers
Power exercisable by Order made by statutory instrument
Procedure Negative procedure of the Scottish Parliament

Reason for taking the This is a standard provision to make ancillary provisions as appropriate to give effect to any provisions in the Bill.

Choice of procedure Negative procedure.

This is a common and an un-contentious provision and negative procedure is considered appropriate in making proper use of Parliamentary time and scrutiny.

Section 62 (commencement)

Power conferred on The Scottish Ministers
Power exercisable by Order made by statutory instrument
Procedure None

Reason for taking the Part 5 of the Bill (except section 58) comes into force the day after Royal Assent while the rest of the Bill will come into force on such a day as the Scottish Ministers appoint by order.

Choice of procedure No procedure is standard practice for commencement orders.
# Table of Contents

## Introduction .................................................................................. 1

## Background and main provisions .................................................. 2

## Consultation .................................................................................. 3

## Health and Sport Committee Stage one inquiry .............................. 4

### Summary of evidence and analysis .................................................. 5

- The establishment of a new food body for Scotland ............................ 5
- Objectives for Food Standards Scotland ........................................... 6
- Scope of FSS objectives and remit .................................................. 8
- Financial matters ........................................................................ 8
- Financial implications of additional responsibilities ......................... 9
- Possible future expansion of FSS remit ........................................... 11
- Administration and governance of Food Standards Scotland ............ 12
- Size of the board ........................................................................ 12
- Sectoral representation ................................................................. 13
- Relationships with other bodies .................................................... 14
- General ....................................................................................... 14
- FSA and other UK bodies ............................................................. 15
- Europe ....................................................................................... 15
- Access to research, evidence, science and advice ............................. 16
- Sanctions for food law offences ..................................................... 18
- Food fraud ................................................................................. 20
- Food hygiene information scheme ............................................... 22

**Consideration by other committees** .................................................. 23

- Delegated Powers and Law Reform Committee ............................... 23
- Finance Committee ..................................................................... 23

## Conclusion .................................................................................... 24

## Annexe A ......................................................................................... 26

- Extracts from the minutes of the Health and Sport Committee and associated written and supplementary evidence ................................. 26
- List of other written evidence ....................................................... 29

## Annexe B ......................................................................................... 30

- Note of visit to Aberdeen ............................................................. 30
### Annexe C

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter from the Finance Committee, Report from the Delegated Powers and Law Reform Committee</td>
</tr>
<tr>
<td>Report from the Delegated Powers and Law Reform Committee</td>
</tr>
</tbody>
</table>
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.

Health and Sport Committee

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Duncan McNeil  
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**Deputy Convener**
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**Colin Keir**  
Scottish National Party

**Richard Lyle**  
Scottish National Party

**Aileen McLeod**  
Scottish National Party

**Nanette Milne**  
Scottish Conservative and Unionist Party

**Gil Paterson**  
Scottish National Party

**Richard Simpson**  
Scottish Labour
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.
Health and Sport Committee Stage one inquiry

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”\(^1\) 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”\(^2\).

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”\(^3\).

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.”\(^4\)
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”.

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”.

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.”
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” 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.”

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
necessary 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.
62. 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."\(^{19}\)

63. 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."\(^{20}\)

64. 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.

65. 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.

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

Relationships with other bodies

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

General

68. 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
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”\(^2\). 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”\(^3\), while Alistair Donaldson (Scudamore Review Panel) agreed that “a collaborative approach will be needed on some major issues”\(^4\).

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”\(^5\).

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”.\(^6\)

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.”\(^7\) 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.  

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.”

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.”

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.”

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.”

108. The Minister told the Committee that the Bill “goes a bit further than what is contained in the regulations”. 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).
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.
14 National Farmers Union Scotland. Written submission, paragraph 13.
15 Scottish Salmon Producers Organisation, Written submission.
16 The Royal Society of Edinburgh, Written submission.
20 Scottish Food and Drink Federation, Written submission, page 1.
22 Scottish Food and Drink Federation, Written submission, page 4.
23 MRC/CSO Social and Public Health Sciences Unit, University of Glasgow, Written submission, page 4.
27 NHS Forth Valley. Written submission, paragraph 5.
28 Scottish Food and Drink Federation. Written submission, page 5.
29 Scottish Retail Consortium. Written submission, page 5.
30 Scottish Food and Drink Federation. Written submission, page 5.
35 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
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
Food (Scotland) Bill

Which?

Creation of a new food standards body

Summary
1. The Food Standards (Scotland) Bill provides an enormous opportunity to deal with the challenges that will be facing Scottish consumers in the coming years. These include tackling high rates of obesity and diet-related disease, the threat of food fraud and food safety issues, such as \textit{E coli} O157.

2. The legislation should build on the strengths of the Food Standards Agency Scotland, ensuring that the new body has responsibility for food safety, standards and nutrition; has a clear and unambiguous remit to put the consumer first and an obligation to operate transparently and be independent.

3. To ensure this, the Bill should be clarified and strengthened to:

   - enhance the governance arrangements so that it is explicit that the Board of FSS must act in the public interest, include specific consumer representation and that FSS builds on FSA practice in relation to transparent working

   - clarify the scope of “other interests of consumers in relation to food” that fall within its remit so that FSS has explicit responsibility for taking account of wider social and ethical issues that affect consumer acceptability

   - make it clear that FSS must enhance food law enforcement delivery, working with local authorities, to address weaknesses that currently result in inconsistent standards

   - strengthen FSS’s powers to tackle food fraud, including requiring food industry testing and disclosure of results.

Introduction

4. There are many challenges facing the food supply chain – from high rates of obesity and diet-related disease in Scotland to the food safety and standards issues posed by a complex food supply chain.

5. The horsemeat scandal highlighted how vulnerable the food supply chain can be, but also how essential it is to ensure that there is a pro-active approach to identifying risks and ensuring that there are effective controls in place. Recent Which? testing of lamb takeaways has reinforced that
food fraud is a major issue\(^1\). However, our analysis of enforcement data submitted to the FSA by local authorities also shows that there are very different standards of food law enforcement across Scotland\(^2\).

6. The creation of FSS provides an opportunity to build on the work of the FSA and ensure that the new body is better equipped to deal with the issues that will impact on consumers in the coming years. A strong, independent agency with a clear remit to act in the consumer interest will also benefit the food industry and wider Scottish economy. A Which? survey in November\(^3\), for example, found that half of people said they had still changed their meat eating habits as a result of the horsemeat incident.

7. Which? was represented on the Scudamore expert group considering the creation of a new food body and the subsequent group set up to advise on the implications of the horsemeat contamination incident for the new food body. Our evidence in relation to the areas identified in the call for evidence are set out below.

**Objectives and functions**

8. It is essential that food policy and regulation is developed independently of any vested interests and that consumer interests are the priority. Past experience, most notably the Bovine Spongiform Encephalopathy (BSE) crisis, has highlighted how failure to do this is not only severely damaging to consumers, but also has long term implications and costs for the food industry when confidence is lost. FSS must therefore have an unambiguous remit to put consumer interests first, to be independent and to operate transparently.

9. It is essential that the FSA has a broad responsibility for food issues in order to take a co-ordinated approach. It should have responsibility for nutrition, food labelling and standards. FSS should deal with the more food-specific and consumer-facing aspects of diet and health policy, while wider policy relating to obesity and chronic disease should remain a Scottish Government responsibility. This includes taking on a greater role in issues around food affordability and access to a healthier diet.

10. FSS should be able to provide clear information and advice to consumers, ensuring that information is joined up and that it acts as a ‘one-stop shop’ on food issues. This includes provision of advice on healthy and sustainable food choices.

11. It will be important that FSS can consider issues of food choice and consumer acceptability that may go beyond labelling. When determining the types of controls over food production methods including GM foods, products from cloned animals, synthetic biology, carcass treatments, use

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\(^1\) What’s really in your takeaway, Which? magazine, May 2014

\(^2\) Ensuring consumer-focused food law enforcement, Which?, January 2014.

\(^3\) Populus, on behalf of Which?, interviewed 2019 UK adults online between 20\(^{th}\) and 21\(^{st}\) November 2013. Data were weighted to be representative of the UK population.
of food additives or compositional requirements, for example, it will be essential that the food body can consider wider social and ethical issues which will determine consumer acceptability.

12. We therefore agree with the proposed objectives of FSS (Part 1, 2):

(a) To protect the public health 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.

The definition suggested for ‘other interests of consumers in relation to food’ is, however, too narrow. It should include ‘wider social and ethical considerations relevant to food’ as well as ‘the labelling, marketing, presentation or advertising of food’ and ‘the descriptions which may apply to food’ (Part 4, 54).

13. We support the functions that are suggested for the food body which range from developing policies in relation to food and animal feeding stuffs matters; advising, informing and assisting Scottish Ministers and public bodies and office holders and other persons on these matters; and keeping the public informed.

14. We do, however, think that the role currently set out for the new body in relation to enforcement needs to be more pro-active (Part 1, 3(e)). The Bill merely requires the body to ‘monitor’ the performance of enforcement authorities in enforcing food legislation. It should be required to monitor and enhance performance.

Administrative and governance arrangements

15. An independent approach and transparent ways of working will be key to public trust and the credibility of FSS. The make-up of the Board and the background and skills of the Chief Executive will be crucial for ensuring confidence in its work. There must not be any conflicts of interest.

16. FSS’s decision-making processes must also be transparent so that it is clear to the public that there are no conflicts and it is clear how decisions are reached. This includes holding open Board and scientific committee meetings. FSS must also be open about the interests of experts that it uses and ensure that they are not conflicted. This also applies to research that it commissions or contracts.

17. FSS must also be clear about how it balances different interests, handles uncertainties and ultimately ensures that it is putting consumer interests first. It should have the power to publish its advice to Ministers.
18. The Bill should therefore be strengthened to:

- clarity that the Board is required to act in the public interest and should be
drawn from backgrounds relevant to the work of FSS, including specific
consumer representation, and not have any conflicting interests

- ensure open, transparent and inclusive ways of working – for example, the
need to hold open Board meetings and open scientific committee meetings

- require the inclusion of consumer representatives on scientific committees
and wider consumer engagement as part of its on-going work.

**Proposed powers**

19. We generally agree with the powers set out for FSS in the Bill. This
includes the general power to do anything it deems necessary to carry out
its functions and the powers to enter premises and take samples; to
determine standards of performance for enforcement authorities; to
request information in relation to enforcement action; to issue guidance on
control of food-borne diseases and to publish advice and disclose
information.

20. Recent Which? research has highlighted that there is a lot of variation
across local authorities\(^4\). Some are far more effective at ensuring
compliance with hygiene requirements than others and some take a more
pro-active approach to food standards and sampling. FSS must therefore
have sufficient powers to over-see the effective delivery of food law
enforcement. This includes ensuring that there is effective use and sharing
of expertise and best practice. It should work with the Scottish Food
Enforcement Liaison Committee (SFELC) to raise standards.

21. FSS will need to have powers to direct local authorities that are failing to
ensure adequate consumer protection, to intervene in national or
particularly complex cases and to provide support to local authorities,
whether in the form of resources or expertise.

**Food Information Provisions**

22. We strongly support the provisions within the Bill to widen the scope of
action by FSS in order to deal with food standards issues, defined as ‘food
information’. This includes the addition of the power for authorised officers
to seize and detain food which contravenes food information law and a
requirement on food business operators to report non-compliance with
food information law within the Food Safety Act 1990.

23. FSS should, however, also be able to require food business operators to
conduct food testing and to disclose the results of this testing.

\(^4\) Ensuring consumer focused food law enforcement - Which?, January 2014.
24. As recognised by the Scudamore and Elliott reviews post-horsemeat, the FSS’s ability to gather intelligence and understand the vulnerabilities of food supply chains will also be key to preventing food fraud. It will be important for it to work closely with the Food Standards Agency in this respect.

25. Co-ordination of work across local authorities, including targeted and more pro-active sampling will also be important to identify potential risks and ensure that they are swiftly dealt with.

26. While the food industry is responsible for ensuring that effective controls are in place, including more robust traceability systems, FSS will have an important role in defining good practice and developing guidance for companies, particularly those that may not have the necessary internal technical capability to deal with the complexity of food supply chains. As recommended by Scudamore, this should include developing a risk-based approach to the level of official and industry auditing at each point of the supply chain in Scotland.

**Provisions for non-compliance**

27. We support the introduction of fixed penalty notices and compliance notices for food standards as well as food safety issues as additional enforcement tools to ensure compliance. It is important that FSS and enforcement officers have the full range of tools available to them to ensure compliance, backed up with criminal proceedings when necessary.

28. We also strongly support the introduction of mandatory display of the results of hygiene inspections in order to help drive compliance, as is already required in Wales.

**Conclusion**

29. Which? generally supports the provisions within the Bill. The creation of the FSS is a real opportunity to ensure a consumer-focused approach to food issues that will tackle the nutritional quality of food, food standards, safety and other consumer interests relating to food.

30. The areas where we consider the Bill should be clarified and strengthened relate to:

- enhancing the governance arrangements so that it is explicit that the Board of FSS must act in the public interest, that there is specific consumer representation on the Board and that FSS builds on FSA practice in relation to open and transparent working
- clarifying the scope of “other interests of consumers in relation to food” that fall within its remit so that FSS has a more explicit responsibility for taking account of wider social and ethical issues that may impact on consumer acceptability
- making it clearer that FSS will need to over-see and enhance food law enforcement delivery across Scotland, working closely with local
authorities, but addressing any weaknesses that currently result in inconsistent standards further enhancing the powers that FSS will have to tackle food fraud so that it can require food industry testing and the disclosure of testing results.

Which?
May 2014
**Scottish Parliament**

**Health and Sport Committee**

**Tuesday 27 May 2014**

[The Convener opened the meeting at 10:02]

**Food (Scotland) Bill: Stage 1**

The Convener (Duncan McNeil): Good morning and welcome to the 17th meeting in 2014 of the Health and Sport Committee. As usual at this point, I ask everyone in the room to switch off mobile phones and other wireless devices, because they can interfere with the sound system. I point out to our panellists that some members and officials are using tablet devices instead of hard copies of their papers.

I am pleased to say that I have received no apologies. We warmly welcome back Nanette Milne; it is good to see you back, Nanette.

Our first agenda item is to take evidence at stage 1 on the Food (Scotland) Bill. We have with us Sue Davies, who is chief policy adviser at Which?; Dr James Wildgoose, who is the chair of the Scottish Food Advisory Committee; and Alistair Donaldson, who is a former member of the Meat and Livestock Commission and a member of the Scudamore review panel. I welcome you all to our deliberations.

Given the pressure of time, we will go straight to questions, if that is okay.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning, everybody. Will food standards Scotland merely take over the functions and administrative responsibilities of the Food Standards Agency, or will its doing so mean any benefits either financially or to the health and wellbeing of the Scottish people?

Dr James Wildgoose (Scottish Food Advisory Committee): Perhaps I can explain the role of the Scottish Food Advisory Committee, which I chair. The committee is part of the Food Standards Agency, which is a United Kingdom body, and it inputs information on interests in Scotland to the deliberations of the UK board. I chair that committee and I also sit on the FSA board. We look at all the papers that come for decisions at the UK board and we offer Scottish input. The committee is part and parcel of the FSA.

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Given the pressure of time, we will go straight to questions, if that is okay.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning, everybody. Will food standards Scotland merely take over the functions and administrative responsibilities of the Food Standards Agency, or will its doing so mean any benefits either financially or to the health and wellbeing of the Scottish people?

Sue Davies (Which?): We think that this is a real opportunity to create a strong new body that will be a consumer champion, so it should be about much more than just a transfer of administrative responsibilities. We campaigned for the setting up of the Food Standards Agency, which was to put consumers first and was to operate openly and transparently. However, some of the responsibilities of the Food Standards Agency in England have been taken away, which was one of the reasons for reviewing whether there should be a separate agency in Scotland.

We think that there is, in the way that food standards Scotland will work, an opportunity not only to enhance openness and transparency but to ensure that it tackles issues that are specific to Scotland. In particular, it could focus more on issues of diet and health than has been possible under the Food Standards Agency.

Food standards Scotland will have to be closely linked to, and work closely with, the Food Standards Agency to ensure that it is influencing European Union policy effectively, and that it is getting to grips with a globalised and complex supply chain. However, we think that there is a real opportunity to go further and to make it a much stronger agency that puts consumers first.

Gil Paterson: Thank you. I have another question. Scotland is a significant food producer and we have a big processing interest. During the most recent foot-and-mouth disease outbreak, there was a concern among processors and producers that they were being unfairly treated, given that Scotland was free from the disease. Would the new agency have the powers to take a different line if something similar happened? If the opposite happened—if the incident was peculiar to Scotland and did not affect any other part of the United Kingdom—would the other parts of the UK be able to act differently, or would that be a step further than what is proposed?
**Dr Wildgoose:** What you suggest would be true in the sense that, with food standards Scotland, decisions would be made in Scotland. However, bugs do not observe borders and there would need to be very close liaison with the rest of the UK about the arrangements. That, in itself, would—I hesitate to say “limit”—influence the policy and the actions that would be taken on things such as foot-and-mouth disease. Food standards Scotland would need to take those arrangements very seriously and co-ordinate its actions very closely with the rest of the UK to fight foot-and-mouth disease and other infectious diseases. That collaboration will be essential in the future, even with the separate body in Scotland.

Rightly, in my view, the proposed body has consumers as its chief focus, as the current FSA has. On safety, standards and nutrition—the whole area—consumers, not producers, are the main focus. However, the key point is that its guaranteeing food as safe—as far as we can—is also in the producers’ interests because that means that we are generating a system in which the food that is produced in Scotland is recognised as being safe and of a certain standard. Therefore, although the focus of the bill is not producer interests, by maintaining consumers’ interests, we also enhance business. The sustainable business comes from ensuring safe food and food that is of a particular standard.

**Alistair Donaldson (Scudamore Review Panel):** I certainly emphasise the point that bugs do not recognise boundaries, so a collaborative approach will be needed on some major issues.

I will turn it round and take a more positive view. I was on the Scudamore panel representing the meat sector; there are, partly as a result of changes to EU regulations that are in the pipeline, real opportunities, in respect of meat inspection, to enhance food inspection activities. The ultimate goal should be a farm-to-fork assurance service that would underpin the “Scottish” label. Members will appreciate that the label is internationally recognised; to be able to say that we have a well-placed food safety system in operation can do nothing but enhance the opportunities.

**Sue Davies:** I agree with Jim Wildgoose’s point about bugs not stopping at the border. It will be important to consider issues case by case. It may be appropriate and possible for Scotland to take a different approach on some issues, but the way that the agency works will have to be seen in the context of what happens throughout the UK and how possible it is to put controls in place, as well as in the wider EU context, because much will be decided by EU legislation.

I agree that a strong agency that puts consumers first will have wider benefits for the food industry, but it is really important to ensure that the agency reaches its decisions based on evidence, that it shows clearly and transparently how it does that and that it does not get into trade issues or trade promotion directly.

**Gil Paterson:** I agree entirely with Dr Jim Wildgoose. When I was visiting China—it was nothing to do with food, but my company does business in China—I was amazed that people approached me about the “Scottish” label. They were interested in purchasing because the food is so trustworthy, not because of what they perceived the quality to be.

**The Convener:** What will the bill achieve? We heard in a private briefing this morning that the regulation and standards are already in place to monitor foot-and-mouth disease, and that enforcement will lie outwith the agency, with local authorities or supermarket chains, as we heard yesterday, where inspection is much more rigorous. How will the bill enhance any of those functions when the aim is to reassure people that nothing much will change and we will still be plugged into the research and sharing of information? What is the point of the bill?

10:15

**Dr Wildgoose:** That is a fair question, but there are clear reasons why we have a separate bill and a separate agency.

Members will no doubt recall from the briefing that there were machinery of government changes in the UK in 2010, which removed responsibility from the Food Standards Agency for nutrition in relation to the population, and for a large element of labelling. We therefore had an odd position in which a UK body—the FSA—had responsibility for those issues in Scotland and Northern Ireland but not in England and Wales. That is really not a tenable position, bearing in mind that nutrition—particularly obesity, which is an element within that—will be a fundamental issue for Scotland, going forward. There is a lot that the proposed new agency can do in relation to that. It would need to work closely with other bodies on that, but there is a lot to be gained—quite apart from the things that Alistair Donaldson has mentioned about being able to take decisions in Scotland on controls and so on, which is significant. The new body would not take over the interests of bodies that have interests in nutrition and obesity, but instead could give considerable readership on an issue that has become significant in Scottish public life over some years.

The horsemeat issue has demonstrated the importance of labelling and standards in relation to safety. The machinery of government change that occurred in the UK in 2010 made what was, in my
view, an unhelpful split that came home to roost, so to speak, with the horsemeat incident.

There are other things that I could mention, but they are to do with decisions that can be taken in Scotland relating to regulation and enforcement. However, the two main things that I have mentioned—nutrition and labelling—are fundamental to the new body.

**The Convener:** I suppose that that is the question that we are asking now, as we did yesterday. What would we do differently? We were told earlier today in a private briefing that Scotland already has the powers to change labelling. If we wanted to change labelling, we could do it now.

**Dr Wildgoose:** Strictly speaking, that is correct, but responsibility currently lies with the FSA, which is the agency that is giving the advice. There will be a change and the new body in Scotland will give the advice. As the convener said, the legislative position is that those things are devolved and that decisions can be taken, but it would be the new body that would give the advice rather than the FSA.

**The Convener:** Would we be more likely to do something on labelling?

**Dr Wildgoose:** Yes—we would be able to take our own decisions on labelling. The advice that will be given will be unashamedly Scottish advice, rather than UK advice.

**The Convener:** That relates to evidence that we took yesterday about concern among manufacturers that we might have a labelling regime that is different from the regime in the rest of the UK.

**Dr Wildgoose:** This comes back to co-ordination with others. It is not right to think that we will end up making a whole lot of different decisions. We need to co-ordinate and ensure that the decisions that we make are the right ones and do not hamper industry. There will be certain areas in which we might want to do things slightly differently.

One of the key points is to ensure that issues to do with labelling and with standards more generally are kept together with the food safety issues. They are not kept together down south, but the establishment of the new body in Scotland will mean that they will be kept together north of the border, and that the decisions and issues will be considered in the round, rather than having different parts of Government deciding on them.

**The Convener:** Would Sue Davies like to comment on the idea of a consumer-led food standards agency?

**Sue Davies:** That is the key thing. We have an opportunity to ensure that we have a strong consumer champion, and that we have an agency that sets the benchmark for how other agencies should operate. We think—this is also one of the recommendations of the first Scudamore report—that it is important to have food safety, nutrition and standards in one place. As Jim Wildgoose mentioned, since the horsemeat scandal, it has become clear that food standards issues have not been getting enough attention and need to become a greater priority. We also see nutrition as an area in which there is a problem across the UK. Scotland has high rates of obesity and diet-related disease. The issue is complex: giving the new agency the ability to do work on it would be an advantage.

The third area within the objectives that have been set out in the bill concerns the other consumer interests in relation to food. Those are often poorly defined. They are in the remit of the current Food Standards Agency, but many things—to do with food production methods, genetic modification, water being added to food and so on—raise social and ethical issues that affect consumers’ decisions about whether to eat particular products. It is important that the new agency consider those issues, too.

**Alistair Donaldson:** The convener raised an important point about differences that might arise in terms of labelling requirements or legislative requirements in different parts of the United Kingdom. The Scudamore panel, however, went out of its way to emphasise the importance of continuing collaboration, so where are the opportunities for that to happen? With regard to my sector, the meat inspection service is an integral part of the Food Standards Agency and there are opportunities to tailor it to the needs of the Scottish processing industry and to ensure that it delivers an efficient and effective service. Within the industry, there is a view that that would be positive and worth while.

**Rhoda Grant (Highlands and Islands) (Lab):** From our visits yesterday, I understood that Scotland has led the way on the changes of labelling that are being implemented, and that the rest of the United Kingdom followed Scotland’s decision to change labelling. Is that correct, or were we given the wrong information?

**Dr Wildgoose:** I am not sure about the detail of the issue that you refer to. There is some leeway for separate decision making in Scotland, but I do not know the detail of that. All the labelling legislation is EU based, so the ground rules are set in Brussels. There are some derogations and opportunities for change that member states can make use of. I suspect that that is what you are referring to, so I do not think that there is an inconsistency, as such. However, it is not possible to make wholesale changes to labelling that would
go against what the EU legislation says, and neither are there huge variations that can be made from that legislation.

**Rhoda Grant:** And that will not change because of the legislation that we are considering.

**Dr Wildgoose:** No, it will not change.

**Rhoda Grant:** On nutrition and health promotion, you said that food standards Scotland could lead the way on health-related issues such as obesity. However, that work falls within the remit of local government and NHS boards. What is in the bill to ensure that those organisations work together? It seems to me that the proposal could simply bring another layer into an area in which a number of agencies are all trying to do the same work. How would food standards Scotland interact with those bodies to ensure that they are all singing from the same hymn sheet?

**Dr Wildgoose:** The answer lies in the question itself. A huge number of bodies are involved in this area and, although we know a lot about what to do with nutrition, I and, indeed, SFAC believe that we need co-ordination and that we get away from the kind of initiativitis—to coin a word—where we have initiative after initiative that might all be good in themselves but which, in my judgment, lack leadership and co-ordination. Various people have provided evidence of that, and SFAC has been dealing with the matter.

Nothing in the bill requires or demands such co-ordination or says that local authorities or any other body will be directed to do this or that. We need leadership to bring people together and to make it clear how we are going to move forward on major issues such as improving nutrition in Scotland and addressing obesity. In the meetings that SFAC has had, we have heard quite a lot about the need for such co-ordination. We know what the answers are and what the prescriptions should be; the question is how to implement them.

This is not about taking things over; it is about trying to lead the debate, to find ways of implementing these solutions and to bring people along. That is how I see it.

**Sue Davies:** It is important that lots of co-ordination mechanisms are in place for different groups. For example, food standards Scotland will have to be very collaborative in how it works with other groups. One of the key issues will be to ensure that its board has strong consumer and public health representation so that it can send out a strong signal about what it is about and make it clear that it is not an industry promotion body. After all, other bodies have that responsibility.

An important role centrally is to promote good practice and incentivise changes in the food industry. The Scottish Government has started to carry out such work; for example, it has started to look at food promotions in supermarkets, takeaways or whatever, but it has not got very far on that. Moreover, a lot of work still needs to be done on reducing fat, sugar and salt in products. Of course, that is not going to be possible in every instance, but a lot of work has been done on salt and there is now a big focus on sugar. Last week, we published research that showed that some savoury ready meals can contain as much as 50g of sugar. There is a lot of scope to look at what can be done nationally and to see how that can be delivered on the ground locally.

**Rhoda Grant:** Do you think that the powers to provide leadership in this area are missing from the bill, or will that sort of thing have to be set up in memorandums of understanding, through working together and so on? I cannot see how food standards Scotland can take leadership in an area where others have a statutory responsibility unless it is empowered to do so.

**Dr Wildgoose:** I am expressing a personal view but, as you have pointed out, we will need collaboration, memorandums of understanding, service level agreements and various such things to bring people together and take hold of the issue on a national basis. Quite a lot can be achieved by bringing people together. I accept that statutory responsibility lies elsewhere, but I do not think that that situation needs to change for us to achieve a better, focused approach. If you sought to change the responsibility, that could be a fundamental change, but I am not sure that it would generate the kind of change that you would want.

10:30

I think that we know the answers to the obesity issues. The question is how best to implement them and to encourage people to—I was going to say make people—do the things that they need to do in order to address the issues. It seems to be more of a question of how to implement that, as opposed to where the powers lie. The leadership aspect is therefore very important.

The measures could fail, but it boils down to how the leadership operates. That is true for the new body with regard to a range of different things. It will need to work collaboratively in various areas, not least in the science. Regulation and enforcement are responsibilities of local authorities, although there is some national responsibility in relation to the EU.

There is a shared type of responsibility, and it boils down to the need for us all to work in the same direction under the same kind of leadership, recognising how important the issues are and addressing problems together. That is how I see the new body working.
Sue Davies: The proposed new body needs to take a leadership role. Its powers to operate openly and transparently and to publish the advice that it gives will be really important in that regard. It is also important that it plays a strong role, sets out exactly what action it expects to be taken and uses its powers to name and shame and to highlight who is and is not taking that action. Even if it does not have the ability to legislate, it can still deliver change across the whole industry.

The Convener: Does anyone have any other comments on this? Do we have evidence regarding the board and the composition of its membership? Sue Davies mentioned that subject.

Alistair Donaldson: I will comment generally. Reference has been made to having the right structure and the right representation on the board, including health representation and consumer representation. It is important to have appropriate food sector representation on the board, too, so that a general understanding of how the industry operates can be taken to the table. All of that is underpinned by putting consumer interests first. It is important that the board is as widely based as possible in its views and experience. Perhaps the maximum number of seven should be considered a bit further.

Dr Wildgoose: I, too, was wondering about seven being the maximum number of members. There is no definitive answer, but that number seemed a bit on the low side.

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.

Sue Davies: That is important. It would be dangerous to start to have different industry sectors represented on the board promoting their own particular interests. That would move the new body away from the public health and consumer focus that it needs to have. It should be clearer in the bill that members of the board are there to act in the public interest, and that they should not have any conflicts of interest. That does not mean that they do not have relevant experience and skills but, overall, and as Jim Wildgoose said, they should be there to act together in the public interest.

Separately to my Which? role, I am the chair of the management board of the European Food Safety Authority. The EFSA’s ability to provide independent advice and the need for it to make decisions in the public interest, rather than for the promotion of the food industry, come under a huge amount of scrutiny. The composition of the board of food standards Scotland, and the need to put in place clear procedures to ensure that it acts independently, will be important for the body’s credibility.

Bob Doris (Glasgow) (SNP): It is helpful that the convener has picked up on some of the corporate governance issues, as that allows me to move on to the nuts and bolts of the bill. As an aside, it would be useful for us to get a brief note—perhaps not in this evidence session—on food safety standards with regard to traceability, welfare and other such things. As the European elections have just finished, it would be good to see the positive role that the European Union can play. It is important to put that on the record as an issue for another day.

I will describe the bill in language that I understand rather than quoting the policy memorandum. My understanding is that, if the trading standards department of a local authority found 100 pairs of fake Nike trainers, it could seize and destroy them. However, if it finds a batch of food that is deemed to be safe but has been passed off fraudulently as something that it is not, a sheriff does not have the power to order the food’s destruction. I understand that the bill will introduce powers to allow that to happen. It is quite a glaring omission at present that fraudulent non-food consumer goods can be seized and destroyed while fraudulent food cannot be. I just want to double-check that such a power will be introduced in the bill. Are all three of the witnesses content that the mechanisms in the bill are sufficient to achieve that aim?

Sue Davies: The good thing about the bill is that it will extend many of the provisions that currently apply to food safety to cover what it terms “food information.” As you say, that will include the power to seize products that are not labelled properly and are misleading or fraudulent.

The bill also includes measures such as fixed-penalty and compliance notices that have previously been applied only to breaches that involve food safety rather than food standards. That is very important.

We would also like an additional power to be included. In the Scudamore report—I was involved in both reviews—we recommended that the bill should include the power for the body to require food industry testing and the disclosure of testing results. That would ensure that, when a situation arises in which there is potential fraud, we will not be relying on everybody’s goodwill. That may work
in some circumstances but not always, so the bill could be strengthened further in that regard.

**Bob Doris:** Convener, do you mind if I ask a supplementary on that specific point before the other two witnesses come in?

**The Convener:** No, go on.

**Bob Doris:** Would the duty to disclose food industry testing be a standard duty? Would it be imposed by a sheriff who was dealing with an issue through the courts? How would it work?

**Sue Davies:** The problem that arose with horsemeat was that the Food Standards Agency did not, when it realised that there was a problem, have the power to enter many of the premises or require the food industry to carry out testing. The agency managed to get a voluntary agreement with the food industry to do more testing. The provision in the bill would apply in that type of situation to ensure that, when food standards Scotland needed the industry to carry out testing, that would be done. I would assume that, if such testing was not done, it would be a criminal offence.

**Bob Doris:** That is very helpful.

**Sue Davies:** My slight doubt—this might need to be checked—concerns the destruction of the food. The food can certainly be seized, and there are various other regulatory elements that will apply to standards, but I am not quite sure about whether the bill covers destruction. I am just looking to see whether that is in the bill. That point may need to be checked with lawyers.

I would like to mention one other thing. The standards stuff is important in the additional regulatory arrangements, and some of the bill’s powers are enabling powers, rather than actual powers, so how those powers will be implemented will be decided through consultations, and FSS will be responsible for that. It is not the end of the story. The detail of how the bill will work will be in some of the secondary legislation that will take up those powers.

The other important thing, which Sue Davies mentioned, is that ensuring authenticity and standards is essentially international. Some of the legislation will not, and cannot, pick that up, because it needs to be done at an international or EU level, to ensure that long processing chains are properly regulated. That is a key feature that follows from the horsemeat issue, and we are waiting to see how Governments will respond to the Scudamore and Elliott reports. That is an important element, given that the horsemeat issue has shown how international some of those problems are.

**The Convener:** That is helpful. Mr Donaldson, do you have anything to add?

**Alistair Donaldson:** I have nothing to add to that. That has covered it comprehensively.

**Bob Doris:** I would like to clarify something. Are there examples of cases in which food information or labelling has been wrong, where authorities have stepped in and seized the food, and where they have wanted to ensure that that food was not put back into the consumer food chain, even though it was safe—just a case involving wrong food information or food fraud—but where the food still re-entered the world of the consumer? The policy memorandum suggests that that is a possibility as the law stands, because sheriffs do not have the power to keep the food. Is it currently the case that, if they seize the food and it is perfectly safe and not breaking any laws other than food information or food fraud laws, it has to be returned? I found it quite staggering that the policy memorandum suggests that, and I want to be clear about the situation.

**Dr Wildgoose:** It is my understanding that there is a gap in the legislation. I am not a lawyer and I have not looked at the matter in great detail, but that is my understanding of the position. The detail would need to be checked with the lawyers, but I am pretty sure that the memorandum will have been produced by lawyers and that it will reflect the current position.

**Bob Doris:** That is fine. When we come to the nuts and bolts of the bill, we find that the bill creates a duty that does not exist at the moment to report breaches of food standards or food information requirements. If you run a small business and seek to enter into an agreement to get some food produce, and then you find out that it is not legit, there has not been a duty on you to report that to the relevant authorities. A good small business would walk away and deal with a legitimate supplier, but it would not be compelled to report the breach. That compulsion is now contained in the bill, and it will be an offence not to report such a breach. Is that a provision that all three of you are content with?

**Sue Davies:** Yes, we are pleased that that is in the bill. It makes it clear that standards are an important issue. It came out in the Scudamore report, and Elliott’s interim report on horsemeat has also highlighted concerns about a culture of turning a blind eye in the industry globally. People have been buying ingredients at prices that could
not possibly be realistic, and the introduction of standards can start to change that culture and make it clear that fraudulent practices are unacceptable.

Bob Doris: I take it that the other witnesses have nothing else to add.

The Convener: I think that there are a couple of supplementary questions on that point.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): One thing that was suggested to us on our visit yesterday was that the ability to fine or punish somebody for fraud is really quite inadequate relative to the profits that are being made through criminal activity. Does the bill, or might the regulations, provide the scope to ensure adequate punishment of criminal activity that is highly profitable?

10:45

Sue Davies: That is being debated at EU level. The European Parliament has been considering the official controls regulation, which will be finalised when the new Commission and Parliament come back in the autumn. The Commission proposed that the fine should be equivalent to the cost of the financial gain from the criminal activity, but the Parliament has suggested that it should be double the financial gain, which we support. We need a range of enforcement tools. The fixed penalty notices will help, as will the requirement to disclose cases of fraud but, ultimately, there needs to be a criminal route as well as tough penalties. As I understand it, that measure would be reflected in the bill, but it is important that the provision is in it.

Dr Wildgoose: I have nothing much to add to that. It is generally recognised that the financial penalties in the area of food are much lower than those for contraventions outside that area, which can be punitive. As Sue Davies says, the issue is being considered at EU level to see what penalties are appropriate. I expect that things will change, depending on decisions in the EU.

Bob Doris: We are thinking about the nuts and bolts and we are trying to ascertain whether there is general support or whether you have concerns. I am glad that there is support in relation to the duty to report non-compliance. The bill uses the terminology of “food business operator”. Are you content with the scope of that? Are there other people who might be aware of non-compliance and who would not have a duty to report but who should have such a duty? Many years ago, I was a kitchen porter in a hotel—earning peanuts, frankly. I would not want to put minimum wage staff in catering kitchens in an invidious situation by giving them a duty to report. Of course, there is a balance to be struck.

Is the term “food business operator” clearly defined? Should the scope of the duty to report be widened? I do not necessarily think that it should be widened, but it is important to ask the question.

The Convener: I see that Mr Donaldson’s microphone light is on.

Alistair Donaldson: Oh, right—I was not aware that it was on. I am not sure that I am the best person to answer that. It is appropriate that food business operators take responsibility for their actions—I do not think that anybody would disagree with that.

To impinge slightly on the previous question, on sanctions, there are different tools in the box. With major fraud, some of the levels that are mentioned in the bill would be less than adequate. As Sue Davies says, the issue is being considered at the wider EU level.

Dr Wildgoose: The term “food business operator” is a well-defined term in legislation. It is the responsibility of the food business operator to ensure safe food and food of a certain standard. To be honest, I had not thought further than that and considered who else might be involved, but there are ideas for things such as whistleblowing arrangements. Those are more the kind of issue that would be dealt with in a code of practice or through a standard approach. There are plenty of examples of things such as secure phone lines, which are the kind of thing that I would expect FSA to consider—actually, I think that the FSA is considering whistleblowing, which I think is the issue that Bob Doris is referring to. However, it would be dangerous to change the definition of the term, as it is central to the way in which the legislation works.

Sue Davies: Bob Doris raises a good point. It is worth checking that nobody important would be excluded. With the horsemeat incident, all these brokers suddenly emerged that people had not necessarily been aware of. It would be good to ensure that all the intermediaries are covered by the definition of “food business operator”.

As Jim Wildgoose was saying, it will also be really important that the new body has effective ways of gathering intelligence more generally. That was something that Scudamore recommended for getting better at economic analysis. Obviously, horsemeat was missed but someone should have been working out that horse is similar to beef and much cheaper than beef, so there was the potential for substitution. I know that it is very difficult, but someone should have been anticipating other areas in which criminals are likely to be making gains as well as looking at wider surveillance.

It is a difficult issue, but someone should be looking at how to get more informal intelligence
from the food industry and at rumours about where particular types of fraud might be taking place.

Bob Doris: That is helpful.

I might come back in later, but I know that my colleagues want to get in just now.

Dr Simpson: The Scottish Food Advisory Committee has an input to the United Kingdom Food Standards Agency. Will the SFAC continue after the creation of the new body?

Dr Wildgoose: The simple answer is no. It will cease on the vesting day of the new body and the arrangements that you are talking about will cease. Those arrangements were set up to allow a Scottish input to UK decisions on food safety and will be taken over wholly by the FSS following vesting day.

Dr Simpson: I realise that the Food Standards Agency Scotland is a subsection of the old Food Standards Agency in the UK, so we needed the separate body to make that input. Will the new FSS have the opportunity to make that input?

Dr Wildgoose: Yes. It is worth saying that the Food Standards Agency Scotland is simply the Scottish executive end of the FSA, so all its line management and so on comes from FSA central headquarters. After vesting day, FSS will be an entirely separate and self-contained body. The arrangements that we have had hitherto have simply been about looking after Scottish interests within the UK setting.

Dr Simpson: Presumably then the FSS will take evidence from Rowett, the Cambridge unit, the Norwich unit, and elsewhere. How can we be sure that the evidence will be compiled in a suitable way? It is all about relationships. Will we still have access to Norwich and Cambridge? I understand that they are complementary to the Rowett. Are they the only bodies?

Dr Wildgoose: No. This is a fundamental point. A number of scientific advisory committees are UK based but also report to Scottish, Welsh and Northern Irish ministers. They cover the whole gamut of food safety and some go beyond that; some of them have a food remit along with other remits. They are standard scientific advisory committees that are charged with providing the Food Standards Agency with the best scientific advice that they can get. When issues arise that require scientific advice, they will frequently provide it.

For example, there is an advisory committee on the microbiological safety of food. It has been very heavily involved in giving advice on a recent issue around raw milk sales. There are nine or 10 such committees and it is really important that the FSS has access to that advice and can ask questions within that forum. That comes very much within the territory of memoranda of understanding and, I assume, is one of the issues that is being worked up in getting ready for vesting day. The arrangements will need to be ready to go at vesting day so that when there is an issue in Scotland that requires scientific advice, that advice can be made available to the FSS.

That is not to say that there should not be coordination with the considerable research capabilities in Scotland itself, a number of which already feed into the scientific advisory committees, but I can see a role for something separate happening in Scotland in relation to scientific advice. Indeed, the SFAC looked quite closely at how that might work for Scotland, with the FSS giving advice to the new body. There are issues, such as how the Rowett institute of nutrition and health and various other research bodies around Scotland would link into the chief scientist who is responsible for the science. Those are crucial issues, because taking decisions on food safety relies on the correct science—the best science—being available.

Sue Davies: I do not have much to add to that. It is important that there is a clear agreement about how that will operate to ensure that the existing scientific committees pick up Scotland-specific issues. The new food body might have to set up its own committees on particular issues, in which case we would want it to work in the same way as the FSA has worked—it ensures that it meets in public, and there are strict criteria around independence. Particularly as a lot of universities now rely on food industry funding for the research that they do, we need to ensure that the independence of the research is not compromised and that there is no perception of that.

Dr Simpson: Thank you. We are considering the bill at a difficult time, in the sense that, after 18 September, we might be independent. I wonder whether the bill would have to be adjusted even further or what would happen in the event of independence. How would we link into the systems, which are quite integrated at present?

Dr Wildgoose: That is a nice question and an important one. It would be quite a difficult and costly process to duplicate the 12 or 15 committees of key experts who sit and pronounce on a range of scientific issues. That is why it is important for FSS to latch on to them.

I do not know what arrangements might apply following September, but I would have thought that it would be important to try to get single scientific advice on issues and not to have competing advice, so some sort of accommodation might be required. The advice has all been publicly funded anyway, and it is all in the public domain. How that would be maintained and how the advice would be obtained would need to be considered following a
yes vote in September. That would be an important issue because there are some quite big scientific issues. We hope that we will not have BSE again, for example, but we need good scientific advice to tackle such issues and for other things as well, so it is essential.

With the changes to the machinery of Government that occurred in 2010, the important Scientific Advisory Committee on Nutrition—SACN—became part of the Department of Health down south, and it has now moved on to health protection England, I think.

Sue Davies: It is Public Health England.

Dr Wildgoose: Yes—I got that wrong. That means that it does not meet in public—it is internal. There might be a specific issue about that committee in Scotland. The issue really boils down to how the new body would work with the access that is available, given how significant nutrition is likely to be for the new body.

However, those are not things specifically for the bill; they are questions about how the new body will work, which are matters for memoranda of understanding.

Sue Davies: A lot of advice now comes from the European Food Safety Authority, which is the basis for a lot of European Union legislation, approvals of particular types of products and the setting of safe levels for chemical contaminants. A close relationship with it is important. Obviously, that will change, depending on what happens in September. Relationships with other bodies, such as the World Health Organization, will also be important.

11:00

Alistair Donaldson: I endorse that. It is an important point, which will require real consideration to ensure that we can find the best way forward and one that enhances food standards Scotland’s role.

The Convener: In the consultation, respondents to the call for evidence raised the issue of the new body being properly resourced. Yesterday, issues were raised about the current situation, irrespective of what happens on 18 September. Issues were raised to do with the science, which I think has been covered; the direction and funding of research; who would decide the priorities; relationships with the Rowett and others; and how we would get a balance there. Are there any views on that in respect of resources? The budget that was mentioned yesterday was around £11 million, I think. Around £5 million is currently being negotiated back from the UK body. The new body will have an influence in and be a focus for the whole area and we are talking about it having a budget of around £16 million.

Dr Wildgoose: The whole area of research, access to research and research commissioning will need to be looked at very carefully for the new body. We in the SFAC have done a little bit of work on that to give to those who will be involved in constructing the new arrangements. There will need to be a mechanism for linking into Scotland-based scientific advice, and that will need to be done fairly carefully if access to the main scientific advisory committees continues, as we would not want competing advice. I see a role for that and for perhaps setting up a separate committee in Scotland. I notice that the bill allows for the construction of separate committees, for example. That is right, as there are other areas in which that approach might be important, as well.

The amount of research funding that is available to the FSA in Scotland is very modest compared with the requirement for scientific advice. Therefore, collaboration with others, such as the scientific research bodies across the UK and, not least, the Scottish Government, with the money that it spends on other bodies, and access to their money will be fundamental in getting answers to some of the questions that have been raised.

On the general issue of budgets, the budget that has been set in the documentation that members have looks to me to be on the low side. The proposed new body will, of course, be part of the Scottish Administration and so will be included in the Government’s funding allocation process. If more resources are needed, bids will go in through that route.

That is my general view. Future science provision to the FSS is a crucial issue. The new body will need to work hard on that to ensure that the right memoranda are around and that there are the right linkages and collaboration so that the right scientific advice and research come forward.

Alistair Donaldson: The research budget may look small. I was a board member of Quality Meat Scotland, which had a research budget of around £300,000, but it attracted additional funding from the Scottish Government and other sources, including European sources. There are plenty of mechanisms to build on the core funding and for being led by the scientific needs and securing funding through those particular routes.

Sue Davies: Collaboration will be important, where it is possible—in many areas, there will be only a limited number of experts to draw on. It is important that the source of the funding is clear, particularly in more controversial areas such as new food technologies, where one needs to ensure that one is relying on independent research.
On how you assess the scientific evidence, the scientific committee structure works well as it ensures that you get a mix of people with a background in various disciplines to weigh up the evidence and provide advice. Jim Wildgoose referred to the existing Food Standards Agency committees. In new areas, it is important to follow that model and to look at ensuring that a real mix of people are brought together to get the best outcome.

**The Convener:** I am interested in the point made by Mr Donaldson and Dr Wildgoose that there are individual budgets in different compartments, if you like, of different departments. Do we have any idea what the global figure is? The health service is looking at all this and is spending some money on research in relation to obesity, for example. The Food Standards Agency is doing likewise, as are others. Is there a global figure that could probably be used more effectively to focus on significant problems in Scotland?

**Dr Wildgoose:** I do not have a figure. I am not sure whether one exists somewhere—it may well do. However, I can tell you that there is a huge programme going on at the moment on E coli, which is a very important organism for Scotland. We tend to have a much larger incidence of shedding of E coli from cattle than elsewhere in the world, and certainly in comparison with the rest of the UK. A big programme on that is going on and a lot of Scottish Government money is going into it—it is not just FSA money. There might be research council money in it, too. I envisage collaborations being brought together to look at issues that are important for Scotland. You could envisage that kind of thing being important for the shellfish industry, which is important for Scotland, and perhaps for other areas. It all boils down to how food standards Scotland would take that agenda forward.

**The Convener:** The issue is not just the sum of money that would be available, but the independence of the research, which Sue Davies referred to. Some general concerns about that were raised. Do you have any comments on that?

**Alistair Donaldson:** That is a perfectly sensible comment. It underlines the importance of FSS being independent and transparent. Funding sources should be very clear; I do not think that anybody would have an issue with that.

**Dr Wildgoose:** I am sorry for coming back to this so often, but one of the UK committees is the General Advisory Committee on Science, which is a new development from the past five or six years. GACS looks at issues to do with the arrangements of science, such as the use of industry-led data and so on; it has done work on that kind of thing. I am not aware of it having done any work on access to funds through industry, but it performs quite an important procedural role to do with how these things would work across the scientific advisory committees and research establishments. That is quite an important role for addressing the very question that you raise about industry money coming in in certain areas and the use of industry data, too.

**The Convener:** Who would decide the priority in the budget? Would it be the board? Would there be influence from Government?

**Dr Wildgoose:** The General Advisory Committee on Science has tended to produce guidelines or procedures for use in particular areas. The one that I remember is on the use of data from other industry sources and how it can be best handled in research so that that is seen to be independent and objective.

**The Convener:** Are you all satisfied that the bill will ensure independence, or will that be done through memoranda?

**Sue Davies:** A lot of that is to be left to be sorted out at the next stage, through memoranda. That is why I said that the bill needs to be more explicit on issues such as the board’s make-up and avoiding conflicts of interest, although more general requirements on ethics in public life, for example, will apply.

The more the bill is explicit on such issues, the better. We found with the Food Standards Agency and the Food Standards Act 1999 that, when priorities change, things that have been left a little ambiguous can easily be weakened in later years.

**Bob Doris:** Dr Wildgoose gave a balanced answer about how the best scientific advice is obtained when it is necessary. He said that the pre-eminent person or committee with the advice is approached, irrespective of whether that is for Scotland, the rest of the UK or Europe. The more I heard about funding, whether it is via the Scottish Government, UK research councils or Europe, the more I became—dare I say it—slightly excited, if that is the right expression, about the opportunities that are out there.

Could food standards Scotland be ahead of the curve on working with higher education institutions and others to scope horizon 2020—the €80 billion European fund for research and innovation—and identify areas for future research? Could the body be a bit more proactive—gung-ho is perhaps the wrong term—in identifying the next big thing in research, getting funds for it and being progressive? Do you see such a remit for food standards Scotland? A lot of money is swishing about, particularly Europe-wide, that I want Scotland’s research institutions to access. Will food standards Scotland have a role in some of that partnership work?
Sue Davies: It will be important that food standards Scotland is linked in and takes opportunities where it can. As Jim Wildgoose said, lots of the same discussions are happening in lots of places. For example, the European Commission had a workshop a couple of weeks ago on tackling campylobacter, which is still the main type of food poisoning, and the Food Standards Agency will have a workshop on that next week. When the same experts are looking at different issues, it is important to work together.

One of the initial consultation documents about the new food body asked whether FSS should have the role of co-ordinating all food research. We were a bit concerned about that, because a lot of the stuff that will come out of horizon 2020 will—rightly—concern agricultural promotion, food industry promotion and developing new products, which are important but are not core to FSS’s work. Making that distinction is important. FSS should take opportunities where it can, but it should not be distracted or compromised by going into different areas.

Dr Wildgoose: The answer to the questions that Bob Doris posed is yes. FSS could have a role in leading the curve on certain issues. That will boil down to how FSS works, which is not an issue for the bill. The body will need to choose the issues that it is involved in, because it will not be able to do everything, but it could be seen to be promoting excellence in certain areas.

Aileen McLeod (South Scotland) (SNP): I was going to ask about horizon 2020, as I will return to our relationship with the European Union. I know that that is not part and parcel of the bill, but that relationship is important, given that much legislation on food policy comes from the EU. What percentage of the legislation that the FSA deals with comes from the EU? How do you see the new body developing or enhancing the relationship with EU institutions—not just the Commission and the Council but the European Parliament, which plays an important role as it is a co-legislator with the Council on a lot of food safety legislation?

Concerns were expressed in written evidence about ensuring that the new body has an effective voice at an early stage in the EU policy-making process and that we can put forward Scotland-specific concerns. Given the new body’s new role with regard to diet and nutrition, how do you see that working? For the moment, the UK remains the key avenue of influence for Scotland to have its say on European legislation.

11:15

Sue Davies: Pretty much all food safety and food labelling legislation is decided at European level, but there is a certain amount of flexibility in implementation. The food information to consumers regulation, which was adopted a couple of years ago, is a big piece of food labelling legislation that covers everything from country of origin labelling and the labelling of meat products to nutrition labelling; the traffic light labelling scheme, which is voluntary, was developed after that came out. There is also slight flexibility around, for example, the amount of meat in sausages and pies and the retention of some of those reserve descriptions, but generally all the decisions are made at European level.

The diet and health area offers real scope and the most potential for doing things differently. Although certain aspects are covered by EU policy initiatives, they are more for guidance rather than regulation, and a lot of that is about encouraging and incentivising the industry to do things as well as regulating where there is the potential to do so.

The relationship with EU bodies will be important and, again, it will depend on what happens with the referendum. At the moment, the Food Standards Agency would, as the UK’s competent authority, be represented on EFSA’s advisory forum and the Standing Committee on the Food Chain and Animal Health. Any memorandum of understanding will have to ensure that, as happens at the moment, FSS has a clear role in inputting into those positions, particularly in the development of policy.

More informal relationships will obviously be important. The FSA does a lot of work on, for example, emerging risks, and it will be important to have a two-way flow of information in that respect.

Dr Wildgoose: I agree entirely. More than 90 per cent of the legislation in question will be EU based. However, you will be aware of how policy gets developed in the EU; ideas float around Brussels and Luxembourg for a long time before they actually become legislation, and the process offers an opportunity to influence matters. Indeed, in our response to the consultation exercise, we suggested having secondments from the body in Scotland to the European institutions. We believe that being on the spot is really important in how those discussions move forward and in being able to influence things, and we feel that a more or less formalised approach to secondments will be very important if the body is not only to influence the debate but simply to get information back about what is going on and where the key issues lie. That links back to Sue Davies’s comment about having the right memorandums of understanding and SLAs.

The current formal position is already set out in memorandums that relate to the UK’s representation in Brussels. If there is a yes vote in September, the ground rules will no doubt change
but, at the moment, those are the memorandums that we work within. Certain informal channels are very important. As I have said, secondments will be very important for information flow and influence on what is going on, and the new body will have opportunities in that respect.

Aileen McLeod: Secondments are a very good idea, but we also need access to all the relevant advisory and scientific committees not just at a UK level but in the EU.

Dr Wildgoose: Indeed. The same point applies.

The Convener: Richard Lyle will ask the next and final question.

Richard Lyle (Central Scotland) (SNP): This is not a question, just a comment. Dr Wildgoose said that bugs know no borders so, whatever happens in September, I am sure that the English and Scottish agencies will work with each other.

I have another comment. There are many universities that are doing good research. The research does not need to be done at FSS.

I have a question about local authority environmental health officers, who have not been covered. For 15 years, I was a manager in a grocery shop and I was previously a councillor. I came across environmental health officers who were extremely committed to ensuring food safety and ensuring that the public were safe.

I will ask about a comment that was attributed to Which? Sue Davies may dispute it or agree with it. Which? noted that there was great variation across local authorities in the effective enforcement of food law and argued that FSS should oversee and co-ordinate that to ensure consistent standards. Did you say that? Did you mean that? What do you suggest FSS should do? Why did you suggest that environmental health officers, who I know have worked extremely well to safeguard the public in their local areas, need to be more effective?

Sue Davies: Yes, we said that. It was based on some research that we did, which we published in January.

We were conscious that local authority resources were under a lot of pressure, so we examined how local authorities throughout the UK carried out hygiene enforcement and ranked them taking into account the level of compliance that they achieved in high and medium-risk premises. We did not consider the lower-risk premises, because we appreciated that local authorities had to prioritise. We also considered how proactively they tried to address non-compliance by examining how many of their planned interventions had been achieved and whether they got round to rating new premises.

That research showed that there was real variation throughout the country. For example, West Dunbartonshire Council had around 50 per cent compliance whereas others, such as Orkney Islands Council and North Lanarkshire Council had much higher levels of compliance. The picture was similar throughout the UK.

We appreciate that many local authorities are doing a really good job, but the research shows that there are variations in the resources that they have available to them and the nature of the premises that they deal with. Some of the cities may have a big turnover of premises that are constantly opening, and keeping on top of that can be difficult.

We appreciate that hygiene enforcement is a local authority responsibility but it seems that there is a need for a more strategic view to be taken so that it is not just a lottery that depends on whether somebody lives in an area where the local authority has really cut back and is having difficulty getting around to food hygiene or food standards work, or in one that has a 97 per cent compliance rate.

The new food body would have an important role in examining which local authorities are struggling and supporting them, examining what kinds of food business exist and how we can match that with the expertise that we have within the environmental health profession to ensure that we have better coverage throughout the country. In Scotland, there are already good mechanisms for co-ordinating the 32 local authorities, such as the Scottish food enforcement liaison committee, but we envisage FSS having a more proactive role than the one that the Food Standards Agency has performed until now.

Dr Wildgoose: That is an important issue as well. I keep saying that there are important issues, but the linkage is important because the vast majority of businesses that require regulation are regulated through local authorities. Although it is the local authorities’ responsibility, there is a kind of overall responsibility to Scotland to ensure that the legislation is complied with.

The key point that Sue Davies mentioned is the pressure on resources. We can see that. In the job that I do, I go round and see environmental health departments. I very much agree that environmental health officers are very committed, but I also see cuts, lots of change and churn and loss of experience with older people leaving. That can have an effect on the operation of the regulatory activity.

The new body will need to look carefully at the existing model and consider collaborating much more with local authorities in the use of resources and so on. It goes back to the issue that I
mentioned earlier in relation to nutrition. There will need to be much more of a collaborative effort to ensure that the right things are done at the right time. I think that it is still possible to do that with declining budgets, but it needs to be looked at carefully—that is key. I do not see the issue of declining budgets going away anytime soon.

I am involved in looking at audits of what local authorities are doing to comply with the legislation, and it is clear that there is pressure in certain areas. There is greater pressure on the food standards side, because of the resources, than there is on the environmental health side. However, there is pressure on both sides, and that will need to be addressed by the new food standards body.

The Convener: There is a lot of surveillance inspection on food hygiene and so on, but NHS Lothian made the point that there is no dietary surveillance. Perhaps there should be a role in that for the new body. What is your view on that? Is that a function of the FSA? If so, why will it not be transferred?

Dr Wildgoose: Some good information is already available under various surveys. They tend to be done on a UK basis, and Scotland sometimes augments the sample to get better information. That information is used, for example, to look at the dietary targets on salt, fat and sugar. A fair amount of work is being done, but it is a very expensive area to survey. Given its responsibility for diet, FSS should look at whether the information that it gets back is fit for purpose or whether more could be done in that area.

The Convener: On behalf of the committee, I thank you for the time that you have spent with us this morning and the evidence that you have provided.

11:27

Meeting suspended.
Food (Scotland) Bill

Association of Public Analysts of Scotland

Introduction
1. The Association of Public Analysts of Scotland (APAS) formed in 1903, following the first Food Act of 1860, represents the professional interests of public analysts in Scotland.

2. Public Analysts are highly trained food scientists who can detect adulteration of food such as horse in burger meat and also have a significant role to play in the microbiological safety of food by testing food for salmonella or E. coli O157 and other human pathogens. This activity is essential during outbreak situations when tracing the source is vital.

3. Food authorities must appoint at least one public analyst under The Food Safety Act 1990 to analyse samples of food for compliance with legislation relating to food safety and standards and report on their findings. Uniquely, a Food Safety Act Certificate is sufficient evidence of the facts stated in it unless its author is specifically required to be called as a witness.

4. Public analysts must hold the Mastership in Chemical Analysis (MChemA), a competence based postgraduate qualification awarded by the Royal Society of Chemistry (RSC). The detailed requirements are laid out in The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013.

5. Food examinations for microbiological safety and quality of food had for a time been performed in laboratories of individual NHS Hospitals, but this work was uneconomic so it ceased. As a consequence, in Scotland food examination is now performed in local authority public analyst laboratories alongside the chemical testing which provides a one stop shop for local authority food sampling. This arrangement is distinct from England where there is a centralised network of microbiology laboratories for food examination work which is part of Public Health England (PHE) previously known as Health Protection Agency.

Funding of Official Controls on Food
6. The Food Safety Act 1990, Regulations made under this Act and EU Regulations lay down the responsibilities of food businesses and enforcement authorities.

7. The Food Standards Agency (FSA) is the competent authority in the UK within the meaning of EC Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. The delivery of many official controls is delegated to local authorities.

8. The bulk of funding for official controls is provided by central government to local authorities via the Revenue Support Grant (RSG). The funding is not ring-fenced and each authority will decide on the basis of local priorities how much funding to allocate. Often the local funding for official controls may be
held in a budget covering other areas and it is difficult to ascertain exactly what resources are actually allocated to official controls.

9. In the last few years the UK FSA in their annual Coordinated Food Sampling programme has made separate direct funding available to UK local authorities. This has consisted of £1–2 million per annum which local authorities or consortia of local authorities can bid for. The FSA specifies exactly what sampling and analysis it requires. Contrary to perceptions only a small portion of this funding is devoted to detection of food fraud with other priorities such as food allergens, food contaminants and food contact materials being funded. The bulk of the funding covers analysis costs with the remainder used to cover costs of sampling (sample purchase and officer time and travel). The FSA has always made it clear that this separate funding should be used to supplement existing sampling budgets, but it is used by some local authorities to partially replace their own sampling budgets.

10. In Scotland the FSA provided welcome additional top up funding for coordinated food sampling in 2013-14, but this is unlikely to continue in 2014-15 reportedly due to sampling expenditure being diverted to fund build of their new HQ in Aberdeen. Separately in the last five years the FSA in Scotland have funded country wide surveys of microbiological safety of salad vegetables, soft cheese and authenticity of fish in the public procurement sector. These initiatives are welcome and to be commended but their sporadic and ad-hoc nature does not allow for forward planning of staff and equipment resources.

11. We note the draft budget in table A of third page of the Financial Memorandum to the Food (Scotland) Bill does not have a line defining sampling expenditure in the proposed new food body. We estimate that the majority of Food Standards Agency Scotland sampling expenditure is spent in England for shellfish testing control work.

APAS Recommendation: That the Food (Scotland) Bill establish and provide for continued funding of Coordinated Food Sampling in Scotland at least at the level currently provided by the UK FSA. Further the Financial Memorandum, for the sake of transparency, should detail sampling expenditure and encourage the new food body, taking account of best value, to spend that money locally in public analyst and food examiner laboratories.

Official Control Laboratories
12. All food samples taken in the course of official controls must be submitted to either a food examiner for microbiological examination or to a public analyst for chemical analysis. In England there is a centralised network of laboratories for food examination work which is part of the Public Health England (PHE). PHE’s activities in this area are centrally funded by Department of Health and coordinated. Their services are free at the point of use to local authorities through a system of credits.

APAS Recommendation: That the Food (Scotland) Bill establish and provide for direct funding of microbiological food examination on a pro-rata basis as a
minimum to that currently provided in England by the Department of Health to PHE.

13. Public analysts on the other hand currently do not work in a centralised laboratory system but are employed by a number of local authority laboratories who decide to offer public analyst services to other local authorities. There are currently four local authority laboratories in Scotland with a further fourteen in the rest of the UK, ten in England, three in Wales and one in Northern Ireland. These laboratories have not been immune to cuts in their operational budgets and four laboratories have closed in England alone since 2011 (Bristol, Durham, Leicestershire and Somerset.) This has led to highly qualified and experienced analysts being made redundant.

14. The remaining public sector laboratories have seen a reduction in the income received for testing from their own and other local authorities. Local authorities in Scotland who do not have their own laboratory generally have service level agreements with the four provider councils. Some councils have started to tender testing contracts and this along with year on year reductions in budgets for analysis, has resulted in competition for contracts and an inability to make medium to long term investments in instrumentation and new technology to ensure laboratories are able to respond to emerging risks and food contamination issues.

15 One area that is suffering from lack of investment in Scotland is the DNA identification and confirmation of food related pathogens using new tools such as next generation sequencing and whole genome sequencing. By contrast for a number of years PHE in England have invested millions of pounds developing a capability and capacity and forged a partnership with Oxford University.

**APAS Recommendation:** That the Food (Scotland) Bill recognises that from time to time there will be a step change in scientific knowledge such as with DNA identification that allows a more robust response to food surveillance and outbreak control which will require pump prime funding and allocate resource for this. This forward thinking will help Scotland be a leader rather than laggard in food safety detection. These new techniques will also help protect Scottish food exports in difficult markets.

16. By comparison to local authorities central government has invested heavily in state of the art buildings and equipment for scientific services under their control. Glasgow has seen a new £75M NHS clinical diagnostic laboratory, Gartcosh is home to a new forensic science laboratory in the Crime Campus, Dundee hosts a £16M forensic science laboratory which includes the Scottish DNA database whilst SEPA has just opened Angus Smith a new super lab at Eurocentral near Coatbridge.
Decline of Food Sampling in Scotland

17. In the last 10 years the amount of food sampling undertaken in Scotland by local authorities has more than halved and continues to fall with the graph showing no signs of levelling out. Audit Scotland in their report Protecting Consumers found that there had been a significant reduction in food safety budgets of local authorities in recent years.

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Table 1 Food samples taken in Scotland by year

18. Unfortunately the Audit Scotland report did not dig further to find out what effect these budget reductions were having. Food sampling budgets are typically the largest non-staff cost so are an easy target to protect staff. The amount of money spent by local authorities on detecting food safety and fraud has dropped sharply to around £2m per annum. That’s equivalent to less than 40 pence - the price of a packet of crisps - per head of population per year. It is expected that post Glasgow Commonwealth Games back end loaded food safety budget cuts will come through. Financial year 2015-16 onwards will be very challenging and put the viability of public analyst laboratories at risk some of which are already operating with an annual deficit which is not sustainable.

Why is Food Sampling Important – Food Safety Incidents

19. It is 50 years since the huge outbreak of typhoid in Aberdeen where 500 people were infected by contaminated corned beef from South America. As well as illness that outbreak caused economic dislocation and widespread public fear. Many lessons were learned from that incident, but still 17 people died in Wishaw from E. coli poisoning in 1999. And the incidents keep coming.

20. The outbreaks of E coli O157 food poisoning this year in Glasgow and Dunfermline should act as a grave warning. These incidents appear to have occurred in locations (concert hall and Indian restaurant) where it is not typical
to have infants or frail elderly people. As a result those infected have not required hospital treatment. For the next incident we may not be as fortunate as previous incidents in Wishaw, Wales and Germany.

21. Scotland is becoming more culturally diverse, the habit of eating out is increasing and the range of food ingredients and food stuffs coming into the country from around the world is increasing. Against this backdrop of increased consumer risk it does not make sense to weaken official controls by reducing testing and putting at risk the viability of the official food control laboratory network in Scotland.

22. Selected food incidents from history
1. 1858 UK Bradford - 20 people died and 200 became ill when lozenges were contaminated with arsenic rather than the usual adulterant of the time, plaster of Paris.
2. 1964 Aberdeen - typhoid outbreak with approximately 500 cases.
4. 1996 Wishaw - E. coli O157 outbreak with 17 deaths and 496 serious cases.
5. 2005 UK - sudan dye contamination of food.
6. 2005 Wales - E. coli O157 outbreak with 1 death and 157 cases
7. 2006 UK - Sporadic outbreak of salmonella linked to Cadbury chocolate
8. 2008 UK - melamine contamination of dried milk from China.
9. 2010 UK - sporadic outbreak of Salmonella Bareilly from bean sprouts. 241 cases
10. 2012 Germany - E. coli O104 outbreak with 53 deaths 3950 people affected
12. 2014 Glasgow - E. coli O157 outbreak linked to concert venue with 21 cases
13. 2014 Dunfermline - E. coli O157 outbreak linked to Indian restaurant with 19 cases

Entry to Laboratory Premises

23. Clause 27 of the Food (Scotland) Bill at line 3(b) describing powers for persons monitoring enforcement action state that they may enter “any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority.”. Whilst the APAS has no concern working with the new food body as it has done with its current incarnation it seeks clarity on the following a) public analyst laboratories test material other than food to include water, consumer products and environmental samples. Therefore will any entry be limited only to food related testing? b) why does the clause appear to only relate to official food control laboratories such as public analysts and not private contract laboratories that may be testing for food producers? c) does the power only relate to official food control work and not to any food samples that may tested by the public analyst as part of a private arrangement?
**APAS Recommendation.** That the need for the powers of clause 27 3(b) be explained, clarified and/or restricted as the case may.

**Scientific Services Scotland – A Way Forward**

24. The 1997 James Report into the creation of the Food Standards Agency stated there was a strong case to unify the public analyst service in Scotland and this unified service could be best managed within the new Food Standards Agency. This recommendation was not implemented.

25. In 1998 the Timbury Report recommended that a formal network of Public Analyst and NHS Hospital food testing laboratories be set up. This recommendation was not implemented.

26. In 2004 a report by Lowenberg on the Development of Scottish Services recommended and provided a framework for a unified Scottish Scientific Service. This recommendation was not implemented.

27. In 2013 the Scudamore Expert Advisory Group Report into the horse meat incident stated in recommendation 33 that “FSA Scotland and the Scottish Government must urgently identify the scientific capacity and capability it would require to deliver official controls in the future, so that decisions could be made about what needed to be available in Scotland and what needed to be available elsewhere. This should then be used to inform more strategic investment decisions.”

28. In 2014 after two years of data gathering the Improvement Service which is a partnership between the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives (SOLACE) came forward with proposals to create a unified public analyst/scientific service in Scotland. After so many failures to deliver change recommended by Scotland’s experts in this area the proposal to succeed needs the sponsorship and support of a strong strategic partner. The current arrangements in the Food (Scotland) Bill indicate that the new Food Body will not operate or control a food testing laboratory although this is quite common in Europe. The Bill offers the opportunity to direct and encourage a move from being an enabling service to entering into a strategic partnership with the four local authority controlled Official Food Control laboratories in Scotland to deliver exciting services in a new refreshed and appropriately resourced way to protect public health.

**APAS Recommendation.** That the Food (Scotland) Bill linked to Scudamore Report recommendation 33 directs and encourages a move by the new food body from being an enabling service to entering into a strategic partnership with the four local authority controlled Official Food Control laboratories in Scotland to deliver a new refreshed and appropriately resourced service to better protect public health.

**Association of Public Analysts of Scotland**
Food (Scotland) Bill

Glasgow City Council

Food Standards Scotland
The Scottish Local Authority food law enforcement community enjoys a very strong relationship with the Food Standards Agency in Scotland. This has been developed via close partnership working since the FSA’s inception in 2000. It is hoped that this relationship can be preserved and, indeed, enhanced with the establishment of Food Standards Scotland.

Nutrition and Obesity
Glasgow City Council recognises the rise in Scottish obesity levels as perhaps the main single cause for concern for public health agencies. A current initiative being run jointly by the Council actively seeks to influence the sale and purchase of high calorie, high fat and high sugar foods to schoolchildren at lunchtimes. This approach relies upon a suite of actions which are designed to restrict the sale of ‘unhealthy’ foods at lunchtimes by outlets near schools. However, this and other similar initiatives are hampered by a lack of enforceable legislation. Local Authorities (i.e. ‘Food Authorities’) are well equipped to enforce legislation effectively – often in straitened circumstances. However, there is no legislative framework for controlling the sale of food which contributes to ill-health in this way.

The pitfalls in, and objections to, such an approach are many. However, the nature of the problem is so significant that it is felt that a radical approach is required.

Glasgow believes that Food Standards Scotland should be more actively involved in the reversal in the current trend of increasing obesity levels in Scotland and that a more aggressive strategy is needed. Existing educative approaches appear to have limited value in relation to changing behaviour. Food Standards Scotland and the Scottish Government should explore new avenues for exerting greater control upon the food industry including in areas such as advertising, nutritional declaration and legislative limitations or taxation on certain foods deemed to contribute most to the problem.

Enforcement Remit of Food Standards Scotland
Glasgow City Council feels that the current arrangement between the FSA and Scottish Local Authorities is robust but could be undermined by any unjustified or inappropriate piecemeal shift or transfer of responsibilities. The proposal to centralise the responsibility for the approval of certain businesses handling products of animal origin is ill-founded. Glasgow’s decision to resist the proposal is not based upon a protectionist viewpoint. Rather, it is considered that it would be most advantageous to both parties – and the food industry – for the demarcation of enforcement roles to be as simple as possible.

Any shift in remit from Local Authorities to Food Standards Scotland could result in the emergence of a two-tier enforcement system, resembling that of Health and Safety at Work enforcement. This would significantly undermine
the role of Local Authority enforcement services which would potentially lose “critical mass” as well as expertise. The outcome would be a rump LA service providing little meaningful benefit to the local community. There would also be a consequent loss of support and advice to businesses – especially small businesses.

Suggestions made by certain colleagues that the delivery of official food controls must only lie with Local Authorities are erroneous. Glasgow believes that a clear and consistent approach to official control delivery is key – whether the delivery mechanism remains via Local Authorities or centrally via Food Standards Scotland. Similarly, the tenet that the only Local Authorities are equipped to deliver official controls is false. Local Authorities are generally failing to resource food law enforcement to the same degree as in the past – despite the increase in scale and complexity of the food supply network. It could, therefore, be argued that a centralised approach may be more effective in protecting Scottish public health as well as bolstering consumer and industry interests.

**Enforcement Toolkit**

It is felt that a review of the regulatory powers of the FSA/FSS/LAs is overdue and that the Food (Scotland) Bill should accommodate this.

The horsemeat incident during 2013 indicated that regulatory powers are not sufficiently robust to enable adequate intervention to be conducted by Local Authority Enforcement officers. It is strongly recommended that powers are granted to enable the detention of food where there are reasonable grounds for suspicion that the said food does not meet food standards and labelling legislation.

The ultimate sanction where there is non-compliance with food law requires a report to the Procurator Fiscal and a subsequent criminal trial. This is resource-intensive and often unsuccessful. Problems with the process include a lack of willingness by the COPF Service to proceed even in strong cases and the excessively long time periods between the offence and ultimate trial. In the light of this, Glasgow City Council favours the introduction of an alternative sanction regime where administrative/ fixed penalty fines may be served upon the operators of non-compliant businesses. (It should be noted that Environmental Health Officers are currently empowered to serve fixed penalty notices under environmental and smoking legislation.)

Glasgow recommends that existing powers contained within the Food Safety Act 1990 should be enacted in order to introduce food premises licensing.

Glasgow supports proposals to make the FSA’s existing Food Hygiene Information Scheme mandatory. It is felt that this would help to drive hygiene standards upwards. It is also suggested that this scheme be extended to incorporate general food law compliance (including food standards and not just hygiene) and, thereby provide impetus in improving the nutritional profile of foods sold/served by businesses in Scotland.

William Hamilton, Glasgow City Council
1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

By proposing a stand-alone food body for Scotland – to be known as Food Standards Scotland (FSS) - the Bill reflects the unique circumstances in Scotland, for instance in relation to incidence of foodborne disease and population obesity, and problems with diet. It also reflects differences in the legal, regulatory and public and environmental health context and structures in Scotland.

FSA(S) (as current FSA in Scotland is currently referred to) already has excellent working relations with FSA UK in London when UK-wide issues arise. There is no evidence that creating a stand-alone body would change this; it may in fact offer opportunities to further clarify when unique arrangements are needed due to different legal and other requirements in Scotland. Health Protection Scotland (HPS) has also established excellent working relations with both FSA(S) and FSA UK over the last 14 years. There is no evidence that creating a stand-alone body would change this; it may in fact offer opportunities to further clarify when unique arrangements are required in Scotland, geared to the needs of the different legal and other contexts.

The stand-alone body would also complement the arrangements common to many other Scottish agencies who contribute to food safety and public health and consumer protection, i.e. their responsibilities and structures are quite distinct from agencies in other parts of UK, but they operate seamlessly with counterparts in other countries when required. This has been evidenced on those occasions when HPS has worked separately but in close collaboration with Public Health England, for instance on UK-wide foodborne outbreaks (many of which have involved co-work with FSA(S) and FSA UK).

HPS for instance mostly operates as an equivalent - rather than exact mirror image - of Public Health England (PHE); this has not prevented HPS and PHE from maintaining close working relations in the many areas where cross-boundary collaboration is required. In this respect the proposed stand-alone body would therefore reflect various health-related agencies whose functions overlap food safety and the FSS’s other objectives.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

The proposed objectives and functions of FSS both maintain, and expand upon, the objectives and functions that were deemed essential to resolve the problems that FSA was originally established to tackle. They also retain the responsibility for food quality issues such as standards, labelling...
and nutrition, and for meat hygiene and regulation, within the same agency that has responsibility for food safety, consumer protection and public health.

These elements have been closely interwoven in many of the initiatives and investigations on which HPS has collaborated with FSA(S) in the area of foodborne infectious disease, for instance. The ability to work with a single “food body” covering all these objectives and functions has been a distinct advantage in these situations, especially when a substantial number of other agencies may be involved overall. It would therefore be helpful if the draft Bill could include more examples related to objective (1)(b) (concerning diet conducive to good health) throughout the rest of the document, where references to infection and contamination tend to predominate. The same applies to (1)(c), concerning consumer protection.

Successful sustainable development requires a comprehensive understanding, for instance, of the way in which both food safety and food quality are essential and often interwoven requirements in food production processes. The objectives and functions of the proposed FSS would avoid any artificial separation in these areas of responsibility, which could otherwise put the achievement of sustainable development at risk. The Bill’s proposals therefore seem supportive of this and many other elements that contribute to public health, as well as to sustainable development.

3. The proposed administrative and governance arrangements for the FSS
Although no particular comments have been made on this, a general comment made on many areas of the Bill, applies to this point as well, i.e. the hope that FSS will 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. Although this is 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, see S14 (1).

4. The proposed powers of the FSS
The details covered within S18 (2), monitoring developments in science, technology etc, and carrying out and commissioning research, are very important and their inclusion is therefore appreciated.

S19 (2) should also include the need to obtain information about storage and all phases of transport (which can for instance be the means or location of cross-contamination, including for potentially foodborne zoonotic diseases such as *E. coli* O157).

Some proposed powers may duplicate those of the Zoonoses (Monitoring) Regulations, see S20 (2), which highlights the need for collaborative work between FSS and other agencies responsible for animal health and feed, etc. This would also apply to S20 (3) where the potential for reverse zoonotic transmission (e.g. of ‘flu virus to pigs or birds) would require
collaboration with animal health agencies; and raises questions of who
would issue the authorisations referred to in S20 (4).

It is also hoped that the powers under S29, to issue guidance on control of
foodborne disease, would be enacted collaboratively with HPS and other
relevant agencies; this could usefully be stated more explicitly in this
section. It would also be useful to address the implications of failure to
comply with this guidance (which is different to mandatory requirements).

5. The likely efficacy of the new provisions related to food information
to prevent food fraud (such as the recent horsemeat incident).
The implications of food fraud fall under our remit where they also have
implications for prevention of infection or illness arising from fraudulent
inclusions or processing to foodstuffs. We do not have any evidence to
suggest that the proposed new provisions would of themselves be lacking,
and it is assumed that these would be resourced as required by the Bill.

Apart from food fraud, the overall provision of appropriate food information
and labelling will usually support health protection and public health in a
variety of other ways, e.g. prevention of illness related to unpasteurised
cheese. This again illustrates the interwoven nature of the food safety and
food quality objectives for the FSS, and the benefits of these remaining
within one overall food body.

Many other implications of food fraud fall outwith our remit and Local
Authorities will no doubt provide the bulk of the feedback to Scottish
Government on these.

6. The provisions set out in the Bill for non-compliance with food safety
and standards.
As mentioned under (4) above, it would be useful if the Bill could be more
explicit about how non-compliance will be handled, particularly in relation
to those areas that are subject to guidance rather than to mandatory
requirements. Apart from this we have no other comments.

7. Any other comments on the Bill that relate to areas not covered
above.
As mentioned under (3) above, it is anticipated that the vast majority of the
proposed objectives and operations of FSS will continue to include close
collaboration with HPS and other stakeholders, as this has always been an
important feature of work with FSA(S). Making this more explicit in some
areas of the Bill would hopefully strengthen the way in which its intentions
are communicated.

Health Protection Scotland, part of NHS National Services
May 2014
The creation of a new food body for Scotland should provide an opportunity to widen the scope of the organisation beyond that currently delivered by the FSA. Any changes could be introduced incrementally building on the expertise and based on available resources. The new food body’s main focus initially should be around the statutory responsibilities and in the development and implementation of policy in relation to food and feed safety, nutrition, labelling and standards with key areas of focus being obesity and food poverty surveillance.

The independent and partnership work on diet and nutrition should be continued and it is important that the new food body is independent and impartial in its work in proposing legislation, providing factual information and advice on policy and in its work with the food industry in relation to the reformulation of products.

It is vital to clarify how any additional roles and responsibilities undertaken by the new food body support and align to the programmes of work delivered locally by NHS Boards and Local Authorities and it should establish and make clear its working relationship with them. It may also wish to consider its relationship with established national advisory groups such as the Public Health Nutrition Group, hosted by NHS Health Scotland. Links with industry are also important but the new body needs to resist any attempts by industry to determine policy or influence its practice.

Any changes to the delivery of official food and feed controls should be subject to a detailed impact assessment and / or an option appraisal involving key stakeholders particularly the local authorities to ensure an effective approach and where unwanted variations exist currently these could be coordinated through the new food body to ensure a consistent approach across Scotland.

It is absolutely critical that the new body is independent and seen to be independent regarding its work and the advice it provides to ensure its credibility and enhance public confidence in its ability to discharge its various functions in relation to food safety, nutrition, enforcement and management of infectious diseases outbreaks.

It is important that any work undertaken in relation to enhancing consumer information clearly compliments the work of NHS Health Scotland who has a role in increasing knowledge and public awareness of key health messages. It is important that difficult to reach groups and those ‘seldom-heard’ are fully engaged to allow inequalities to be tackled effectively. Consumer panels should be representative of the population they are serving. Working in partnership with territorial NHS Boards and Local Authorities will assist the new food body in engaging effectively with consumers, as local staff and agencies (including the Third Sector) are working directly with target audiences.
The FSA currently has access to a range of expert committees and this should be maintained with the new body having access to skills, expertise and resources to undertake its work and it should also be able to assess, synthesise and commission research as required. It should access the necessary expert science and evidence in relation to issues specifically relevant to Scotland and its population e.g. tackling obesity should be considered a priority.

It would be beneficial for the new food body to be responsible for the co-ordination of funded research on food safety and public health nutrition as this will ensure that research programmes are commissioned in a co-ordinated and complimentary way, whilst minimising duplication.

The new food body should strengthen its role as the key provider of education and professional training to drive standards and should also be resourced appropriately to provide specialist and authoritative advice when required.

The new food body should take the lead in assessing and responding to the needs of the Scottish population and drive the way forward in ensuring a concerted approach to deliver high standards of food safety, quality and public health nutrition.

Dr S Josephine Pravinkumar  
Consultant in Public Health Medicine  
NHS Lanarkshire
Food (Scotland) Bill

The Royal Society of Edinburgh

1. The Royal Society of Edinburgh (RSE), Scotland’s National Academy, welcomes the opportunity to contribute to the call for evidence by the Health and Sport Committee of the Scottish Parliament on the Food (Scotland) Bill. In preparing this response the RSE has drawn on the expertise within its Fellowship in those areas of research covered by the Bill, which has included people involved in the establishment of the Food Standards Agency in Scotland.

2. The RSE has also previously submitted a response to the Scottish Government when it consulted on the establishment of what was then termed a “New Food Body” in May 2013. The current Bill, which aims to establish a new body, Food Standards Scotland (FSS) is broadly in line with the earlier consultation proposal.

3. Ensuring the safety of food is one of the most fundamental issues to all in society and putting in place the best structure to ensure this is one of the most important duties of government. This Bill is therefore one that the Committee should scrutinise very closely.

4. The food and drink sector is significant in the health of the nation. It is also a major part of the Scottish economy, being a major export earner (with food exports of £5.3 billion in 2012). Delivering an increasingly coordinated approach to build on Scotland’s food quality and provenance is vital to supporting and enabling this export market to grow.

5. The RSE is of the view that there is significant merit in the Bill as it seeks to bring enhanced coordination to the issue of food safety. We would also wish to draw some issues to the attention of the Committee in its scrutiny process and would be very happy to provide a witness to the Committee in its Stage One exploration of the Bill.

6. There are three main objectives of the Bill and these will be addressed in turn.

To protect the public from health risk associated with food consumption

7. The Food Standards Agency in Scotland (FSA) has since its inception played a valuable role in protecting the public from health risks and so the RSE is of the view that the new body should, at a minimum, perform all of the existing functions of the FSA.

8. We agree that, if established, the FSS should perform a comprehensive whole food chain approach to safety, from the farm, through the distribution chain, to the shop, to the restaurant or domestic kitchen.

9. The links between agricultural practices and food safety are already well recognised in Scotland, so the new body should seek to develop this understanding further.
10. The organisation should adopt a risk-based approach to monitoring – those premises deemed on the basis of evidence to be low risk should be visited less regularly.

11. The enforcement powers of the body need to be closely linked with other statutory agencies, such as the local authorities, procurator fiscal services and other relevant regulatory bodies.

12. The FSS should concentrate on Scotland-wide issues to do with food safety. Local inspection of premises should remain a local government function. The Scottish Parliament should ensure that these local government services are resourced sufficiently.

To improve diets

13. There is much documented evidence that many health problems in Scotland are related to diet. The RSE views it as reasonable that the FSS should play a role in promoting a healthy diet, providing that it is sufficiently resourced to fulfil that role and that it is well connected to researchers on the aspects of diet that impact upon good health and to the scientific advisers to the Scottish Government. A regular programme of engagement with the Chief Scientific Adviser, the Scottish Science Advisory Council and the Chief Medical Officer would be useful.

14. The FSS also has an important role to play in advising the Scottish and UK Governments on clear and effective labelling of food products to ensure that people can make informed choices about healthy food choices.

15. The question should also be considered as to whether FSS should also play a role in advising the Scottish Government on the role of alcohol in diet. The Scottish Government, over several administrations, has recognised the importance of this in the health of people in Scotland. It may be that FSS could play a supportive role in this regard. High alcohol consumption is not only related to conditions such as liver disease, but also in many cases to other aspects of unhealthy food consumption that lead to obesity and to other health complications.

To protect other interests of consumers related to food

16. The issue of “food fraud” has clearly moved up in the public’s mind following the issue of horsemeat being sold as beef, although there are other examples that didn’t attract the same media attention. Food fraud is a different issue from food safety; however it is right that the consumer receives the type of food that they believe they are buying. The new FSS should have a role in monitoring and, where necessary, taking action against, retailers found to be selling incorrectly labelled products. Retailers and food producers themselves have a responsibility to ensure that they are carrying out due diligence in the sourcing of their products.
17. In relation to the issue of alcohol, fraud is also a potential issue here, with the risk that fraudulent products are not simply being mis-sold, but may also have contents with significant risk to health, such as methanol.

Research and analysis

18. Key to the success of Food Standards Scotland will be access to the best available research and well-resourced public analyst services. Much of the current research funding comes from UK Government sources – it is important that the FSS is able to access this. Strong links need to be developed with the Scottish Funding Council, the UK Research Councils, key universities and research institutions.

19. The monitoring of food safety also depends upon well-resourced and well-staffed public analyst laboratories. There may be a case for Scotland having a single laboratory to support the work of FSS and one with its own research facility, but linked to key researchers in universities in Scotland, the UK and internationally. The FSS should use the best research, whether generated in Scotland, or sourced from elsewhere, to advise the Scottish Government and Parliament on challenges to be faced in food safety.

20. As well as testing locally sourced food products, the international transport involved in the modern food industry requires that the FSS should also develop a programme of testing imported food products: for pathogens; pesticides not permitted for use in the UK or EU; and also for antibiotics or growth promoters in imported meat.

21. Research capacity requires to be directed towards specific pathogens are recognised as having a high level of incidence in Scotland, such as Campylobacter.

22. Research and laboratory support should also be directed to veterinary science where there is a direct relationship from animal to human health through the food chain.

23. The new body should also at an early stage undertake a review of the number of public analysts available in Scotland, whether working directly for FSS or for local authorities and advise the Scottish Government on the sufficiency of available, qualified individuals. Links should be built with organisations such as the Royal Society of Chemistry, who provide the statutory qualification as a public analyst (MChemA). As well as the availability of public analysts a study should also be undertaken on the effect of funding pressures on the number of analysts employed in local government.

Accountability and Governance
24. It is important that the new body has firm accountability to the Scottish Government and the Scottish Parliament. It should provide a public annual report to the Parliament on its activities and on food safety developments, including on nutrition. The Chief Executive of the organisation should have an annual evidence session at the Health and Sport Committee (or any successor) and the Cabinet Secretary for Health should have regular planned meetings with the body.

25. The independence of the FSS from the food industry is critical. The Chair and board members should not be perceived to have any current or recent commercial links with the industry.

26. On governance, 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.

27. The FSS should have the power to establish advisory committees on specific issues, but where such committees already exist at a UK level, rather than duplicate, the body should seek to access advice that has already been developed there.

The Royal Society of Edinburgh
May 2014
On resuming—

Food (Scotland) Bill: Stage 1

The Convener: Item 3 is a round-table evidence-taking session for our stage 1 consideration of the Food (Scotland) Bill. As usual with such sessions, I will give precedence to the panel members. I see this as an opportunity for committee members to listen to others’ comments, so I ask for patience from my colleagues.

If it is okay with everyone, we will go directly to questions. If panel members can introduce themselves the first time they speak, it might give us more time for the discussion. Is everyone happy with that?

Members indicated agreement.

The Convener: Thank you. Rhoda Grant will ask the first question.

Rhoda Grant: Some of the evidence that we have taken about food standards Scotland suggests that it should take a lead on health protection issues such as nutrition and tackling obesity in Scotland. Should that be the role of the proposed new agency? Should it cover other aspects? If so, would that require more resources?

The Convener: Who wants to take that one?

Professor Peter Morgan (Rowett Institute of Nutrition and Health): I am director of the Rowett institute of nutrition and health at the University of Aberdeen.

Food standards Scotland could be a very good vehicle for leading on nutritional issues relating to diet and health. The UK Food Standards Agency was developed with the intention of providing leadership in that area, and it gained a lot of public confidence as a place where the public could go for sound nutrition and health advice. Now that it has been split up, there is more confusion, and I think that food standards Scotland could take on that role in Scotland.

However, in order to take on that function, the proposed new agency needs to get access to some of the knowledge that was present in the UK Food Standards Agency and which has since been lost. For example, websites that provided information to consumers would have to be restored, which I guess would be a resourcing issue. I imagine, therefore, that if the new agency is to be set up properly, resources will be needed for the infrastructure to provide that information to the public.

As I have suggested, food standards Scotland could be a good vehicle for providing diet and health information to the public, but a broader question is whether it should take on a role that it perhaps did not have before: giving advice on obesity. That is difficult, because obesity is a complex issue that is not solely diet related. It would be helpful if food standards Scotland could take on a leadership role on diet-related obesity issues, but we need to recognise that some aspects of obesity would have to remain with the health department, given the clinical relationships that are also involved.

In short, food standards Scotland could take a lead role on giving advice on diet and nutrition, but I reserve my judgment on the issue of coordinating research, which I am sure we will discuss later.

Professor Marion Bain (NHS National Services Scotland): I am the medical director of NHS National Services Scotland. In that respect, the point of most relevance to this debate is that one of our organisations is Health Protection Scotland.

On Professor Morgan’s point about the possibility of having more impact on health-related issues in Scotland, especially obesity, it is important to recognise that the national health service—and, in particular, one of our sister special boards, NHS Health Scotland—already plays a major role in that area. We would need to be clear about the relative responsibilities and how we can build on the best aspects of all the different organisations.

Dr S Josephine Pravinkumar (NHS Lanarkshire): I support the comments that both speakers have made. As an independent body, food standards Scotland would be in a good position to lead on public health nutrition, and it should work with boards and local authorities to strengthen the work that is already taking place and to support the various partnerships.

10:00

Professor Hugh Pennington (Royal Society of Edinburgh): The most important thing, if food standards Scotland is to have any type of role in providing public advice, is that it must be seen as an independent organisation. It must keep its independence in particular from industry, and even from Government in a sense. However it works, the bill must maintain that independence. I know that the organisation will be funded from Government, but that independence is needed so that the public can trust it. That is crucial, and it must be borne in mind as the bill is progressed to ensure that, in the public perception, the organisation has a strong link with the public rather than with official bodies.

The Convener: If none of the other panel members wants to come in, we will move on. It did...
not take us too long to get to the independence question, but that is what happens in the Scottish Parliament.

The nature of funding for the body was a theme that arose in last week’s evidence session, and it raises questions. The make-up of the board was also discussed. Would any of you like to comment on the board make-up or on the funding mechanisms? I may be wrong, but I took from the evidence that we heard last week that, although there will be some core funding, areas such as research will be bidding for funds. How do we create independence for the body when it is funded in such a way? How strong can the board be in representing consumers? Do any of you have a response on that?

Professor Pennington: The make-up of the board will be crucial. The individuals on the board must be seen as trustworthy people who will not be afraid to speak out on issues even if they are going against Government policy. I know that it is sometimes very difficult when one is in that position, but the public must see that degree of independence as part of the body’s essential nature.

Clearly, the body will be seeking research funding. On a historical point, when the Food Standards Agency UK was set up, it lost research funding that was already in the system. There was a change to the system, and the agency lost out on that funding, which was a great pity. I hope that the new body will have an adequate research budget. That is very difficult to define, of course, but one of the body’s highest priorities must be to commission research and maintain links with other funding bodies so that it can influence them if necessary—perhaps indirectly—to push funding towards issues of great public health importance that are capable of resolution in real time.

As a microbiologist, I know that there are many such issues. We have made progress through research on our understanding of campylobacter but, unless we understand it even more, we will not make much more progress in controlling what is the most common cause of bacterial food poisoning in Scotland.

Professor Morgan: The question of independence raises a number of issues. One is the independence of the body itself, which will be separate from the original Foods Standards Agency UK—previously, of course, it was part of the overall system. In becoming independent, the body must be able to stand on its own two feet, but it is important to recognise that it needs to work in partnership with other bodies. Those links are crucial and need to be sorted out. The body cannot work in isolation from the Food Standards Agency UK, and it cannot work totally independently of Public Health England. However, it needs to have its own identity and its own understanding of how it will move forward.

Hugh Pennington is right to say that there was a great loss of research money when the Food Standards Agency UK was disbanded. The money for nutrition research certainly disappeared, although there is still evidence of some money for food safety research. The issue is where the new money will come from; we have to be clear about that. The way I understand the situation is that, previously, the Food Standards Agency UK had quite a sizable pot of money for research, which disappeared. The Food Standards Agency in Scotland had a small sum of money that was targeted towards research into Scottish-focused issues. That would need to be maintained.

However, the wider research funding opportunity, which comes from other Government sources such as the rural and environmental science and analytical services division, is a different budget and we need to be clear that it is different. It would not be a good idea to raid that budget to put resources into food standards Scotland, because the function of the RESAS budget is different from what the function of food standards Scotland’s budget will be.

If food standards Scotland requires research money, we need to consider where it will come from. There is a debate in my mind about what sort of research food standards Scotland should do. For example, I am not so sure that it is a great idea to have a legislative body commission research. It will need a budget for short-term research to answer its own specific questions, but I would keep the budget for strategic research needs independent.

Robbie Beattie (Association of Public Analysts Scotland): I am from the Association of Public Analysts Scotland.

One part of the issue is to do with the budget. A third of the budget relates to operations. Will the body serve industry or the public? Will it be a consumer champion or not? There may be conflicts in the structure. If it is going to look at cutting plants and meat plants, is it going to be helping industry or the consumer?

Bob Doris: We have been talking about the independence of food standards Scotland, but I wonder about the powers that it will have. The bill has a kind of general powers provision, which says:

“Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.”

The functions are laid out in the bill.

Our witness from Which? last week raised the issue that food standards Scotland will not have
statutory access to food testing results from industry, and there was a belief that such statutory access would be very helpful. When industry carries out testing, the information should be passed routinely to either the FSA at UK level—which is now going, of course—or the new food standards Scotland. Do panel members agree with that? Would the power to compel industry—large supermarkets and producers—to provide their food testing results be welcome?

**The Convener:** Any takers?

**Professor Pennington:** The more information the body has, the better able it will be to discharge its function, although there is an issue about the relationship with industry and getting information in that way. I sit on the fence on the question of food standards Scotland having overriding powers to get information of that kind but, in principle, yes, it would be useful to have that sort of information.

**Dr Pravinkumar:** It would be useful to have that information up front to help prevent outbreaks and it would boost the public’s confidence about the monitoring that takes place and the information that is available for auditing and improving standards. That would be helpful.

**Professor Pennington:** A fair amount of testing is done on a fairly random basis. One needs to look carefully at whether the right kind of testing is being done on the right kinds of foods, and so on, because most of the results will be negative. My experience has been that that kind of testing is of value, but it is of relatively limited value in giving good public health protection. Other issues are probably more important, such as how well businesses are run. A lot of that falls down to local authority enforcement officers doing inspections, and so on.

There are fundamental philosophical issues to do with the role of testing. Testing is essential and it is necessary, but it has to be focused. It has to be done almost by looking at something where it is thought that there might be a problem and focusing on that rather than having a general testing programme, which can be quite expensive and produce quite small returns. Professional judgment is crucial when it comes to who is doing the testing on what and so on.

**Robbie Beattie:** There is an issue with allowing industry to do its own testing. Cadbury’s was caught short because it was putting salmonella in chocolate. If we rely on industry to look after its own shop, we risk having problems. Similarly, in the case of horsemeat, the industry was looking after itself but was looking only for what it wanted to look for and did not find horsemeat. It is necessary to have an independent body that is willing to take the challenge on and horizon scan for the unknown unknowns, as it were. If we rely on industry, it will just tell us what we want to hear.

**William Hamilton (Glasgow City Council):** I am business regulation manager for environmental health at Glasgow City Council.

I will pick up on the broader question about powers. To fly off at a little bit of a tangent, I have a rather unpopular view about the enforcement role. I would like to see a slightly more aggressive role being taken, to be honest. As I am an enforcement person, perhaps that is in my blood.

I feel that there is a need for a more interventionist approach to nutrition and obesity. We engage fairly peripherally with quite a lot of initiatives that encourage and support healthier eating, but it is a great source of frustration to me that there is no final step that can be taken to push the issue slightly more. For example, there is a scheme in Scotland that advises the public about food safety compliance and there is a move in the bill to make that a mandatory scheme. I wonder whether its scope could be broadened to include a broader compliance or performance issue for businesses that relates to their nutritional performance and the kind of food that they sell. We could perhaps work out some kind of profile for businesses.

**The Convener:** Does that relate to your evidence about food sales in and around schools and young people?

**William Hamilton:** It would do. I do not want to pre-empt any discussion of those issues. However, to be honest, such sales lead me to think in the way that I described. My colleagues and I experience frustration, because the evidence is there but there is not very much that we can do.

**Bob Doris:** That is helpful, because I was going to come on to that issue.

Very briefly, in relation to the general powers provision and testing with industry, I hope that the approach could be based on partnership rather than confrontation. As the witnesses have said, there is no point in testing things that you know are safe. Supermarkets and large producers that are ethical in their practices would be keen to work with FSS or the FSA to identify the higher-risk areas so that an inspection regime can be put in place around those. It would be good to see that being done. The approach does not always have to be confrontational, and I hope that there is a way forward based on partnership.

Mr Hamilton has helpfully allowed me to come on to my other question, on enforcement powers, so I thank him for that. An issue that I raised last week is that the policy memorandum states that, currently, when food is seized that is safe but in relation to which the vendors are guilty of food
fraud, if you like, there is power to seize the food but not to destroy it, and it could, in theory, go back into the food chain. The bill appears to put a stop to that.

With reference to some of the more general powers, such as the duty to compel the reporting of breaches at outlets and the duty to give inspection outcome displays much more prominence in outlets, Mr Hamilton has talked about maybe introducing a cluster of other powers. This is a good opportunity for witnesses to put on the record any additional powers that they would like to be included in the bill. I add the caveat that I imagine that some breaches are by small businesses that are trying to do their best but are not complying. I would not like those businesses to be driven out of business but would like them to be supported to perform better. What additional powers do people want to see in the bill, particularly on enforcement? Mr Hamilton had started to give some suggestions about that.

The Convener: Mr Hamilton, is it the case that if you seize food for one reason or another—it may have been labelled incorrectly, for example—you give back that food?

10:15

William Hamilton: Generally speaking, we do not seize food on the basis that it is not what it says it is on the label—our powers extend only to seizing food that is deemed to be potentially unfit for consumption, so there is a safety imperative to do that. The bill would introduce a food standards power that mirrors those powers exactly. That would be very welcome. I am assuming that the powers would remain the same and that authorisation from a sheriff to destroy the food would be needed.

The Convener: Do the panellists have any response to Bob Doris’s question about additional powers and his challenge to strengthen the bill? Of course, there are no guarantees that that would happen.

William Hamilton: I work in enforcement, so it is only natural that I would say that there should be more enforcement powers. I respect the view that there is always the potential for inappropriate use of powers but, if anything, there is a suggestion that some of the powers are not being used adequately. I take that point on board. However, there is a case for making mandatory the food hygiene information scheme, which is a welcome part of the bill.

Information is already available to the public through freedom of information. However, a more meaningful scheme—in other words, one that is mandatory for business—would be helpful. There are certain doubts about how helpful such a scheme would be; in our opinion, that would be a relatively inexpensive way to proceed. As I said, I would quite like to see the expansion of that scheme’s scope.

On powers, food premises licensing is an additional issue that is quite close to my profession’s heart. Powers on that exist in the Food Safety Act 1990, but I would be crucified if I did not mention the issue on my colleagues’ behalf. There is quite a strong appetite for that, primarily to prevent the emergence of unsuitable businesses as a matter of course.

Professor Pennington: I agree absolutely with what has been said about the mandatory display of the scores on the doors as it were. That has been progressed in Wales. There were supposed going to be some problems with doing that, but they have not amounted to very much. I am very much in favour of that power being included at this stage rather than it being left to ministers to come forward with at an appropriate time, because that would very much be in the public interest.

Robbie Beattie: There is perhaps a move towards industry testing. Under the 80:20 rule, 80 per cent of your problems could come from 20 per cent of your estate. There was an E coli outbreak in Fife that related to a small restaurant, the E coli outbreak in Wishaw related to a small butcher’s shop, and there was a case in Glasgow. Lots of problems are coming out of small areas. You are expecting industry to self-police. That might be okay for organisations such as Tesco and Asda, but who will look after the small guys who are causing a lot of the problems and killing people?

Dr Simpson: When the committee visited Aberdeen, it was mentioned that the proposal is not to have the five-point scoring system that is used in Wales because it is not clear how a score of three or four would be judged and what the public would understand by that. Instead, the idea is to have three levels. At the first level, a health improvement notice would be issued, but should it be displayed? If so, how quickly should that be done, and how long should the individual be given to rectify the situation before they are required to display the notice? The second level is when a business has passed the health inspection, so the premises are regarded as hygienic. The third level, which 1,000 businesses have reached, is the gold standard, which is an exceptional standard to reach. That seems quite a good system. I seek comments, in particular, on how quickly a health improvement notice should be displayed.

William Hamilton: As you have described very well, the scheme in Scotland is quite simple compared with that in England, and it is less problematic. In reality, there are only two statuses in the food hygiene information scheme, one of
which is “improvement required”. A very small minority of premises are deemed to require improvement. The vast majority are given a pass; in other words, they are considered to be of a satisfactory standard.

I am sure that my colleagues would love to make this much more complicated or more impenetrable for the public, but in reality it is very simple and straightforward: the scheme is completely flawed, because it is not mandatory. Without contradicting what I have already said, I would look for the scheme to be carried forward as it is, but I would like its scope to be enlarged. It is all very well saying that a business is clean and well operated, but if it serves, in the main, deeply unhealthy food, perhaps that gives us an avenue in.

I do not know whether that entirely answers your question.

Dr Simpson: Not quite, because my question was about how long people should have before they must comply with a health improvement notice or display the notice, which will have an effect on their business.

William Hamilton: The key is to be aware of the fact that the display of the notice is for public information; it is not an enforcement tool. We have enforcement mechanisms that require a business to comply within a given period of time. If the business presented a risk, it would probably be closed immediately. If there were serious issues, it would probably be subject to a notice, and it would be allowed 14 days to rectify them.

I think that, under the scheme, the display of the notice would be pretty much instantaneous—there would be a requirement to display it straight away. If the business could sort things out straight away, it would obviously be allowed to change that.

Dr Simpson: From this and previous discussions, I understand that the UK Food Standards Agency’s funding was split and that it was underfunded. We heard in Aberdeen that a number of Scottish units—Rowett is the main one—are involved in the research, but the Scottish research is, I understand, complemented by research at big units in Norwich and Cambridge. Moreover, research funding comes from councils such as the Biotechnology and Biological Sciences Research Council, the Wellcome Trust and others.

Recommendation 33 of the Scudamore report is:

“FSA Scotland and the Scottish Government must urgently identify the scientific capacity and capability it would require to deliver official controls in the future, so that decisions could be made about what needed to be available in Scotland and what needed to be available elsewhere. This should then be used to inform more strategic investment decision.”

During last week’s evidence session, we heard from Jim Wildgoose that there are 15 UK scientific advisory committees. Can the witnesses outline where we are now and where we will go with the new body? We have already heard about the rural fund, which should be separate. Will we still have scientific advisory committees and systems, given the split that has occurred in England? What would happen with all those aspects of research and the relationship with the current complementary system if Scotland were an independent country? Dr Wildgoose made it very clear that the Scottish Food Advisory Committee would cease to exist. What are the implications of that for Scotland, irrespective of what happens post-September?

Professor Morgan: If the Food Standards Agency in Scotland becomes a separate body, it will have effectively dislocated itself from what went before, although I suppose that, in many ways, that has happened as a result of the fragmentation of the Food Standards Agency in England.

Advisory committees were set up to take on various activities. There are advisory committees on nutrition, novel foods, pathogens and toxicology, for example. I do not see any advantage in duplicating those committees. They already exist to bring together the best people from across the whole of the UK to give advice. Setting up a separate set of bodies would just be duplication for no positive benefit, and the same people who are already on the existing committees would probably be used. I think that the best thing that we can do is harness the information and use the existing advisory committees.

The question then is how we do that. Previously, under the old set-up, the Food Standards Agency Scotland was part of the Food Standards Agency, which was the parent body, so all the relationships were built in. Now that the FSA has become fragmented, we need to revisit the mechanisms to see how a new, independent body would be able to influence and get advice out of the committees. I do not think that that would be impossible, but it would require us to look at the mechanisms to ensure that they were fit for purpose.

I cannot imagine any reason why what I suggest should not be possible. Certainly, the advisory committees that I know of do not see themselves working for just one body; they just give advice, and there is no reason why that advice should not be given to Scotland as well as to England. The mechanisms are important. For example, there would have to be a conversation between food standards Scotland and Public Health England,
which has the secretariat for nutrition advice, about how food standards Scotland would get proper representation and advice in that area.

I would not duplicate committees. At the end of the day, all advice is about synthesising information from the maximum number of sources. Any committee should come to a good consensus for everybody.

Many places are funding research on different nutrition or food safety topics, and the advisory committees will filter that research. I am not convinced that food standards Scotland would need to do more research independently. Plenty of research is going on and the only question in my mind is whether it would need to do specific things to deal with specific policy needs. Sufficient research is going on in other areas to allow the advisory committees to pull together the required information. As I said, I am not convinced that a body that is the advisory committee and the enforcing body should also commission research. I think that there could be a conflict and that those functions should be kept separate.

I do not think that there is an issue about the new body getting advice. The mechanisms are there, potentially; certainly, the advisory committees are there. The mechanisms need to be examined to ensure that they do what we want them to do. There is plenty of research going on, although no doubt many of my colleagues would argue that we have lost the Food Standards Agency in the UK and that its research budget has never been replaced. Nevertheless, 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.

Professor Pennington: I echo Peter Morgan’s comments about advisory committees. One that is of particular interest to me is the advisory committee on the microbiological safety of food, which existed before the Food Standards Agency was set up and which has worked extremely well in producing a consensus view on problems and the best solutions to them, which can then be embedded in legislation. Its chair used to work in Scotland—she is now a professor in Liverpool—so she knows the situation well.

Peter Morgan made an important point about maintaining a formal link between the advisory committees and what happens in Scotland. They need to avoid ignoring special Scottish problems—there are one or two such problems, and I will come on to one in a moment. It is really important that that link is maintained, with, if possible, advisory committees having Scottish representation or a Scottish voice—someone who knows the Scottish scene. Like Peter, I do not see any reason why that could not be done. The negotiations might be quite complex and difficult—negotiations between different Government departments are always difficult, because they always look after their own patch. However, if it is done sensibly and with the right aim, which is clearly to protect public health, I do not foresee any problem.

10:30

I may take a different view from Peter on this, but I think that it would be really important for the Scottish food body to have its own research budget. It may have to respond to a particular need in Scotland to look at a particular problem, albeit that, from a microbial point of view, the situation is not caused by an organism that exists only in Scotland. Sometimes things have to be done quite quickly to get to grips with a problem and find out what it is. If we do not have our own research budget, it might be difficult to do that timeously.

For example, work was commissioned on the back of the Wishaw outbreak in 1996, and work had been commissioned previously in relation to similar outbreaks. Although particular Scottish issues were being considered and Scottish input was required to do the research, the results of that research applied internationally—they did not just apply in the UK but were of international importance. It would be important for the body to have a research budget on which it could call if it needed to do or commission research to inform its own policy.

I was a founder member of the Scottish Food Advisory Committee. One of the advantages of that committee was that, to an extent, it held head office in Aberdeen to account. We saw ourselves as independent members of that committee. We were part of the Food Standards Agency but we could ask questions that perhaps head office—well, I will say no more. We could raise issues and stimulate policy development.

One of the great advantages of the committee was that we met in public throughout Scotland—we went from Shetland to Dumfries—which was a useful way of communicating with the public. It might have been quite expensive, but committee members felt that it was a really important way of talking in public about issues, hearing people’s views and—because there were question-and-answer sessions—being held to account. If that committee is not to be replicated, it is really important that the board of the new body also has frequent interactions with the public, as well as having appropriate interactions with people in the Scottish Government.

Professor Morgan: I clarify that I agree with Hugh Pennington that food standards Scotland
would have to have some budget for research to respond timeously to important projects for policy reasons. I am really arguing that I do not think that the body should be involved in co-ordinating or taking a lead role in directing research in the general area.

The Convener: I think that it was Dr Wildgoose who last week raised the issue about the need to be very careful about that. Are you aware of, or have you been involved in, any work to ensure that we continue to link into those scientific committees at the UK level? What has been done to ensure that your concern is addressed?

Professor Morgan: I know people who sit on those committees, on which, as far as I am aware, there is still an opportunity for members of food standards Scotland to sit as observers. However, if we want to use those committees for what they can actively do, which is to respond to questions that Scotland may wish to have answered or to provide advice, the linkages need to be re-examined, because they were set up under the old UK Food Standards Agency and have not been re-examined in the context of the new world. If we want to ensure that we have formal arrangements under which we can utilise the committees, first to examine issues that are important to food standards Scotland, and secondly to provide outputs, we need to examine those linkages.

The Convener: The bill gives us an opportunity to set up a separate Scottish committee. Is that contradictory? What would that committee do?

Professor Morgan: If we are talking about advisory committees on specific issues relating to scientific research, I see no point in duplicating the existing committees, because we use the experts across the UK already. If we are talking about a committee that functions a bit like the SFAC, that is a slightly different issue, because it would take an overall view within Scotland. That approach would still be possible, but it is not the same as research advisory committees.

Professor Pennington: I absolutely agree with that. The scientific advisory committees are the crucial ones that we want to have formal links with. The SFAC is slightly different, because it was engaged not in research but in public communications. It looked at issues in a broad way, slightly outside the box, but all the people on it were selected because they brought different strengths in relation to food.

I would like to see that sort of body existing in one form or another, just to get those people round the table at frequent intervals to advise the board, which will be busy with things such as running the organisation, to ensure that nothing is missed and that concerns are properly addressed. It would not be a scientific advisory committee, such as the advisory committee on the microbiological safety of food, which has quite a different role and which does extensive, in-depth studies of particular problems.

There is one important reason why it is important for the Scottish body to have input into the advisory committee on the microbiological safety of food that has not been mentioned yet. The committee looks in depth at particular issues, and issues may arise that are seen as more important in Scotland than in the rest of the UK. Therefore, it would be useful for Scotland to have that voice, to persuade the larger body to conduct an in-depth study using resources that might be beyond what the Scottish body can employ.

Bob Doris: I note that the bill gives a permissive power to form committees, not a prescriptive one. My reading of the bill is that, if FSS needs the need to form a committee, it is free to do so. That is the expectation, rather than the bill prescribing set committees. Knowledge transfer across the UK, Europe and the globe involves finding expertise at the most appropriate level. We are talking about various committees at the UK and Scottish levels and about whether the witnesses are content for the bill to have a permissive, rather than a prescriptive, power. I simply want to know the witnesses’ views on the nuts and bolts of the bill.

I see heads nodding—that is fine.

Professor Morgan: That would make sense.

Dr Simpson: Both Dr Pravinkumar’s paper and Health Protection Scotland’s paper talk about research. In particular, Health Protection Scotland’s paper talks about further opportunities, but it did not specify what they might be. I am interested in that. Has Health Protection Scotland further thoughts about that?

Professor Bain: Health Protection Scotland recognises a number of areas that relate to food in which it would be important to do further research. I do not think that that cuts across anything that has been said. A lot of those things need to be done nationally and internationally. I am not an expert in the area, but my colleagues talked about bacterial counts in food, for example—I am sure that other members of the panel would be able to speak about that more accurately. My point was that we do not want to lose that focus. There are still a lot of areas where significant research is needed if we are to protect the public’s health better, and we want to ensure that that research is not endangered in any way.

Dr Pravinkumar: We also referred to research on unique challenges for Scotland. Professor Pennington has referred to particular food safety issues that might emerge in Scotland, but there are other issues, such as obesity and food

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poverty, that might come up, and we referred to such things when we mentioned further opportunities for research.

**Robbie Beattie:** Dr Simpson raised a point about Scudamore recommendation 33, which is about official controls. I saw that as a red flag to the Government and the FSA to deliver official control laboratories, because the network in Scotland is creaking, and we are looking to join up the scientific services of the four official control labs. That point has still to be addressed.

That feeds into the question whether, if Scotland is going to have its own FSA, it is also going to have its own national reference laboratories or whether we will still use the laboratories in England. We still need to understand that—of course, such laboratories would also feed up to the European reference laboratories.

**Dr Simpson:** I have to say that I am finding it hard to reconcile the two views in the Association of Public Analysts Scotland paper. Over the past 10 or 12 years, the budget for public analysts has more than halved. You recommend the creation of a centralised national public analyst system instead of the system being under the control of local authorities, but local authorities themselves have said that they want to keep the individual bodies.

Professor Pennington has also pointed out that testing is going to produce a lot of negative results, and that things need to be focused. I am trying to get my head round the question of how much we should be doing on that, whether we should have a national system and Mr Beattie’s point about whether we need our own reference laboratories for everything or whether we should just rely on the UK national reference laboratories.

**Robbie Beattie:** Local testing is useful, but testing on a national scale will allow us to buy larger pieces of equipment and to employ DNA sequencing and all the other new techniques that are coming through, such as the use of isotopes to establish authenticity and provenance. That work cannot be funded at local authority level. As you pointed out, sampling has halved, and laboratories are finding things difficult now that their funding is drying up. They need to diversify, but they are scrabbling around for money.

The point is that you do not want an emergency to happen and no one to be there to respond to it. We need a continual supply of work to keep up capacity and expertise and ensure that public analysts can respond to emergencies. The need to keep things ticking over is one rationale for having a national service.

The FSA is trying to pump-prime things by putting in moneys from its co-ordinated food sampling programme. However, the agency is also looking at feed, and none of the local authorities that I work with actually submitted any samples in that respect. In fact, they would not even take the free money that the agency was providing for that purpose, because the trading standards service did not have the capacity to deliver those samples.

Another issue is the reduction in the number of local authority officers on the ground who take samples, which means that that aspect is also being diluted. There are a lot of competing pressures, and a small local authority lab is going to be in a David-and-Goliath situation if it tries to keep on top of huge multinational companies such as Nestlé and Cadbury.

**The Convener:** Does anyone have any comment to make on the back of that?

**Dr Pravinkumar:** A proportionate risk-based approach should be taken, and access to specialist testing is absolutely crucial to prevent any negative impact when an outbreak happens that requires the rapid response that people expect.

**Professor Pennington:** From a microbiological point of view, I point out that, for a long time now, we have had reference labs in Scotland for organisms such as E coli 0157. Those labs, which sit outwith the Food Standards Agency, work well, but the proposed new agency needs to keep a very sharp eye on their funding, because they provide a national service. The slight bee in my bonnet that I have always had is that they should not only provide a reference and typing service in relation to organisms that have been isolated in hospital laboratories, but have a research function of their own. Indeed, it is quite wrong for a reference laboratory not to have such a function.

The point has been well made that the costs of providing services such as DNA sequencing have increased. The costs are coming down, but they are not yet at the level where they can be ignored and not be seen as substantial. I would expect the new agency to look at that issue as soon as it begins work and to ensure that an appropriate service is provided across Scotland—and that, if it does not think that such a service is being provided, it will say as much to the appropriate bodies.

**Aileen McLeod (South Scotland) (SNP):** My question is about research funding. Scottish research is well renowned for its excellence, and Scotland will continue to attract research funding and to participate in international research collaborations, regardless of what happens following the referendum on independence in September.
What opportunities will the new body have to lever in other sources of research funding, such as funds from the EU’s new horizon 2020 programme? One of the grand societal challenges that horizon 2020 seeks to address is around how we ensure sustainable food and feed security and safety.

Will food standards Scotland have a crucial role in identifying areas for future research around diet, nutrition and obesity, which we have already discussed, working with key partners in academia, on the industry side and among other research institutes? The key issue is around the other sources of EU funding that we could lever in.

Professor Morgan: I agree with you entirely: Scotland is one of the best places in the world to do research and it always punches above its weight. It exploits funding from the European Union very well, and I can see great opportunities for Scotland coming through the horizon 2020 funding. The lead for that research will come primarily from academics. I would not argue that the new body should co-ordinate research, but it should have a definite role in trying to influence what research is done. That is where we would need to have a forum in which food standards Scotland could have an influence on the sort of research that should be taken up. That would influence the academics with regard to the funding that they may seek, within Europe or elsewhere.

If there is support for research from industry or Government, that makes research applications even more compelling. That is how it will work. If food standards Scotland can present its ideas and take them through some forum in which they can influence the direction of research—in Scotland or beyond—that will be very good. It will certainly be helpful in focusing academics on what they view as the key priorities.

Nanette Milne (North East Scotland) (Con): Professor Pennington has mentioned the functions of the FSS board a number of times. We have heard comments from the Royal Society of Edinburgh, in particular, about the size of the board and the suggestion that the minimum number of three members is not enough. What are the witnesses’ views about the size of the board, and who should be on it?

Professor Pennington: I chaired the RSE committee that came up with the recommendations. We felt strongly that the minimum size was a bit on the small side for the board, although we did not want it to be too large.

The board will not necessarily be representative, but it will have a fundamental representative nature, with people coming from completely different areas of expertise and background knowledge, representing consumer interests and so on. We thought that three was a bit on the small side for getting those interests represented on the board, considering what the board members could contribute to the way in which the organisation runs. Our concern was to have that breadth.

There is an incredible array of problems to address. Some of them are much more simple to resolve. We have done quite well with regard to some of the microbiological problems, including Salmonella enteritidis; we have a vaccination programme for chickens, which works quite well. However, with some of the other bugs that I am interested in we are not better off than we were 10 years ago in relation to the levels of human infection. Some of the infections concerned are very serious. There are some incredible problems around nutrition, too, involving poor or inadequate diets, as well as the superabundance of food.

There are some connections between those problems, but many of the links are not straightforward when it comes to finding answers. That is why we feel that, philosophically, it would be much wiser to have a larger board than a smaller one.

Nanette Milne: What about membership of the board?

Professor Pennington: The individuals will represent those particular areas of expertise and their personal qualities will be important. They will have to have shown already that they are able to fight their corner, to put it crudely, with regard to influencing nutritional policy.

One important issue that arose when I was on the Scottish Food Advisory Committee was how we could persuade the public to act on something that everyone—even the public—knows is good but which no one is doing anything about. That is a common interest. One example is obesity, as everyone knows that being overweight is not good for your health, and another is the need for people to wash their hands. How can we persuade people not to eat too much and to wash their hands? That can be difficult, so we need members on the board with the wisdom to communicate such things to the public in an effective way that delivers. Otherwise, the body will just be a talking shop.

Nanette Milne: Should there be any industry representation on the board?

Professor Pennington: I do not think that industry is all bad, but there would be an issue with the body’s credibility if it was seen to be getting close to industry, even if it was doing so for the best reasons. One must remember that many parts of industry do not want to have food problems associated with their products. I have had heads of big supermarkets speaking to me just before a board meeting that is held in public

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about the problem that they have had with an outbreak. They are desperate, because they do not want their brand to be destroyed or damaged by that sort of thing. They have a vested interest in protecting their business rather than necessarily in protecting public health.

I do not think that having board members who are clearly associated with industry would be a particularly good idea. That is not to say that we might not have senior officers on the board who have substantial industry experience, but we should not have people with current experience.

**Robbie Beattie:** Hugh Pennington has just said that brands are desperate to try to hide what they may have uncovered themselves in order to protect their brand. Does that not run counter to the idea of the industry looking after its own testing?

**Professor Morgan:** I am slightly more catholic in my views. I certainly agree with Hugh Pennington on the size of the board. The membership must be greater than three, because we need appropriate representation in the new body of the key elements of what goes on, but the board must not be so large that it cannot take decisions.

With regard to representation, I feel strongly that the food industry, although it is lambasted for a lot of health problems, is the vehicle for improving public health. It is important that we engage with the industry to achieve that aim. I do not think that a single member from the industry would be able to subvert the whole board. In my view, we should engage with industry and have a member on the board, because that will be a positive statement to the industry that it can have an influence but not the sole say.

**Professor Bain:** I agree with what has been said, as it certainly makes sense. I agree that three would be too small a number, but we do not want the board to be too big because it would—from my experience of sitting on boards—become unmanageable.

Returning to our earlier discussion about the opportunities that relate to broader public health, the agency needs to move beyond health protection issues to address the nutrition and obesity agenda for Scotland, and link in with health inequalities. There is potential for the body to make a big difference through some of the work that it might focus on.

That leads us to suggest that there should be someone on the board with a strong public health background who can bring that experience to the agenda by identifying not just the obvious opportunities, but some of the less obvious ones to improve Scotland’s health and reduce inequalities.

**Professor Pennington:** The Glasgow effect is something that we do not talk about very much, because it does not fill us with any great pride. I would like to see someone on the board who has experience of that kind of complicated issue—someone with that particular expertise. That should be a public health person who sees across the piece and sees how difficult the issues are, and how they clearly relate to other health issues.

We heard that the new body should have a very strong relationship with health because many of the issues, such as alcohol policy, overlap with health. I think that the RSE said that we should look at whether the new body should have input into that; it is bound to have an input in terms of fraud, because of the fraudulent sale of things such as vodka.

I agree that the public interest is crucial, as is a focus on the particularly Scottish problem, which I call the Glasgow effect. That is unfair to Glasgow, but I lived in Glasgow for 10 years and I know what the problem is. It is still there, and it is still writ large.

**Richard Lyle:** Willie Hamilton and Professor Pennington covered in part the issue of food fraud. What sanctions should there be for food fraud? Would you like to see more sanctions for food law offences, Mr Hamilton?

**William Hamilton:** Yes—again, I paint myself as a rather draconian enforcer here. Over a number of years, I have been pressing for a slightly more user-friendly regime of fixed penalties, which is a quick and easy method of approaching enforcement.

You mentioned food fraud. The only recourse that we have, even to relatively low-grade food fraud—a lot of it is very low grade—is prosecution. We have big problems with prosecution because the court system just does not support it. We suffer probably more than most, because we do not have the critical mass that would enable the court system to work in our favour.

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. Any funds that were raised would go to a central pot, so it would not be seen as a money-making exercise for councils. That is the way to go. The system should not be draconian; it should be preventative.

The majority of food fraud that we encounter in Glasgow concerns the substitution of meat and fish. It is done on a relatively low scale, primarily to save money. It is food fraud—of course it is—but is not in the same league as the horsemeat issue
that we saw last year. It does not justify pursuing cases through the court and criminalising individuals, small butchers—very often in the ethnic community—and restaurants that substitute beef for lamb or whiting for haddock.

There is a need for a more streamlined, non-criminal sanctions regime, which would benefit us all, including the industry to a great extent. The industry calls for a level playing field, and we could deliver that better with a slightly more flexible system.

**Professor Pennington:** I have experience of a butcher who killed some people with his bad meat. He was also selling what he said was Welsh lamb but was actually New Zealand mutton, but he was not prosecuted; that was an incidental thing. I agree that we need a better way of sorting out the fraud problem, which is probably quite common.

Such fraud is not like the horsemeat problem, in the sense that it would immediately come up if we started testing on the basis of intelligence; it is a small thing, but perhaps quite common. Of course, one must remember the Shetland fish issue, which was on a grand scale, but that clearly needed forensic accountants rather than anybody else to bring the prosecution.

11:00

**Richard Lyle:** In your experience, Mr Hamilton, what is the average fine when something is found to be wrong in someone’s premises?

**William Hamilton:** I am probably not the best person to ask, because my authority's policy is largely to avoid prosecution, for the simple reason that it has become incredibly ineffective. For example, we have one case for food hygiene offences that has been pending for well over two years. We have not heard a thing about it for several months, and it might not even come to court now—it has rather disappeared into a hole in the ground. We do not see that as an effective method of enforcing food law and protecting public health. I understand that the public might require or request prosecution to happen, but it is not really in our best interests, and I do not think that it is in the public’s best interests, for that to be the main thrust of our actions. I am sorry, but I do not know what the average fine would be these days.

**Richard Lyle:** Would you welcome any changes that would prevent the frustrations that you sometimes feel?

**William Hamilton:** Very much so. There are certainly measures in the bill that will deliver that.

**Bob Doris:** I have a brief question that relates to my colleague Richard Lyle’s line of questioning. Mr Hamilton has given useful evidence in relation to the need for fixed-penalty notices in the bill. He has given a fairly strong reason why they should go to a central pot rather than back to the local authority, which is so that there are no conflicts.

My question is for Mr Hamilton, as he is involved in enforcement. I must admit that I know very little about the use of fixed-penalty notices, but if a family-run fish and chip shop, which is the business’s only outlet, is found to be substituting whiting for haddock and is given a fixed-penalty notice, the burden of that notice would be far greater than the burden for a business with a chain of 20 outlets across west central Scotland, which might have been caught doing that in only one of its outlets. Can fixed-penalty notices take account of the scale of the business network, or would there be a disproportionate effect on smaller retailers, producers and outlets? I wonder whether that has been done before. It is always dangerous to ask a question when you do not have a clue what the answer will be. I would want to ensure that the measure would have a proportionate effect on the industry.

**William Hamilton:** There are existing schemes under legislation such as the Environmental Protection Act 1990, which enables local authorities to serve notices. To be truthful, little consideration is given to the capability of businesses to cope with the costs. If a fixed-penalty regime or anything of that sort were to be introduced in food law, it would certainly have to be robust. Local authorities would have to be called to account and would have to demonstrate transparency, accountability and proportionality. There would also need to be a clear code of practice to cover the means by which notices would be served. Perhaps there would be a sliding scale for the level of fines. I certainly take on board the point that there is potential for such a system to be disproportionately punitive.

**Bob Doris:** I am not saying that there should not be fixed penalties—I am just trying to work out what the impact would be for various businesses. Your answer has been helpful.

**Robbie Beattie:** A review is happening in Europe just now of, to use the jargon, regulation 882/2004, on official controls and funding of them. At one stage, the review talks about taking action only with businesses that are over €1 million in size. It also talks about the number of employees in the business. If, say, the limit is 20 employees, what if there are two people in the kitchen who do not comply? Alternatively, if it is a hotel, would all the cleaners be included? I presume that the lawyers have looked at the bill to ensure that it will not cut across what is coming out of Europe. Additional penalties and offences might come out of Europe through the review of regulation 882/2004.
Bob Doris: That is a new one on me, so thank you for giving me that information.

The Convener: The committee has been out and about hearing evidence, and we had an evidence session last week and are having one this week. There are lots of opportunities in the bill, but I am still a bit uncertain about what the outcomes will be, particularly when I hear the evidence that we just heard that lots of powers and regulations will still come out of Europe—that is not going to change.

Powers of inspection lie with local authorities, but we do not know whether that will change. I heard yesterday from a local meeting that local authorities and health and social care partnerships are worrying about whether the health service or the local authorities will carry the health message. We heard evidence last week that the labelling regime, over which we already have powers that have not been used, could be slightly different.

As I asked last week, what is the point? What will the bill’s outcomes be? Will the bill help us to tackle obesity, for example? Will it give us a new focus on E coli and other Scottish health problems? I want someone to tell me that the bill will make things better.

Professor Pennington: Can I give you a simple answer? The proof of the pudding will be in the eating. It will depend entirely on how well the new body works. In essence, it will be very similar to what we have already. The body will have a few more powers here and there and will be able to take a few more powers here and there, too. However, at the end of the day, it will be down to how well the body works. The composition of the board will be very important. We need to get the right people on the board to get the message across and sound a drum whenever necessary.

There are other big issues that are not and could not be addressed in the bill, such as local authority funding. Enforcement is done by local authorities, and the new body will have a role in ensuring that they are doing their work properly. However, it will be dependent on an enormous extent on how other people are comporting themselves. That issue is of critical importance. The same applies to the public analysts. We need to have a system across the country that is fit for purpose, and the new body will have a big role in keeping that going. That is why it is important that the body has very good, robust relationships with the Scottish Government so that if it sees a problem, it can appraise the Government of it, even if it is a problem that the body itself cannot do anything about. For example, it can raise the issue of ensuring that we have the right enforcement structure and that local authorities are appropriately funded and have the appropriate numbers of staff.

I gave evidence to a Welsh Assembly committee on the back of the public inquiry that I did on the South Wales E coli outbreak. I raised the question of local authorities and enforcement because there were problems with that. There were problems in other areas throughout the system, including the meat hygiene service and the procurement of food by the education authorities.

There are major opportunities for the board of the new body, but there are also major hazards. If the body does not have the right board calling the shots in the right way, the right level of funding and the right level of support from Government, we will not be as good as we are at the moment. I will leave it on that slightly negative yet positive note, in the sense that there is a way forward.

The Convener: I think that we all agree that to have the opportunity we need a new body.

We have reached the end of this evidence session. We have the witnesses’ written evidence, but if you feel that there are other areas that we could have touched on this morning, you have the opportunity now to leave us with a last thought. If you are on your way home and something comes to mind that you feel that the committee needs to take into consideration, please email us. Robbie Beattie has a last word.

Robbie Beattie: It is a follow-up to what Hugh Pennington just said. You are asking the new food body to do more with less. It can be seen from the budget that you are depending on FSA UK putting some money back up to Aberdeen. There are a lot of imponderables there and you are asking the new body to do more. The challenge is how to do more with less. Is that possible, or does the new body need to be funded adequately to do the job?

The Convener: We will examine that in future evidence sessions. Thank you for your attendance and the time that you have given us this morning, which is very much appreciated.

11:10
Meeting suspended.
The Scottish Grocers’ Federation (SGF) is the only national trade association for Scotland’s convenience store sector. SGF has 2,000 members in a sector that employs 40,000 people and contributes some £3.2 billion to Scotland’s economy. Our central aim is to ensure that key policy and decision makers understand how to improve the trading environment to allow for continuing investment, job creation and development by convenience store retailers.

SGF welcome the opportunity to respond to the Committee’s Stage 1 call for evidence on the Food (Scotland) Bill. In 2013 SGF responded to the Healthier Scotland Consultation - the Scottish Government’s consultation on creating a new stand-alone body in Scotland for food safety and standards, feed safety and standards, nutrition, food labeling, and meat inspection policy and operational delivery. These devolved functions are currently carried out in Scotland by the UK-wide Food Standards Agency (FSA), which is accountable to all four Parliaments/Assemblies in the UK. We note that the new body would be a non-Ministerial department accountable to Parliament rather than a Minister and that the new body will carry out all the functions currently delivered by the FSA in Scotland.

General Principles of the Bill: the merits of creating a separate Scottish food body.

It is clear that the existence of a separate Scottish food body and a food body for the rest of the UK creates a risk that decisions taken and advice given by one body could conflict, contradict or undermine the decisions and advice from the other. It is quite possible that the bodies could reach different decisions on what action retailers should take in removing products from the shelves. This would have serious consequences for both businesses and consumers. We would urge the Committee to consider this risk extremely seriously and to ensure that Ministers provide clarity on this important issue.

Overall, as the Committee will be aware, the majority of legislation and controls on food emanate from the EU – for Scottish businesses the main decisions that impact on them will continue to be taken at the EU level where it is the UK and not Scotland that is recognised as being the member state. Businesses urgently need clarity on whether or not FSA UK will continue to represent all the nations of the UK (and therefore continue to represent Scottish businesses) on developing food regulations in the EU. Again we would ask the Committee to ensure that Scottish Ministers provide a clear and unambiguous explanation of how the new Scottish food body will articulate with the institutions of the EU.

Food Information

Section 15b of the Bill creates a new power for authorised officers to issue a notice to detain food which contravenes food information law.
We do not support this power as currently drafted. In our view it leaves retailers with no ability to challenge the actions and decisions of the enforcing officer if they ordered products to be removed from sale. It is our understanding that in the rest of the UK, the regulatory framework allows for a suspension of a removal notice whilst a review of the evidence is undertaken. This is a considerably more balanced and proportionate approach. Any summary removal of products from the shelves based on the decision of an individual enforcing officer without regard to the opinions of other enforcing authorities and agencies carries a high risk of unfairly punishing retailers.

There must be a provision to enable a retailer to make reasonable challenge to the original notice, with enforcement action being suspended until the issue is reviewed and resolved. Another potential check and balance would be to ensure that these provisions be considered within the scope of the new Primary Authority partnerships arrangements which are provided for under the Regulatory Reform (Scotland) Act 2014.

**Administrative Sanctions (Part 3)**

Within the context of the Bill, we do not support the imposition of fixed penalty notices for non-compliance and/or infringement of the terms of Bill. Compliance should be based on partnership, advice and guidance. In this instance fixed penalties will compromises (and indeed reverse) the innocent-until-proven-guilty principle and transfers the burden of proof from the enforcement authority to the retailer.

A business or individual retailer accused of a breach of regulation should be able to defend themselves legally. Again Primary Authority would provide an effective check and balance on any enforcement action and would also ensure consistency across the 32 local authorities in Scotland. Many of our members have premises in more than one local authority area; indeed several of our members operate in every local authority area in Scotland - the lack of consistency at local authority level is one of the key issues they face. Inevitably this results in a great deal of time and resource being consumed to ensure compliance.

**The Scottish Grocers’ Federation**  
May 2014
Food (Scotland) Bill

Soil Association Scotland

About the respondent organisation

Soil Association Scotland is the Scottish office of the Soil Association, the UK’s leading membership charity campaigning for healthy, humane and sustainable food, farming and land use.¹ The Soil Association was founded in 1946 by a group of farmers, scientists and nutritionists who observed a direct connection between farming practice and plant, animal, human and environmental health.

We are pleased to be able to provide the following response to Food (Scotland) Bill - Call for Evidence. We welcome the Bill as a positive step forward for the creation of the new body, Food Standards Scotland and would be pleased to provide further evidence (including oral) should the Committee request.

Merits of creating a stand-alone body and proposed administrative and arrangements for FSS

We believe that creating a single Scottish non-ministerial office body with clear responsibility for food standards, safety and nutrition is the correct model to ensure independence, transparency, accountability and efficiency for FSS.

Scope of the objectives and functions of FSS

We welcome the proposal that FSS will have a legislative remit to develop policy work around diet and nutrition, and recognition by the Bill of the need for effective engagement between FSS and public health agencies. We also think it is sensible to wait until the body has been created before possibly widening FSS’s remit to include more involvement in other areas such as animal health, drinking water and organic labelling², and that consultations will be sought prior to any decisions being made. [Responsibility for organic labelling sits with Defra and is controlled by EU legislation.]³

¹ Soil Association Scotland: [http://www.soilassociation.org/scotland](http://www.soilassociation.org/scotland)
³ Organic food production within the EU is strictly regulated and EU rules apply to the organic production and to the labelling and control of organic products. The Department for Environment, Food and Rural Affairs (Defra) is the authority responsible for all organic regulations in the UK. All farmers, growers, food processors, storage providers and/or importers of organic food from a non-EU
We particularly welcome the inclusion of sustainable development. However, we believe that for FSS to be successful in delivering its objectives, that a much more progressive policy climate is required going forward. The Scottish Government needs to take the lead in setting target-driven policies which link food, health and sustainability, and provide clear terms of reference for FSS to effectively operate in.

Our food system in Scotland, the UK and globally is increasingly complicated with many stages required to get food to where it needs to be. This industrialising process has brought with it economies of scale and opportunities for a wide diversity of food. However, the end result after decades of specialising at a macro level is depressing, with environmental, social and economic effects indicating system failure, from biodiversity loss and climate change to obesity.

Changing the way we produce and consume food, cutting its environmental impact and reducing food poverty and health inequalities are an enormous challenge. But it need not cost lots of money to rise to this responsibility. Many changes could be made by refreshing and refocusing existing policies and setting firm targets for the production and consumption of sustainable and healthy food and ensuring these targets are shared across key Government departments and agencies for food, health, education, procurement and sustainability.

This is of particular relevance to the proposal in the Bill “The scope of FSS is to be significantly widened through the creation of the new objective on diet.” Food production and consumption has a huge impact on our daily lives, including directly on:

Our health and well-being, and therefore on costs to individuals and to society. Diet related diseases are debilitating and expensive.

- Diabetes affects 1 in 20 people in Scotland.
- In 2010, over a quarter of adults in Scotland were obese.
- By 2030, the cost of obesity to Scotland (both direct and indirect costs) is estimated to be between £0.9-3 billion with adult obesity predicted to rise to 40%.

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country must be registered with a licensed organic control body (CB). Defra is responsible for the licensing and control of all CBs in the UK.
Our environmental challenges:

- biodiversity loss
- soil and water pollution
- climate change - globally, food production, distribution and consumption is estimated to account for one third of human-caused global warming effect.
- Our local economies, particularly in fragile farming areas, and on SMEs.
- Our landscape and our culture must to be looked after to support our valuable tourist industry, and ensure it is a place accessible and amenable for the people of Scotland.

It is important that the new body provides information to the public not just on public health, but also including well researched, environmentally sustainable diets. We need to take a long term view of our food system: the health of individuals and planet are linked.

Proposed powers of FSS and likely efficacy of the new provisions

We welcome measures which drive up hygiene standards, reduce the incidence of food-borne disease and safeguard food standards against fraud. But this is only half the equation. Aligned to statutory powers, FSS should also encourage and support food systems and schemes, especially for public procurement, which help provide greater assurance of the provenance and traceability of food whilst also delivering environmental benefits.

For example, organic food certification confers legal status which assures a product’s origin and quality with high environmental and animal welfare standards and no GMOs. France, Sweden, Denmark and The Netherlands are just some of the European countries that have set organic food procurement targets for their schools, hospitals and other public institutions in recognition of the public health and sustainability benefits of organic food. [The Soil Association has produced a report about the benefits of organic food and farming, which has been agreed by the Committee of Advertising Practice (CAP) Copy Advice Team.]

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4 Soil Association: What you can say when selling organic food (2013): http://www.soilassociation.org/LinkClick.aspx?fileticket=ud1b0Fu7V_q%3d&tabid=109
Example: procurement of healthy and sustainable food

The Scottish Government Policy Memorandum for the Procurement Reform (Scotland) Bill states that “there is an increasing number of good examples of how food is being sustainably procured and it is intended that the Bill will drive consistency of this approach across the public sector in Scotland.”

The Food for Life Catering Mark is an example of a certification scheme for the procurement and communication of healthy and sustainable food by public and private catering services. The Catering Mark encourages caterers to make step by step progress towards using more local, free range, fair trade and organic ingredients, and produce healthier and more sustainable menus.

There are currently 21 Catering Mark award holders in Scotland including 9 local authorities (one in three of all Scottish primary schools serve Food for Life Catering Mark certified meals), universities and health-care providers.

Given FSS’s proposed enhanced role for developing policy, the new body could play a game-changing role in encouraging more Scottish public institutions including hospitals to adopt sustainable food strategies, which deliver clear public health, environmental and socio-economic objectives for achieving the Scottish Government’s National Outcomes.

Example: consumer education and dietary advice
Swedish case study on healthy and environmentally friendly food guidance

Sweden’s National Food Administration (NFA) provides an excellent example of how it has worked with other public agencies to deliver evidence-based consumer education for healthy and sustainable food. The Swedish NFA’s three areas of responsibility are safe food, fair practices in food trade and good eating habits focused on consumer education. Since 2006 the NFA has been given sector responsibility for work on environmental

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5 Scottish Parliament: [http://www.scottish.parliament.uk/S4_Bills/Procurement%20Reform/b38s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Procurement%20Reform/b38s4-introd-pm.pdf)
6 Soil Association: [http://www.sacert.org/catering](http://www.sacert.org/catering)
7 Soil Association: [http://www.soilassociation.org/foodforlifescotland/cateringmark](http://www.soilassociation.org/foodforlifescotland/cateringmark)
8 Scottish Government: [http://www.scotland.gov.uk/About/Performance/scotPerforms/outcomes](http://www.scotland.gov.uk/About/Performance/scotPerforms/outcomes)
objectives within the area of food, they therefore play a role in working to achieve environmentally sustainable development.

The NFA has recognised the need to advise consumers on what food they should be eating to make environmentally-friendly choices. They identified environmental objectives affected by food production, including: reduced climate impact, a varied agricultural landscape and a non-toxic environment. Conclusions on what was ‘environmentally-friendly’ were then made regarding the effect of food production and consumption on these objectives.

Their advice combines these conclusions with recommendations on a healthy diet. Advice was drawn up for six groups of food: meat, fish and shellfish; fruits, berries vegetables and leguminous plants; potatoes, cereals and rice; dietary fat; and water.

- On meat the messages are clear: eat less, choose locally produced, grass-fed beef and lamb, and choose organic.
- On fish: eat fish from stable stocks, wild caught or sustainably farmed, look out for the labels to prove it – such as the Marine Stewardship Council and KRAV (the leading Swedish organic and sustainable standards organisation).
- On fruit and vegetables: choose local, seasonal and organic.
- And on potatoes, cereals and rice: choose local and organic, choose potatoes and cereals over rice.

The NFA’s aim was to translate complex messages into an ‘understandable and usable decision-making tool for the consumer standing in front of the shop shelf’. In doing so, they offer clear, concrete advice on what healthy, environmentally-friendly food choices are, from which the consumer can make better informed decisions.10

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10 Soil Association: Lazy Man of Europe [pg 9], 2011: http://www.soilassociation.org/LinkClick.aspx?fileticket=0DLNEXzSj%3d&tabid=1315
Example: city scale sustainable food initiatives from Scotland

Edible Edinburgh: An initiative which aims to develop Edinburgh as a sustainable food city. Governance structures are established through the Community Plan to the Edinburgh Partnership. Edible Edinburgh is part of the Sustainable Cities Food Network. Edinburgh Food for Life Partnership: An innovative partnership between NHS Lothian, The City of Edinburgh Council and The University of Edinburgh that aims to transform food culture in Scotland’s capital. This is strand of work connected to Edible Edinburgh focussing on public procurement.

Example: city scale sustainable food initiatives from Scandinavia

The Copenhagen House of Food: An independent, non-commercial foundation established by the City of Copenhagen in 2007 to improve the quality of meals offered by the City of Copenhagen to its citizens and to create a healthy, happy and sustainable public food culture.

Sustainable Food in Malmö: The city of Malmö has established ambitious targets concerning the environment and sustainability for the next 10-15 years. The goal of its leading policy on sustainable development and food is: all food purchased should be organic by 2020 and greenhouse gas emissions from food procurement should be reduced by 40% by 2020.

The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident)

Testing regimes are important in the enforcement armoury, but they are not the whole answer.

We need to ensure that we strengthen our supply chain assurance, so that scrutiny is the norm. Acknowledging and supporting schemes which encourage this will help. For example:

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11 Edible Edinburgh: http://www.edible-edinburgh.org/
12 Sustainable Cities Food Network: http://sustainablefoodcities.org/
13 Soil Association: http://www.soilassociation.org/foodforlifescotland/edinburghfoodforlife
15 City of Malmö: http://www.malmo.se/English/Sustainable-City-Development/Sustainable-food-in-Malmo.html

All website references accessed on 30 April 2014
Organic is a highly regulated food system. Any product sold as 'organic' must comply with strict rules assuring consumers they are buying genuine products that can be fully traceable back to the farm. Independent organic inspectors accredit every step of the supply chain, meaning buying organic offers consumers a more confident choice about the food they buy and eat. Organic supply chains are regularly inspected at every stage and the Soil Association provides rigorous certification standards, developed in partnership with experts across the country. We work closely with our licensees on their production and processing systems to maintain integrity and to ensure consumers are getting a true organic product.

The current and potential impact of the Food for Life Catering Mark in the foodservice sector (now used in 1 in 3 primary schools in Scotland). UK farm assurance such as QMS is mandatory for all meat products, and this system provides an independent annual inspection, as well as encouraging caterers to make step by step progress towards using more local, free range, fairtrade and organic ingredients, and producing healthier and more sustainable menus.

Soil Association Scotland
May 2014
Food (Scotland) Bill

Soil Association Scotland, June 2014

1. Merits of creating a stand-alone body
Soil Association Scotland believes that creating a single Scottish non-ministerial office body with clear responsibility for food standards, safety and nutrition is the correct model to ensure independence, transparency, accountability and efficiency for FSS.

2. Scope of the objectives and functions of FSS
We welcome the proposal that FSS will have a legislative remit to develop policy work around diet, nutrition and sustainable development. Given FSS’s proposed enhanced remit for developing policy, the new body could play a game-changing role. However, we believe that for FSS to be successful in delivering its objectives, that a much more progressive policy climate is required going forward. The Scottish Government needs to take the lead in setting target-driven policies which link food, health and sustainability, and provide clear terms of reference for FSS to effectively operate in.

Aligned to this, we would like to see the role of food and the FSS built properly into the National Performance Framework (NPF) to reflect its importance in delivering the National Outcomes, especially for a healthier Scotland. (Diet and nutrition do not feature under the outcome or in the NPF.) We believe the following living examples provide an excellent starting point for exploring further how FSS might shape and promote transformational food policies, which deliver clear public health, environmental and socio-economic objectives for achieving Scotland’s National Outcomes.

- The Food for Life Catering Mark, a certification scheme for the procurement of healthy and sustainable food which encourages caterers to make step-by-step progress towards using more local, free range, fairtrade and organic ingredients, and produce healthier and more sustainable menus.
- Sustainable Food Cities, a city-scale community-based model which puts food at the heart of delivering health, environmental, economic and social objectives. The model (exemplified by Edible Edinburgh) encourages public, private and third sector organisations and local communities to work together to improve their food system and to use food as a catalyst to tackle local challenges around diet-related ill health, obesity, food poverty, and waste, biodiversity loss, climate change and social inclusion and cohesion.
- Sweden’s National Food Administration which provides an excellent example of how it works with other public agencies to develop and
promote evidence-based consumer education for healthy and sustainable food; the Swedish eat S.M.A.R.T.\textsuperscript{6} model which combines health and environment goals "without increasing costs"; and the City of Malmö\textsuperscript{7} which provides a model for translating sustainable development and food policy into practice.

3. Proposed powers of FSS and likely efficacy of the new provisions including prevention of food fraud

We welcome measures which drive up hygiene standards, reduce the incidence of food-borne disease and safeguard food standards against fraud. Testing regimes are important in the enforcement armoury, but they are not the whole answer. We need to ensure that we strengthen our supply chain assurance, so that scrutiny is the norm. Acknowledging and supporting schemes which encourage this will help. For example:

- Organic food certification a highly regulated and inspected system, which confers legal status and assures consumers of a product's origin and quality with high environmental and animal welfare standards and no GMOs.
- Food for Life Catering Mark (now used in 1 in 3 Scottish primary schools). UK farm assurance such as QMS is mandatory for all meat products, and this provides an independent annual inspection.

4. Independent expert advice

We need to ensure that Scotland does not become isolated from relevant work on nutrition and food safety that is happening in the rest of the UK, and beyond. There are a number of existing advisory committees, which we should be able to tap into rather than replicate, and ensure good communication and use of resources. We should also seek representation on these committees, or have an appointed person to identify Scottish needs on these committees. There should also be flexibility for convening working groups on specific issues, able to deliver fast responses to issues that need expert input, for which a register of expertise could be drawn-up.

References

\begin{itemize}
\item Scottish Government: National Performance Framework: \url{http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome/healthier}
\item Soil Association: \url{http://www.sacert.org/catering}
\item Sustainable Food Cities: \url{http://sustainablefoodcities.org/keyissues}
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\item National Food Agency: \url{http://www.slv.se/en-gb/Group2/About-us/What-we-do/}
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Food (Scotland) Bill

UNISON Scotland

INTRODUCTION

UNISON is Scotland’s largest trade union representing over 155,000 members working in the public sector. UNISON represents the operational workforce of the Food Standards Agency (FSA) – predominantly meat inspectors and vets working in abattoirs and meat plants. We also represent Local Government Environmental Health Officers, who are involved with the inspection of food premises and undertake food sampling and educational and advice services across Scotland.

UNISON Scotland welcomes the opportunity to respond to the Committee’s call for evidence on the Food (Scotland) Bill.

GENERAL COMMENTS

UNISON Scotland broadly welcomes the main provision of the Bill to establish Food Standards Scotland (FSS) and amend the law in relation to food.

In this response we will set out a range of concerns over the current arrangements for food safety in Scotland in the context of developing EU regulation, before addressing the specific provisions in the Bill.

UNISON members in the FSA are facing a huge number of challenges as they work to protect the public from contaminated meat and unscrupulous practice in the meat industry. Unfortunately, we believe that some of these challenges are as a result of policies put in place by the current Food Standards Agency.

The creation of a new Food Body for Scotland offers the Scottish Government the opportunity to end the dominance of the Food Business Operators (FBOs) in lobbying for lighter regulation of the food industry and to establish lines of accountability to ensure that robust independent regulation is established and enforced across Scotland.

Scottish meat is a highly regarded brand across the world. UNISON believes that to be able to sell Scottish meat as a robustly regulated product, could even further enhance the brand. At present it is most unusual for any food producers to be investigated and even less likely, to be prosecuted, in a mistaken view that this would damage the brand. In our view it is not possible to have a high quality brand with low quality standards of inspection.

We believe that the new body must ensure that its aim is to protect the consumer and uphold high standards of animal welfare. The only way to ensure these two criteria are met is to move to a wholly provided state delivered service. Meat inspectors and official veterinarians working in approved premises must be truly independent state officials so that they can deliver consumer protection and protect animal welfare with total autonomy.
from the influence of the meat industry and with the full support of FSS. History tells us that the meat industry will only protect the consumer if it is forced to do so. For example, a report into the pig slaughtering industry states that in abattoirs, “The present design is dictated primarily by a desire for ever higher speed/throughput and cost reduction but, to date their actual microbiological effects may appear as a secondary criterion”. This is after six years of having in place a hygiene package that passed more responsibility on to the food business operators. Pig suppliers and the British FSA want to introduce visual inspections, instead of cutting the animals open to check for sickness or diseases. A no-knife policy cannot guarantee the animals are safe for consumption and will not guarantee that abscesses and other pathology the consumer would not regard to be meat will find its way into sausages, pies and other meat products.

Since 2006 the responsibility for ensuring only clean livestock were slaughtered was transferred from officials of the Meat Hygiene Service (MHS), to the slaughterhouse Food Business Operators. The enforcement of the “Clean Livestock Policy”, one of the key recommendations of the first Pennington Report, which followed the E.coli outbreak in Scotland in the late nineties, had until that time been the responsibility of MHS official Meat Hygiene Inspectors (MHI) and Official Veterinarians (OV). Surveys of Meat Hygiene Service OVs and MHIIs reveal that this and other changes created by the implementation of the 2006 regulations has left officials less sure of their role and in less control of hygiene in UK abattoirs. Our members report that the general level of faecal contamination in many slaughterhouses is high and has deteriorated under the new regulations. The new FSS should ensure the immediate re-instatement of the clean livestock policy under the control of state employed officials.

The highest level of consumer protection will only be achieved by moving to a wholly state-employed workforce which includes the Official Veterinarians and the Meat Hygiene Inspectors. Any move away from this system would potentially leave the door open for pressure to be applied from very powerful trade bodies to lobby for a relaxation of controls, which, in our members experience would lead to a drop in standards. The livestock and meat industry is a key component of the Scottish economy; the consequences of getting the delivery of meat inspection services wrong could have a very negative impact on the whole economy, in addition to very serious implications for the public. There is a very real threat that we could once again be faced with a food safety problem on the scale of the Wishaw or South Wales E.coli outbreaks if hygiene standards are not maintained and enforced.

Workers in slaughterhouses and food suppliers would not be able to carry out thorough inspections if an even lighter touch regulation was introduced. They would be compromised as their employers would expect them to follow the policies they wanted to introduce, such as quicker throughput to increase profits. Already training for slaughterhouse staff has been cut and only qualified, independent inspectors can guarantee good quality meat and meat products.
In addition, any move to a separate system to deliver meat inspection in Scotland must be adequately resourced. There has been a move to a ‘control body system’ of delivery in the Netherlands which our connections in Europe tell us has been unsuccessful, resulting in falling standards and in some cases employees without the necessary qualifications performing the official function. We must be very clear that failures made at this, the very foundation of the food chain, will force the rest of the food industry to work with products that could potentially result in tragic circumstances.

The other key food safety enforcement organisations in Scotland are local authorities. UNISON has surveyed its Environmental Health Officer (EHO) members on the effect the cuts in local government were having on the services they provide. These surveys show a reduction in the numbers of EHO's in Scotland and a corresponding reduction in food sampling, inspections and other food safety work. These cuts affect our members ability to be able to react to any public health emergencies and equally important, undermines essential preventative and educational work. This reinforces the importance of strong regulation from FSS.

There was a suggestion in the original consultation that services might be transferred from local democratic accountability to FSS. We remain of the view that the further centralisation of public services is the wrong approach. We note the Bill includes a duty to monitor the performance of enforcement authorities in enforcing food legislation.

RESPONSE TO SPECIFIC QUESTIONS

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements.

We support the establishment of a stand-alone body. The UK FSA has been complicit in the development of light touch regulation in the industry to the detriment of the industry and the consumer. A stand-alone body will enable Scottish Ministers, under the scrutiny of the Scottish Parliament to set a new direction in Scotland as we suggest above.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development.

While the Bill reasonably leaves these matters fairly open in order to allow flexibility, we would urge the committee to look at setting explicit duties. In particular, that the primary duty of the FSS is to protect the consumer and promote public health - not the profitability of the food producers.

3. The proposed administrative and governance arrangements for the FSS.

The governance arrangements are not set out in any detail in the Bill. We would wish to see a specific duty of staff governance in similar terms to those applying to NHS Scotland. This should include trade union representation on the FSS board.
There are no provisions in the Bill for staff transfer. These are only referred to in the financial memorandum, which is inadequate and contrary to the Cabinet Office guidelines referred to in the memorandum. We agree that field staff should remain members of the LGPS. However, it appears from the financial memorandum that FSS will be an admitted body to an English fund and therefore come under the English LGPS. Other public service staff in Scotland who are members of the LGPS belong to the separate Scottish LGPS.

The provisions in s13(2) should not allow for the delegation of inspection and enforcement functions to contractors. Particularly those connected to the food industry.

4. The proposed powers of the FSS and compliance

There are extensive powers to ensure food safety in Scotland. The problem is the lack of resources to support preventative work and enforcement. In addition a culture of light touch regulation has been allowed to develop with the interests of food producers coming before the interests of consumers. This has been reinforced by light touch regulation emanating from the European Union. We would strongly urge the committee to ensure that Scotland adopts a different approach.

The creation of a mandatory food hygiene information scheme in Scotland is welcome. However, such a scheme is simply cosmetic if local authorities do not have the resources to properly carry out their functions.

CONCLUSION

UNISON Scotland believes that the primary role of FSS should be to protect the public - not serving industry and be a wholly and directly provided public service. It must be adequately resourced and remain properly independent of industry. This means that it must have sufficient autonomy from major industry players and trade associations.

UNISON believes that the Horsemeat scandal if nothing else showed conclusively that strong government regulation of the food industry is necessary to protect public health. Left to their own devices, rogue elements in the industry have readily put commercial gain above consumer safety.

UNISON Scotland
May 2014
Food (Scotland) Bill

Tesco Group

With a team of over 30,000 colleagues in Scotland, working in 206 stores, Tesco is Scotland’s leading grocery retailer. We are committed to supporting the Scottish food and drink sector and work with over 170 Scottish producers and provide them with a route to market within Scotland and our wider UK and international business. Last year sales of Scottish products totalled over £320m in Scottish stores and over £2.1bn in UK stores, and we are delighted that sales continue to rise year on year. Tesco is proud to be Scottish agriculture’s biggest customer and sell 100% fresh Scottish beef and chicken in our Scottish stores.

Across our business, wherever we operate, nothing matters more to us than our customers and providing them with safe food of the highest quality is what we do, day in and day out. We know that customers must have trust in their food and it is our job as the leading retailer to win and maintain that trust. The same is true for any government body which provides consumer advice on food safety and standards. We are therefore pleased that, in response to consultation, the Scottish Government has confirmed that Food Standards Scotland will be an independent, transparent body that issues evidence-based and consumer-focused advice.

As a retailer that operates across the UK, we support the Scottish Government’s acknowledgement that Food Standards Scotland will need to collaborate closely with the FSA. To ensure that FSS can make decisions and give advice based on the best available scientific evidence and analysis, we welcome confirmation from Scottish Government that FSS will work closely with FSA and will continue to contribute to and have access to UK-wide scientific committees. Maintaining close links with the FSA’s advisory committees will ensure that FSS policies, decisions and advice are based on the best available scientific evidence and analysis from across the UK, which will benefit Scottish consumers.

It will be important that, as the FSS establishes itself and its ways of working with the FSA, it works in partnership with the FSA and there is consistency in approach, communications and advice across the UK so that the supply chain and – most importantly consumers – do not receive conflicting, confusing information. As a retailer with operations across the UK and with 40 million transactions going through our tills each week, we believe we can play a positive role in supporting the FSS in this process. In addition, given that most food safety legislation sits at EU level, it will be important that the FSA and FSS work to ensure there is a clear, consistent message given on behalf of the UK when it is negotiating at EU level. We would welcome greater clarity on how this will work and where accountability will lie under the EU Competent Authority regime.

We agree with Scottish Government that FSS should not take on direct responsibility for food and health programmes currently maintained by NHS
Health Scotland and think it is right that any widening of the scope will need to be justified in terms of balancing the benefits to consumers and the overall costs of change, and that consumers and affected stakeholders will have an opportunity to comment on any proposals made. As and when the Scottish Government and FSS consider whether its scope can be widened beyond the current FSA Scotland’s remit, we would encourage the Scottish Government to engage with a wide range of stakeholders, including consumers, retailers and the supply chain, to ensure that any proposals will work for the best interest of consumers.

Tesco Group
Food (Scotland) Bill

Scottish Food and Drink Federation (SFDF)

The attached submission is made by the Scottish Food and Drink Federation (SFDF) in response to the Scottish Parliament’s Health and Sport Committee call for evidence under Stage 1 consideration of the Food (Scotland) Bill. We are a division of the Food and Drink Federation (FDF), the trade association for the food and drink manufacturing sector and as such our membership extends across companies registered and operating in Scotland and a wide range of companies including multinationals registered elsewhere which operate in Scotland. In this response we represent all of these views.

SFDF appreciates the importance of scrutinizing this Bill, as it is essential that the outcome creates an effective regulatory system that provides for consistent and proportionate regulation and enforcement - the best working environment for economic sustainable growth.

This is important as a successful food and drink manufacturing industry is a vital component of a healthy Scottish economy. In Scotland our industry has annual sales in the region of £10.4 billion, exports worth just £5 billion and employs 46,000 people.

In the UK, food and drink is the largest manufacturing sector accounting for 16% of the total manufacturing sector and turning over £76.7bn per annum; creating Gross Value Added (GVA) of £20.4bn and employing up to 400,000 people.

As a regulated industry, SFDF will continue to work constructively on behalf of members with a new Food Standards Scotland (FSS). We would stress, however, the importance of maintaining appropriate links on food regulation to ensure a consistent regulatory framework across the UK, thereby minimizing unnecessary burdens on companies. This is of particular importance for SMEs which make up the majority of the food manufacturing sector in Scotland.

Since the FSA Scotland (FSAS) was set up in 2000, as part of the Food Standards Agency (FSA), we have found FSAS and its officials credible, straightforward to work with and prepared to discuss the scientific reasoning behind decisions. Our experience of FSAS, as well as of FSA, has been of constructive working relations, even where there has been a difference of views. We look forward to continuing these relationships with the FSS.

A number of issues for the food and drink manufacturing industry have been identified. Some of these arise due to the nature of the industry which works across UK boundaries. Scottish based companies sell the majority of their products in the UK. Companies including global manufacturers based elsewhere sell their products in Scotland. Therefore two separate approaches could bring extra burdens and costs.
Issues for the food and drink manufacturing industry are:

- **Consistency of approach to enforcement** — a proportionate approach that is consistent across the UK. The FSS must have appropriate mechanisms in place for engagement with other bodies and committees throughout the UK;

- **Consistency of approach to regulation** — much of the legislation that relates to food and drink manufacturing emanates from the EU and it is important that there is consistency in implementation across the UK. The FSS in our view must ensure consistency of approach across the UK;

- **Voice for Scottish specific food and drink issues into Europe** — given that the UK is currently the Member State there needs to be a robust mechanism to ensure Scottish views are taken in to account. Where there is direct contact between the FSS and European bodies, this should reflect the needs of all the Scottish food and drink manufacturing industry and be open and transparent;

- **Access to scientific advice** — it is essential that the FSS has robust peer-reviewed evidence on which to base its decisions. Appropriate arrangements should be made to ensure that the FSS makes use and has access to all information from existing government advisory bodies and is represented on all relevant committees;

- **Management of potential conflict of interests** — an FSS with a broad remit could represent many diverse stakeholder groups. When incidents or issues arise which impact across these groups, there must be appropriate mechanisms in place for dealing with and managing any conflict issues;

- **Adequate resourcing** — it is vital that the FSS has the funds and other resources to deliver all aspects of its remit, retain experienced staff and be able to recruit or access expertise to fill skill gaps. This should be reviewed if and when FSS takes on any further responsibilities;

- **Independence** — the FSS must be independent and have credibility with all stakeholders in order to build and retain consumer confidence and thus industry’s reputation. The make-up of the Board is crucial for ensuring independence. There should be Members with appropriate knowledge of all stakeholders including industry and a full declaration of all interests;

- **Understanding of industry sector** — the FSS should have a structure that enables it to provide a service for all food and drink manufacturers. This includes indigenous companies with key brands, global players and SMEs many of which may have a strong heritage and potential to grow.
SFDF Response to Scottish Parliament’s Health and Sport Committee Call for Evidence under Stage 1 consideration of the Food (Scotland) Bill

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

Our members operate across the UK and the EU so it is important that there is at least a consistent UK-wide approach to food safety and co-ordination in response to EU food safety legislation. Consistent implementation of this legislation across the UK is also important. It is vital therefore that the views of companies based in or operating in Scotland are fully reflected in UK negotiating positions in Europe. **We believe that the most effective and robust way to achieve this consistency is for food safety to remain within a structure that has appropriate, effective links across the UK.**

It is vital that Scottish Government provides adequate resources to support a stand-alone body and mitigates any risks that the new structure may cause.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

SFDF has a very positive relationship with the FSAS across the breadth of its activities and would wish this to continue. Any expansion of scope needs to provide clear definable benefits that are evidence based. It would also be prudent to get the FSS set up to work efficiently based first on the current model before looking to extend the scope, in order to manage the learning curve of the team and ensure adequate resources for any additional responsibilities.

Any extension of its scope and remit beyond those of FSAS should not negatively impact the effectiveness of the current model. Therefore, any new responsibilities need to be properly costed and resourced. The ability to access and share resources, expertise and advice through the wider FSA UK model has been a key factor in the effectiveness of the FSAS and this needs to be retained.

*Diet and Nutrition*

The FSAS has fulfilled an important and influential role in Scotland in diet and nutrition in Scotland since inception. Dealing with the unacceptable levels of obesity in the population requires a multifaceted approach as detailed in the Obesity Action Plan. Given that this covers such areas as building design, physical activity and planning there needs to be overall government co-ordination and a joined up strategy based on solid
intervention and effect evidence, not opinion. Clearly FSS will have a contributory role.

It is 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. Any potential conflict of interest should be noted but this should not negate the work provided it is found to be robust.

Sustainable development and economic growth

In considering the scope and remit with respect to economic sustainable development, it is important to take into account the nature of the food and drink manufacturing industry. Companies that sell food products to consumers in Scotland are not all based in Scotland. Similarly, companies in Scotland sell their products to consumers in other parts of the UK and further afield. Sales to the rest of the UK are a vital part of the Scottish Government’s food and drink policy.

FSS should have a structure that enables it to provide a service for all food and drink manufacturers. This includes indigenous companies with key brands, global players and SMEs. SMEs play an important part in the Scottish context; ONS figures show that 64% of firms had 1-49 employees in 2011 and many of these have the potential to grow and contribute more to economic growth.

It is important that the service FSS provides is tailored appropriately, and minimizes costs and unnecessary bureaucracy. Links with the UK regulators are therefore paramount.

3. The proposed administrative and governance arrangements for the FSS

SFDF supports the FSS being at arm’s length from government and believes this is important for the delivery of Scottish Government’s aim to protect public health and maintain consumer confidence and trust. The make-up of the Board is crucial for ensuring independence. There should be Members with appropriate knowledge of stakeholders including industry and a full declaration of all interests.

4. The proposed powers of the FSS

Food Hygiene Information Scheme

SFDF does not agree that enabling powers should be made available at this time to provide regulations requiring the outcomes of official food inspections to be displayed by food business operators and requiring local authorities to participate in such schemes.
The Food Hygiene Information Scheme (FHIS) works by providing consumers with accessible information so they can make an informed choice on where to eat, thereby driving an improvement in hygiene standards at this type of business.

*New Enforcement Sanctions*

SFDF does not support the proposals to create new enforcement sanctions. We are concerned about the risk of inconsistencies in enforcement across local authority areas and the additional uncertainties and burdens that these would generate for businesses. There is a whole spectrum of contraventions from minor to major and there needs to be a proportionate approach by Local Authorities and between Local Authorities in dealing with these. It is unclear from the Bill what systems and lines of communications will exist between Local Authorities and FSS to ensure transparency and consistency of approach. These should be clarified.

Any effective and proportionate controls systems for food and feed should be consistent across operating boundaries and comply with better regulation principles. This is essential if Scottish based businesses are to remain competitive in the future. Whilst we all support ensuring a high standard of manufacture, sales and service from the food industry, creating new hurdles and penalties to be implemented in Scotland uniquely will create complexity, possible additional costs and may deter investment in the sector.

SFDF is also concerned that extending the scope of existing powers could seriously undermine the collaborative approach to compliance between enforcers and food manufacturers when it comes to issues of interpretation of new or existing legislation on minor labelling issues. This is not an unlikely scenario given the context of the new EU Food Information to Consumer Regulation.

In the context of labelling compliance, we also believe that there is a clear difference between rogue traders purposefully trying to mislead consumers and responsible companies navigating their way through new and complex legislation, often without the benefit of clear guidance endorsed by government. The proposed extension of existing powers fails to consider such important differences.

We continue to advocate a positive and open dialogue between enforcement officers and businesses so that any necessary improvements can be quickly carried out without the need for costly and potentially inconsistent implementation of additional powers.

5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident)
SFDF feels the new provisions are disproportionate. It is important to note that during the recent horse meat incident, which arose as a result of fraud and criminal activity, products that were confirmed to be labelled incorrectly were promptly removed from the market and consumers informed.

6. The provisions set out in the Bill for non-compliance with food safety and standards

SFDF has concerns regarding how these provisions would work in practice. There are potential risks regarding lack of consistency in application and the possible scenario where enforcement officers are given targets which would incentivise them to look for minor breaches. This could lead to a distortion of priorities for scarce resources. More clarity is needed on these provisions.

7. Any other comments on the Bill that relate to areas not covered above

FSA plays a major part in global supply chain activity including emerging issues, emergency prevention and rapid response via a cascade process of dissemination involving various national, European and international bodies. It is unclear in the Bill how FSS intend to feed into this in the short and longer term. For example will FSS continue to adopt common publications with the FSA such as their Principles for Preventing and Responding to Food Incidents?

As a responsible trade association FDF/SFDF produce advice for industry such as the “Food Authenticity: Five Steps to Help Protect Your Business From Food Fraud” and “Sustainable Sourcing: Five Steps towards Managing Supply Chain Risk”. We would appreciate clarity on the extent to which FSS also will produce guidance for industry and provide help.

In order for the FSS to be successful and independent, it needs to be well-resourced and understand the nature of the food and drink manufacturing industry so it can advise and negotiate appropriately on its behalf. There should be mechanisms to avoid conflict of interest. It must be joined up with relevant bodies at Scottish, UK, Europe and global level, have access to robust evidence and deliver on consistency of approach.

FSS also has a role in helping to grow and build a responsible food industry. This will require some expertise in encouraging food export not just to the EU but to the more rapidly growing non-EU export markets. A sustainable competitive food industry is good for the Scottish economy and employment and any additional help it provides outside of the UK would be welcome and good for Scotland.

Scottish Food and Drink Federation
May 2014
The Food and Drink Manufacturing Industry

The Scottish Food and Drink Federation (SFDF) represents the food and drink manufacturing industry in Scotland. The food and drink manufacturing industry in Scotland has an annual turnover of over £10 billion and exports worth just under £6 billion.

SFDF is a devolved division of the Food and Drink Federation (FDF), the voice of the UK food and drink manufacturing industry.

As the largest manufacturing sector in the UK, food and drink manufacturers employ up to 400,000 people and have a combined annual turnover of over £78.7bn. UK food and drink exports exceeded £12bn in 2012.

The following Associations are members of the Food and Drink Federation:

- ABIM Association of Bakery Ingredient Manufacturers
- ACFM Association of Cereal Food Manufacturers
- BCA British Coffee Association
- BOBMA British Oats and Barley Millers Association
- BSIA British Starch Industry Association
- BSNA British Specialist Nutrition Association
- CIMA Cereal Ingredient Manufacturers’ Association
- EMMA European Malt Product Manufacturers’ Association
- FA Food Association
- FOB Federation of Bakers
- GPA General Products Association
- MSA Margarine and Spreads Association
- SMA Salt Manufacturers’ Association
- SN Sugar Nutrition UK
- SNACMA Snack, Nut and Crisp Manufacturers’ Association
- SPA Soya Protein Association
- SSA Seasoning and Spice Association
- UKAMBY UK Association of Manufacturers of Bakers’ Yeast
- UKHIA UK Herbal Infusions Association
- UKTC UK Tea Council

Within FDF there are the following sectoral organisations:

- BCCC Biscuit, Cake, Chocolate and Confectionery Group
- FF Frozen Food Group
- MG Meat Group
- ORG Organic Group
- SG Seafood Group
- VEG Vegetarian (Meat-Free) Group
- YOG Yoghurt and Chilled Dessert Group
On resuming—

Food (Scotland) Bill: Stage 1

The Deputy Convener: Welcome back to the meeting. Item 3 is consideration of the Food (Scotland) Bill. We will be taking evidence on the bill in a round table this morning. My brief says that we should not do introductions in the interests of time, but I think that we will do introductions. We will go around the table and people should say briefly who they are and which organisation they are from.

I am the deputy convener of the committee, and an MSP for Glasgow.

Laura Stewart (Soil Association): I am director of the Soil Association in Scotland, which is part of the UK membership charity that campaigns for sustainable food farming and land use.

Richard Lyle: I am an MSP for Central Scotland.

Charles Milne (Food Standards Agency Scotland): I am the director of Food Standards Agency Scotland.

Nanette Milne: I am an MSP for North East Scotland.

Dave Watson (Unison): I am the head of bargaining and campaigns for Unison Scotland.

Gil Paterson: I am the MSP for Clydebank and Milngavie.

John Lee (Scottish Grocers Federation): I am public affairs manager with the Scottish Grocers Federation. We are the national trade association for the convenience store sector in Scotland.

Colin Keir: I am the MSP for Edinburgh Western.

Dr Simpson: I am an MSP for Mid Scotland and Fife.

Colette Backwell (Scottish Food and Drink Federation): I am the director of the Scottish Food and Drink Federation. We represent food manufacturers large and small in Scotland and the rest of the UK.

Rhoda Grant: I am an MSP for the Highlands and Islands.

Tim Smith (Tesco Group): I am group quality director at Tesco.

Aileen McLeod: I am an MSP for the South of Scotland.

The Deputy Convener: Thank you everyone. You are all most welcome here this morning. When we go to questions and answers, I will give priority to guests over MSPs. This is your opportunity to have your say and put your thoughts on the record. I will give the first question to Gil Paterson.

Gil Paterson: I have a very general question about the onset of food standards Scotland. What are the upsides and downsides of that body coming into being?

The Deputy Convener: That is a fairly general question. Perhaps Mr Milne will go first.

Charles Milne: One of the upsides is that the new food body will be able to be much more cognisant of the Scottish landscape. That does not come without risks that need to be managed, however. What has caused concern for people across the UK is the management of incidents that, by their very nature and the nature of the food business, need to be managed on a UK basis.

It has been clear right from the start that the chair and chief executive of the FSA and the Scottish ministers have recognised that and have given a commitment to work closely together. Service level agreements and memorandums of understanding will be drawn up to ensure that that happens. There are parallels in animal health, as animal diseases are managed on exactly that basis. We have no reason to believe that that commitment will not work.

It is also recognised that there is a risk—albeit a manageable one—to access to expertise in scientific committees and within the organisation. Again, that cuts both ways. We have expertise in Scotland in areas such as shellfish that is of use to the rest of the UK FSA. There are also areas of expertise that are held in London, Cardiff and Belfast to which we need access. That can be managed through the appropriate use of MOUs.

Dave Watson: We support the creation of the body. We understand that there is a risk but, frankly, the arguments against having a stand-alone body in Scotland could apply to a whole range of devolved areas, particularly regulatory functions that are already devolved. It is particularly important that these functions be devolved because of the tie-in with the other matters that are already devolved to Scotland.

We also support the new body because we do not feel that the UK FSA always has the balance right between consumer protection, brand protection and the safety of the consumer. That has sometimes drifted too much in the way of meat producers and there has been less emphasis on safety for consumers. We hope that having a Scotland body will mean that we have a proper focus and we get the balance right.
John Lee: Our main concerns are about ensuring consistency of advice, guidance and enforcement action, particularly around food incidents. We also have a concern about how the European dimension will be managed. Will FSA UK continue to be the lead body at the European level and how will it negotiate on behalf of Scottish businesses, particularly in light of the potential referendum result? The European dimension is an overarching issue that could do with further exploration.

Laura Stewart: We also support the creation of this new food body for Scotland. There are some potential benefits in how policy is looked at from the food perspective in Scotland, because it can be quite confusing. The new food body will give a chance to air where that policy is being set, and to make sure that we are properly linked up. It is not just about food and health; it is also about food and sustainability. The health of individuals and the health of our planet are linked and the new body is a good chance for us to look at what we can do better and at how other systems around the world work. For example, in Sweden it is normal to talk about healthy and sustainable food and to give advice on both those things at the same time.

Tim Smith: We have shared successive Scottish Governments’ vision of ensuring that customers have food that they can trust. Scotland Food and Drink has been a tremendous boost to the industry and to consumers, including our customers, and nothing matters more to us than them. If we are thinking about how we ensure that we sell the best-quality products that are safe, taste good and are great value, what is proposed goes pretty much in that direction at the strategic and policy level.

The things that I would tick off as being achieved through the design are those that the architects of the FSA in London also contemplated, such as transparency and the fact that science and evidence will play a huge part in what the organisation does. It appears, on the face of it, to be proportionate and risk based. There are question marks over whether that will apply to some of the enforcement regimes, but that is the second-order problem. Another thing is independence, which will allow the body to stand away from the Government and so be trusted more by consumers and therefore our customers. That is all good news.

There are currently 11 or 12 advisory committees, and it will be important—I think that this is contained in the bill—that access to them is as good as it currently is for policy makers north and south of the border, both in relation to the work of those committees and in relation to the more acute problems of incident handling that others have mentioned. It would be good to know that, if there is an incident—let us hope that there is not one—consumers will be able to trust whichever body it is that gives them advice because the bodies will use the same evidence and take the same proportionate, risk-based approach.

11:15

Colette Backwell: We have had a positive relationship with FSA Scotland across all its activities and we are keen to see that continue. In considering the scope and remit of the new body, it is important to take into account the nature of the food and drink manufacturing industry. Not all companies that sell food products in Scotland are based in Scotland, and food manufacturing companies that are based in Scotland export the majority of their products elsewhere, not least to the rest of the UK. Sales to the rest of the UK are a vital part of the Scottish Government’s food and drink policy, and it is important to be aware of the breadth and size of the companies that operate in Scotland, and particularly the small and medium-sized enterprise nature of the companies that tend to exist in Scotland.

With all that in mind, we would like a number of issues to be considered. The first and possibly the most important is the consistency of the approach to enforcement. There should be a proportionate approach that is consistent across the UK wherever possible, and the new food body should try to ensure, as Charles Milne set out, that appropriate mechanisms are in place for it to continue to liaise with other bodies and committees across the UK.

Someone else raised the issue of the voice for the industry in Europe. There are questions about how that will be achieved once the new food body has been established.

Tim Smith alluded to access to scientific advice, which is another issue. It is important that the new food body has robust, peer-reviewed evidence on which to base its decisions. FSA Scotland currently draws heavily on other committees and groups as part of the FSA in the UK, and it is important to ensure that those mechanisms still exist. With a broad remit, a new food body could represent many diverse stakeholder groups, so it is important to ensure that potential conflicts of interest are managed.

Last but certainly not least, the new body must be adequately resourced to ensure that it continues to fulfil the functions that it is established to fulfil.

The Deputy Convener: Gil Paterson’s opening question seemed to tease out all the issues in the bill in one fell swoop. We heard that there are a lot
of risks but there are opportunities as well. Do you want to come back in, Gil?

**Gil Paterson:** Yes. I have a question on the opportunities. Scotland has an enormously high reputation for safe and good-quality food. Will the proposals hinder that or add to the brand? Are they neutral or will they add to or subtract from the image of good-quality products from Scotland?

**The Deputy Convener:** I see that Mr Milne wants to respond, but I ask Mr Smith to respond first, because during his answer I scribbled down something about opportunities from the quality of Scottish food, which links in closely with Gil Paterson’s question.

**Tim Smith:** We have 170 producers in Scotland who produce 1,600 products for us, and we sell £2.1 billion-worth of Scottish produce across our UK markets. Nothing in the way in which the bill is shaped or in the way in which I imagine the body will work will do anything to slow that progress down—I cannot imagine why that would happen.

Colette Blackwell can speak for manufacturers better than I can, but what they will want is a clear line of sight to any new policies and plenty of time to think about any changes. Ultimately, however, I think that our producers—I hesitate to speak for them, but I will do so—will want a level playing field, clarity of purpose and an evidence base to back up what happens.

Since I wrote my submission, we have added another 10 producers to our list of Scottish producers, and I can only imagine that our business will grow with Scottish food and drink producers; I cannot imagine why it would not do so.

**Charles Milne:** One thing that has not been mentioned yet is that the new food body will be charged with putting consumers first in everything that it does. That is very important, but to deliver for consumers we have to work closely with the industry. We can have all the policies that we like but, at the end of the day, it is the industry that produces the food. Consumer interests and industry interests align. Industry wants to produce safe food, which is what it says it is on the label. That is important for developing consumer confidence, thereby allowing industry to grow and underpinning Scotland as a land of food and drink.

I will give you two examples of where that has not worked in the past. In 2009, there was an incident where the export of white fish from the UK to Russia was banned as a consequence of a visit by their inspectors. More recently, exports of cheese from the UK have been banned by China, again as a consequence of visits by their inspectors.

It seems to me from talking to industry representatives that they want a proportionate, fair enforcement system. They want the reputation of Scotland to be underpinned by good and effective regulation. I believe that the new food body gives us the opportunity to deliver that.

**Colette Backwell:** Charles Milne made my case for me very well, and I will not reiterate that. The key is effective and proportionate regulation. Tim Smith’s point about engaging often and early with industry stakeholders is well made.

**Dave Watson:** Having proper regulation adds to the brand. It is sometimes argued that the brand is all, but the brand is only good for as long as there is no scandal. If something goes wrong, as Charles Milne said, the damage takes years to get over. Our view is that the brand is best protected by having rigorous regulation.

Our concern in recent years has been about light-touch regulation. Your committee had a proposal put before it that there should be only a visual inspection of pigs, which means that tumours and abscesses are minced in without inspectors being able to cut the meat open and inspect it properly. In our view, that is a move to light-touch regulation. We know from the banking and other scandals that light-touch regulation is not the right way forward.

**The Deputy Convener:** We are in danger of going off on a tangent about how we deal with pigs—I never thought I would say that at the Health and Sport Committee—but I suspect that Mr Milne wishes to come in on that point.

**Charles Milne:** Yes, I do. It is worth mentioning that the current post mortem system that we have at abattoirs is based on one that is more than 100 years old. Science has moved on since then. I totally agree that we need appropriate regulation. Staff in abattoirs do a fantastic job under difficult and trying circumstances, but it is a matter of delivering what is right for consumers.

A lot of the conditions that we currently examine are quality issues, not public safety issues. The purpose of the change in the regulation is to move away from quality inspection to safety inspection. What are the modern challenges? Salmonella, campylobacter and E coli are invisible organisms on carcasses, so we will not pick them up by cutting into lymph nodes. We need to change the system to suit the challenge of the times.

I will talk about the work that we have been doing in Scotland in the past six months. In September, carcase contamination levels were about 4 per cent across Scotland. We introduced an initiative that, by March, had delivered a reduction of 50 per cent down to 2 per cent. That will make a difference to public safety, and it is...
being delivered by our inspectors on the ground. That has to be driven by science.

Dave Watson: There is a difference of view on this matter. Our inspectors are clear. They say that there are many examples of inspection being carried out without inspectors being able to cut in. I agree that this is not hugely a health issue; it is a quality issue. However, we are talking about the brand, and quality has to be important, too. There are things that are now going into the meat process that the consumer, if they saw them, would not want to see in their sausages. That is the reality.

The Deputy Convener: I will bring in Mr Smith. I might then move to another question—unless Mr Paterson wishes to come in with a supplementary.

Tim Smith: I wish to broaden out the issue a little bit. I suggest that the trust that customers have in our brand, and therefore in the brand of Scottish food and drink, is only enhanced by having competent audit checks, safety analysis and so on, all the way through the supply chain. Many members of Dave Watson's organisation are doing that work. My encouragement to them and to others is to continue to press to have their role.

The customers, who matter so much to us, have trust in a government body acting as a regulator almost as much as they do in the individual retailers and manufacturers, some of whom are represented around the table, who also do a good job. It is a complementary system.

Charles Milne is right about the science and the proportionality, but what matters to customers is the ability to trust the food that they are eating, and their knowledge that what is on the label is what is in the pack.

The Deputy Convener: That was quite a nice comment on which to end that section of our discussion. The emphasis is not just on safety, but on quality, because that is where the branding opportunities come in.

The next question is from Richard Lyle MSP.

Richard Lyle: I should say that, after leaving school, I went into the grocery trade and was a grocery manager for 10 years.

The bill introduces new administrative sanctions for food law offences. In response to a question that I asked last week, William Hamilton, environmental health officer with Glasgow City Council, stated:

"Prosecution is not a great option, so administrative fines or fixed-penalty notices—call them what you will—would be a boon to us."—[Official Report, Health and Sport Committee, 3 June 2014; c 5580.]

However, I note that some of our witnesses today, particularly those from the Scottish Food and Drink Federation and the Scottish Grocers Federation, are not in favour of new sanctions. Do the rest of our witnesses agree with our previous witnesses that the new sanctions in the bill for food law offences are a positive addition to existing sanctions, and, if not, why not?

The Deputy Convener: I suspect that we will get some definite replies to that question.

Of course, when I say something like that, no one puts up their hand. Who wants to go first?

Dave Watson: You will not be surprised to learn that we are in favour of the new sanctions or that, as the union that represents environmental health officers, Unison can say that our members welcome the new powers. You have only to look at how few prosecutions there are in Scotland to realise that there is an issue here. The issue itself is not largely about regulations—we have lots of those—but about enforcing them. At the local authority end of the business, there has been a 17 per cent cut in the staff working in environmental health departments and a 13 per cent cut in professionally qualified EHOs. The reality is that we are not inspecting food premises at the rate at which we used to inspect them.

An MSP once asked me whether we should introduce the European system and ensure that every restaurant posts its inspection report on its door. I replied that we could but it would be fairly pointless, given that for most restaurants the reports would be two years out of date. At the end of the day, you can have all the regulation you like, but if we do not have the resources to allow inspectors to do their jobs, it will not be very effective.

The Deputy Convener: Of course, the bill contains a proposal for requiring inspection reports to be displayed in every outlet.

Charles Milne: The bill proposes a number of legal measures, the first of which is the food hygiene information scheme that has just been referred to. The local authority's inspections are converted into what you might call a score on the door that says whether the premises have passed or whether improvement is required. At the moment, businesses can display the certificate if they choose. I am pleased to say that 31 local authorities in Scotland currently administer the scheme and that, by the end of the month, all 32, including South Lanarkshire, will be in it.

The argument is that by having better regulation and 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 standards. Wales is introducing legislation that makes the display of such notices mandatory, as is Northern Ireland, and we will have the opportunity to look at the
issue in future. As the power in the bill is an enabling one, we would need to have further consultation if we chose to go down that route. In summary, though, I support the measure.

The second legal measure in the bill relates to food authenticity, which is an issue that came to light with the horsemeat incident. It became apparent that a number of our food safety measures are not replicated for food identity, and the idea behind the proposal is to bring those things into line and give us powers to seize and, if necessary, destroy food that is not what it says on the tin.

As for the notices themselves, it has been pointed out, quite rightly, that many local authorities do not seek prosecutions. It is another tool in our armoury but in my view we need the appropriate tools for the right circumstances to ensure that we can take effective action against the businesses that are not playing the game or abiding by the rules. That would reduce the burden on the very large number of businesses that trade responsibly.

Finally, I support the provisions in the bill on feed legislation.

11:30

**Colette Backwell:** The purpose of the food hygiene information scheme is to provide accessible information for consumers, so that they can make informed decisions. Some thought has to go into the best way of doing that, and we believe that consumers relate to the approach that is taken in the current scheme.

On food authenticity, since the original incident that sparked the discussions on the matter, there have been a number of reviews, including the Scudamore review in Scotland and the Elliott review in the United Kingdom. All those reviews have acknowledged that the food industry works hard to deliver safe and competitively priced products, but we need to recognise that, regardless of complexity or risk, every supply chain is at risk and we must work collaboratively to address some of the issues.

We have recommended a whole-supply-chain focus on prevention of fraud, as part of which we have produced a five-step guide to protecting businesses from food fraud to inform companies of the questions they should be asking and the steps they should be taking to ensure that they are not victims of fraud. It is important to remember that companies want to do that.

We have a number of incident prevention and technical committees that assess what is happening elsewhere, and we also support the concept that came out of the Elliott review of a Government intelligence-sharing hub. Such a hub would be facilitated by Government, which is the most effective repository of information on all the issues that can lead to food fraud and similar incidents, and it would work with trade associations, which could feed into and off such a hub to ensure that we have the best access to horizon-scanning data to identify where such fraud might come from in future.

**Tim Smith:** I have the privilege of knowing that successive Governments in Scotland have led their local authorities in this work in an exemplary manner and that the 32 Scottish local authorities do a very good job, particularly on the ground through the hard work of the various enforcement officers.

We want proportionate and evidence-based enforcement, which I suspect all of us would say is pretty much what we have at the moment. As you would expect me to say, nothing matters more to us than being able to say that what is on the label is what is actually in the pack. Internally, our organisation and our manufacturers will also point to very robust testing regimes, the outcomes of which let us know not only how stringent that work is but its importance to our customers.

My sense is that the food hygiene information system, at least as it is already being applied in Wales, helps customers to make choices in areas where previously they might not have thought too carefully about hygiene standards—in other words, in catering establishments rather than in retail outlets.

As for authenticity, I think that Colette Blackwell has covered the ground very nicely. Only when you understand the whole supply chain and have made it shorter and more transparent can you get a clear sense of where the risks might lie, and it is the outcomes for our customers that we will be contemplating when, as we hope, we work with the Scottish Government, the proposed new food body here and others on formulating how all this will work in practice. We are certainly keen to help where we can.

**Laura Stewart:** On food authenticity, testing regimes are a very important tool in the toolbox but they are not the whole answer. We need to strengthen our supply chain assurance schemes, which might, of course, be independent of the new body, and the new body must acknowledge and support not only organic schemes but the many other schemes to help with that aspect.

**John Lee:** Mr Lyle is quite right to say that we are not particularly in favour of civil penalties. I should say that, in taking that position, we very much have smaller independent retailers in mind.

It might be a bit idealistic of us, but we hope that the establishment of the proposed new food
In our submission, we mentioned the development of primary authority partnerships. I might say a bit more about those later, as I think that it would be helpful for the committee to be aware of them. Perhaps there could be some read-across between different committees and the different Scottish Government departments that are taking primary authority partnerships forward. The partnerships have the potential to offer retailers and businesses that operate in more than one local authority area the opportunity to develop new and constructive partnerships that are based on guidance, information and advice rather than on, potentially, the imposition of new civil penalties.

Richard Lyle: I welcome Mr Lee’s comments. Having been a grocer, I know that there are many excellent grocers in Scotland—by the way, I am not looking for a job at Tesco. I was also previously a councillor. When, as a grocer, I worked with EHOs, I found that they wanted to work with us and came in to give us advice. They could be hard if they so wished, but most of the time they worked with us, and I hope that the Scottish Grocers Federation will embrace the new law.

Richard Lyle also asked about the proportionality of the fines, which came up during last week’s evidence session. If a breach was discovered not within the supply chain but in a local Tesco store—I mention Tesco only because Mr Smith is sitting at the table—any fine that Tesco received would be, proportionately, minuscule compared with the fine that a small grocer would receive for something similar. We must ensure that the fine system is proportionate and that, as Mr Lyle said, the local authority enforcement agency works in partnership with local businesses instead of being there just to fine them.

Richard Lyle asked specifically about the proportionality of fines and the duty to report, but I do not feel that those issues were teased out in the answers.

John Lee: I do not quite have the answer to the question. For our members, the issue is very much one of consistency across local authorities. For example, a lot of our members—very encouragingly—are now developing relationships with genuinely local suppliers, whether they are butchers, bakers or whatever. Some of our members have an arrangement with a local baker, and the local authority allows them to have an open display of bakery products—bread, rolls and whatever. That is very popular with customers and goes down incredibly well. However, some of our members in other local authority areas tell us that they are being told that that is an infringement of health and safety rules and that all bread products must be packaged. For our members who operate across Scotland, that causes a lot of hassle and anxiety.

There must be consistency. Whatever we have, it would be hugely helpful if there was consistency across Scotland in relation to the civil penalties that are being introduced and enforcement activity. We have a big issue with different approaches being taken to food health and safety in different local authority areas, and we hope that the bill will address that.

Tim Smith: I am keen to help with this one if I can. We enthusiastically support the Scottish Government’s approach of primary authority partnerships because that seems to work more effectively. That is on the enforcement side. The vast majority of activity by food officers and enforcement people who go on to manufacturers’ and retailers’ sites is advisory. They are doing a great job in helping people to do the right thing, which helps our customers and everybody else’s.

The requirement to notify almost slipped past me, because it is just so obvious that such a thing should be a requirement. It usually happens on a Friday afternoon, as Charles Milne will tell you, but it means that there is a clear sense of direction in the handling of any potential concern, whether it concerns fraud or food safety. In my experience, our suppliers do what our customers want them to do and act in a timely and proportionate manner.

Anything that changed that would be concerning, but I do not see anything in the spirit of the bill that could be a risk, if we follow the track of having a clear primary authority-type approach.

The Deputy Convener: That is helpful. We are scrutinising a specific bill, so we keep trying to bring the discussion back to the detailed scrutiny of the bill.
Colette Backwell: The problem with the duty to report on food standards relates primarily to the broad range of issues that can be covered by that duty. At one end of the scale, there are extreme cases in which someone may have adulterated food with something that they should not have used, and at the other end there are cases of mislabelling caused by a printing error or some other issue arising on the production line. The question in the latter cases is how such issues would be managed by those who are enforcing the regulations. Will there be a light-touch approach to genuine mistakes that have arisen through no fault of the individual responsible? What approach will be taken in cases of reckless mislabelling and repeated failures to comply?

An issue that we want examined in more detail is the extent to which there will be guidelines and guidance for local authorities and environmental health officers—or whoever is to implement and enforce the regulations—as to what stance they should take.

Last week, in partnership with the FSA, we ran a workshop for SMEs in Scotland on the new regulations on food information for consumers at which two things struck me. First, small companies often do not really understand what is coming over the hill at them, so they need a lot of support, however things turn out, to understand what is happening, how to implement new legislation and what the penalties will be. Secondly, those who were ahead of the game and had started to explore some of the issues arising from those regulations were saying, for example, that they had received three pieces of conflicting advice from the same local authority. Consistency of approach is key; we must not use a sledgehammer to crack a nut.

Dave Watson: We support the duty to report. Inspectors and regulators need all the help that they can get, so it is important that everyone in the chain has that responsibility.

We are not opposed to primary authorities. When we gave evidence on the Regulatory Reform (Scotland) Act 2014, we pointed out some of the challenges that primary authorities present, particularly to smaller local authorities and particularly in areas such as environmental health and trading standards, as some local authority departments can be very small indeed and have small numbers of professionally qualified staff. The right authority must be identified, and it must be properly resourced.

Our view is that consistency is probably best achieved not by top-down regulation by Government, but by local authorities coming together with the industry and producing national frameworks. That is the way forward. Our members are keen on a partnership approach.

Last year, we did a survey of environmental health officers, and one of the things that they were particularly concerned about was that, because of the pressure on their time and the reduction in resources, they were having to give up educational and preventative work, inevitably focusing more on the policing function. The worry is that, if they do not have time to do educational and preventative work, they will focus simply on being policemen.

Charles Milne: You will not be surprised to hear that we strongly support the reporting duty. I hear what Colette Backwell says about proportionality, and I reassure her that the incidents that we are aware of are dealt with on a risk-assessed basis. I envisage that any duty to report will be treated in exactly the same way. We would not take the same action over a serious health concern as we would over a labelling issue. That is how I envisage it working.

However, the duty is important for a number of reasons. The first is obvious: companies or individuals might not report an incident to begin with, which could result in potentially significant public health issues.

11:45

Secondly, we regularly receive reports in which we are told that a company in Fife or in Highland is doing something but the individual will not tell us which company is involved or provide any details that allow us to take action. The duty would enable us to get the information.

The duty would also address a third issue. We have recently had examples of companies that reported but delayed doing so until the economic impact was minimised. Delaying a report until the best-before or use-by date allows the product to go through the market to the consumer, whereas an earlier report would have prevented it from reaching the consumer.

Rhoda Grant: I will ask about the financial resources that will be available under the bill. Is the resourcing adequate for the new authority? Many people are talking about it taking on some health prevention work. Will it be sufficiently resourced to do that as well as look after the standards of produce and the safety aspects that the Food Standards Agency already covers?

Charles Milne: The objectives of the bill as set out in the policy memorandum are extremely challenging. They are not only to make “sure food in Scotland is safe” but to ensure that people’s “diet and nutrition” enables them to live
“longer, healthier lives”.

That, in itself, could require a huge amount of work and you are absolutely right to flag up the fact that, if considerable work is required, resources have to be provided to do it.

The financial provision as laid out in the financial memorandum is probably adequate for the functions that the FSA currently undertakes, but there is a discussion about the new food body’s future scope and the potential for it to take on further work. If further work and further responsibilities are allocated to it, suitable financial provision must be made.

Dave Watson: I do not disagree with that, largely. Our concern on resources relates not only to the FSA but to local authorities, because the FSA has only one part of the role.

Our concern about the FSA is that, if resources are tight, people will inevitably start to think about cutting costs. Over a number of years, the UK FSA has had a track record of pressure to cut costs. One of the methods of doing that has been to deregulate by transferring the responsibility for meat inspection from the independent meat inspection by FSA staff to contractors or directly to the meat producers.

I welcome Tim Smith’s comments about Tesco’s concerns that regulation must be seen to be independent. If a meat inspector is employed by a meat producer, their approach to inspection will be different from that of a Government meat inspector who is employed by the FSA, who has a degree of independence. Inevitably, there is pressure on people who are employed by a company, not only from the company but from other staff working in the plant. An independent inspector does not have that pressure.

Our concern is that, if the new body is not properly resourced, we will carry on down the road of cost cutting and, in effect, deregulation, which will mean that we lose the independent nature of inspection, which is important for the Scottish brand.

Colette Backwell: I will make two points. The first builds on Charles Milne’s point about extending the scope of the agency. In May 2013, when the establishment of a new food authority was first mooted, there was a lot of discussion with stakeholders about a large number of fairly meaty—if you will pardon the pun—additional responsibilities that could be given to the new body. It is obvious from the bill that the decision has been taken for that not to happen, but it is not clear where the additional resources for such functions would come from should they be given to the new food body in future. We are keen to have some clarity on that.

The second point relates to hidden costs. FSA Scotland is currently part of FSA UK and benefits from the synergies that that brings—the committee structures, the research that is commissioned and access to other bodies. All that is available within a structure that comes at no cost.

Once the new food body is established, how will it access those sources of expert advice, research and evidence—all the things that are fundamental to delivering a strong and effective food standards agency? Will that access come at a cost? If so, have those costs been considered? It is not clear from the bill that those costs have been actively considered.

We have submitted our comments on funding issues that relate to the new food body to the Finance Committee. Unfortunately, that was done after the Health and Sport Committee’s call for evidence, but we would be happy to share those comments with you, if that would be useful.

The Deputy Convener: That would be helpful.

Rhoda Grant: What additional funding would be required? Has work been done to look at the parts of the new organisation that will need to be set up and which will not benefit from the UK organisation, such as human resources and finance functions? It would be useful to have an idea of those costs, because they will be incurred regardless of whether the new authority takes on new functions.

Charles Milne: Corporate support is costed in the financial memorandum. The UK advisory committees are for the UK, so the new food body in Scotland will have access to them. An example of how that will work comes from what happened when responsibility for nutrition transferred from the FSA to the Department of Health. The FSA used to take advice from the Scientific Advisory Committee on Nutrition. After the responsibility transferred to the DOH, Scotland continued to have access to that committee’s expertise and was still able to ask appropriate questions of the committee. That model will apply going forward.

Scotland has its own research budget and it is part of the UK research programme. I see that continuing after the new food body comes into being. That has a parallel with what goes on with the Department for Environment, Food and Rural Affairs in relation to animal health. There is an annual get-together to co-ordinate programmes—to ensure that they are complementary and that there are no gaps and to get as many synergies as possible. When Scotland manages its own research budget, it will also have more opportunities to leverage additional funding.

The main concern that I have flagged up is that if, as is set out in the papers, we bring in additional functions from local authorities or elsewhere in
relation to nutrition or other matters, we will need to identify what those responsibilities will involve and what resources will be needed to administer and deliver them. We will need to cost that and ensure that those resources are provided.

Tim Smith: I have three points to add to what colleagues have said. It is inevitable that the fixed costs for Scotland alone will be significant, to the point that they will need to be identified and have protected resources. The new body will need its own systems; some of them will be shared for a while and some will not be shared.

What would work best for us, our customers and our producers would be knowing with certainty that the most important priorities, which the FSA and FSA Scotland lay out clearly now, will be protected. That relates to a point that Dave Watson made. If the new body is about protecting consumers and ensuring that, when they buy food that derives from Scotland, they can trust it, enshrining protection in the bill would be helpful.

There will always be priorities that are not things that would just be nice to do, but nothing will be more important than food safety. It is important to protect the regimes that others might be more worried about than I am, because they concern other supply chains.

I have a final observation about access. Charles Milne made the sensible point that Government bodies can share access to committees. I encourage more boldness and suggest that the new body will want not 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 applies now.

The Deputy Convener: That is helpful. I would like to ask a supplementary, but Rhoda Grant asked the initial question. Would she like to ask anything else?

Rhoda Grant: No, thank you—I am happy with that.

The Deputy Convener: I will refer again to Tesco, Mr Smith, simply because you are sitting here. A suggestion has been made in evidence that large retailers may test what they know to be safe, rather than what might be risky. I am not saying that that is the case, but there can be an affirming testing process. We see that there is a food chain in place, we think that the process is done very well and we decide to test it. That validates what we think we already know, rather than taking a risk-based approach to testing. I am not saying that that is the case, but such suggestions have been made.

There is also the idea of full disclosure, where there can be commercial issues. The more testing a large supermarket or manufacturer carries out, the more breaches will be found, by definition—that is the world we live in. Reputational damage could come through reporting on that, but that would be important information for informing food standards Scotland, or the FSA currently, in relation to partnership working. I would be grateful to know how comfortable you would feel if there was a duty to share the testing process, and to hear any information that you have regarding what the balance is.

I know that you are here to speak for Tesco but, in more general terms, is it your view that tests validate what people already think is safe? To what extent is there a risk-based approach to testing?

Tim Smith: I am happy to clarify what others might have thought we do.

The Deputy Convener: The people concerned did not mention Tesco; it is a general theme.

Tim Smith: Considering things from a customer perspective, let us go back to the events last year concerning horsemeat. We were already very much taking—and we strengthened—a risk-based approach to our auditing regime, our testing, our sampling and our surveillance, according to a simple two-dimensional grid of likelihood and impact. If a product had the potential to cause harm to human health if it was badly handled—for example, a ready-to-eat sandwich—or if there was a high likelihood of that happening, because we had intelligence to suggest that, there would be more work going into that area.

To date, we have 5,300 DNA tests up on our website, which display what we have tested, why we have tested it and what we have found. We took that view, which relates to your point about transparency, because we thought that, if there were two things that would make consumers, our customers, feel more comfortable, the first would be knowing that we were doing that and were bringing that testing result to them, and the second would be for that sampling surveillance testing regime to act as a deterrent to those who might possibly be tempted to do the things that happened during the horsemeat situation.

We were already doing that. We were already taking a risk-based, proportionate approach. Our investment has gone up substantially since that time, as it has proved easier to identify the risks as we have shortened our supply chains and made them simpler.

The important aspect is that, even if we were not disclosing that information to our customers before, we are now. That pre-empts any need to do that with a regulator—but we did that anyway.
That would be a normal part of our daily, weekly and monthly regimes. We are happy to share any of that information with the proper bodies.

The Deputy Convener: That is really helpful. Mr Milne, is that your experience? Is the sector as a whole doing that? Is Tesco being a bit more progressive than some other retailers in that regard?

Charles Milne: I would find it hard to believe that industry would deliberately look at samples that it knew would be clear. That is an awful lot of money to waste. Industry would certainly want to underpin its knowledge of and confidence in the food and the ingredients that it buys.

On the subject of overall surveillance, having access to industry sampling and an open and transparent sampling system is a tremendous benefit. That is just one layer, however. We need industry to sample, and we also have a co-ordinated sampling programme for local authorities across Scotland to underpin that, for verification.

The Food Standards Agency is developing advice for ministers on what a world-leading food surveillance system would look like. The lessons from that exercise will be pertinent to the new food body.

12:00

Richard Lyle: Before I come on to my question, I point out that I previously served on the Rural Affairs, Climate Change and Environment Committee and I would suggest that Scotland’s food and drink is the best in the world. Most companies and grocers—such as Tesco, Asda and Morrisons—check their food daily for the dates and so on.

I put in a plea to the EHOs, because I go into my little local shop and love to select my rolls in the morning. I hope that you do not create a situation whereby rolls have to be covered, because that would make it likely that apples, pears, bananas and everything else in grocery shops would have to be covered.

My serious question is that, given that FSS should have a structure that enables it to provide a service for all food and drink manufacturers, who should be on the board? Should the board be made up of people from the industry or people who take a great interest in the industry?

The Deputy Convener: What should the FSS board look like and how do you feel about the bill’s provisions on that?

Tim Smith: The critical issue is that anybody who observes the new body would be able to detect the single purity of its independence. That means that, although the voices around the table would need to be drawn from industry, from consumer bodies and from a whole range of academic and scientific backgrounds, when they sit round the table and debate a specific issue it would not matter where they came from, because they would add an independent clarity of purpose and hold the executive to account.

It is important to understand that it makes policy making a lot easier and implementation more straightforward when there is expertise round the table that adds value. If a huge amount of the work that goes on in the next few years is about changes in meat regulation in Europe and how that might be applied in the UK, it would be strange, would it not, if there were no bodies or individuals around the table who could bring to it expertise on the matter, as long as—given that there is transparency and openness—it is clear to anybody looking in that they are acting in an independent manner.

Colette Backwell: I support what Tim Smith said. The important issue, given that FSS will be a consumer-facing body, is that consumers have confidence in the agency and in its board. The independence point is well made and is very important. There needs to be breadth on the board to cover all the bases, if you like, and a knowledge of the industry that provides food to consumers must be captured in some way on the board and, indeed, within the organisation.

Laura Stewart: Those comments are all very sensible. The independence point is key. I add that food is such a cross-sectional issue that, to reflect the work of FSS, we will need people who understand health as well as the environment and the social implications of food and our food sector.

Dave Watson: I reassure Richard Lyle that, given the cuts in environmental health, it is highly unlikely that anyone will visit his corner shop. I suspect that Tesco probably has more time focused on it, on a proportionate basis. He should certainly not worry about whether his rolls are covered. The more serious point is that there has been a big cut in the amount of food sampling that is done by environmental health officers, so that is another area in which there is a problem.

Of course, the board has to have a balance of expertise, but one point that we made in our submission was that the bill does not mention staff governance, which we have developed in other public bodies in Scotland. In the NHS and elsewhere a staff governance framework has been introduced and that has involved staff representation on the board. Frankly, the bill is almost entirely silent on the subject of people—you would think that food inspection was done by robots, not by people, but as it is done by people we would like to have seen a little bit more about
staff governance in the bill, including provisions on staff transfer and other issues that seem to have been missed out.

The Deputy Convener: Could some of those issues be picked up in guidance?

Dave Watson: It could. Such arrangements usually have a statutory requirement saying something like, “There shall be a staff governance framework” and secondary guidance then picks that up. All that we are looking for in the bill is a general statement on staff governance; the detail could be left to secondary legislation.

John Lee: Mr Lyle asked a good question. At the risk of making it a crowded table, it would be useful if retailers could be represented in some way, to bring their expertise and knowledge to bear.

The Deputy Convener: The bill does not deal only with the appointment of the chief executive and the top-tier committee; it also has a permissive power to establish various committees, as the senior staff see fit. Does everyone have to be represented at the top table—I do not like that language—or could there be roles for other committees and for stakeholder groups, such as an industry reference group or food producers’ reference group? The same question arises with every subject that we ever discuss in committee. You would have to build a table the size of the Scottish Parliament to get everyone around it who wants to be on the board of the new FSS, so could a system of committees be a way of ensuring that those who are not at the top table can have some form of representation?

I see a few heads nodding. Would anyone like to comment?

Colette Backwell: There is no doubt that committees work well, but they are primarily advisory and the decisions are taken at the top table, so what is really important is that that top table has the breadth and balance to properly represent all the stakeholders involved, and to ensure that there is an appropriate challenge at the top table, so that when proposals are made there are people who can say, “Hang on. That is not going to work.” That applies across all aspects of the agency’s work, not just in relation to industry.

The Deputy Convener: Thank you. I just wanted to ask the question, because the same issue seems to arise with everything that the committee has ever scrutinised. There is always a clamour to be at the top table.

Nanette Milne: What is the ideal size of the board in numerical terms?

The Deputy Convener: That is a very good question, because we might say six and then find that 20 groups want to participate. To make it fleet of foot but still appropriately representative, how big should the board be?

Any takers? Everyone is silent.

Charles Milne: The only thing to say is that there are so many different areas of expertise that you cannot realistically expect all of them to be represented on the board. The type of people who are on the board must be questioning and they must put the consumer first, but they must also have access to information from the executive and more broadly, to inform their decisions. I agree that you do not want to make the committee too big. You need a reasonable mix of expertise on the committee, but if you make it too big it will become pretty unwieldy.

The Deputy Convener: That is more of a politician’s answer than a politician would give.

Richard Lyle: I would like—

The Deputy Convener: I am sorry, but I should let Tim Smith comment before I bring you back in.

Tim Smith: Independence and putting the consumer first have been mentioned a number of times by witnesses, including me. If in doubt, go for that, because science and evidence gathering, people who understand the science and the industry, and retailers, manufacturers and the whole supply chain will need to be represented, but if consumers are to trust the body it must be seen as independent and it must feel as if the people on whose behalf work is being done are represented round the table.

The Deputy Convener: Thank you, Mr Smith. Richard, I apologise for cutting you off.

Richard Lyle: That is okay, convener. I have been cut off by better people than you.

The Deputy Convener: Why does that not surprise me?

Richard Lyle: I agree with Mr Smith and I know why Mr Milne gave that politician’s answer. I understand that you are leaving Scotland and going to Australia, Mr Milne. I am sure that everyone round the table wishes you well and thanks you for your work with the Food Standards Agency Scotland. Given your expertise, can you not just tell us before you go how many people should be on the board?

The Deputy Convener: Mr Milne, feel free to answer that—or not, as the case may be.

Charles Milne: An appropriate number. [Laughter.]

The Deputy Convener: I suppose that one of the most important things is that Richard Lyle’s morning rolls are uncovered, and if we can
achieve anything today perhaps we can achieve that.

I thank everyone for participating in our round-table discussion. As always, we are conducting on-going scrutiny, so, as our convener, Duncan McNeil, would say at this point, if you think of something that you should have mentioned, put it in writing and send it to us. I am not soliciting further comments from witnesses, but we do have a tiny bit of time left. However, as I see no indications that people want to put anything on the record at this stage, I shall take that as a resounding mandate to close the meeting. Thank you very much.
Areas on which the Committee invites comments:

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements.
   Comment
   Quality Meat Scotland (QMS) fully supports the creation of a dedicated food body for Scotland, which will develop and implement policy on food safety standards. This will clarify arrangements regarding responsibilities for nutrition and labelling. Given the horsemeat substitution fraud of early 2013, it is important that labelling and traceability throughout the supply chain are enforced effectively. This will be advantageous for Scottish consumers and the Scottish food industry in general.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development.
   Comment
   QMS believes that a dedicated food body for Scotland will support the economic growth and development of our already successful Scottish food production and manufacturing sectors.

   It should be an objective of Food Standards Scotland (FSS) to provide guidance and advice to Scottish Government on the translation and implementation of European legislation into Scottish legislation.

3. The proposed administrative and governance arrangements for the FSS.
   Comment
   QMS supports FSS being at arms length from Scottish Ministers and that this arrangement will promote independence, transparency and consumer confidence.

   We have reservations that the minimum Board membership of 3 plus Chairman will provide sufficient breadth and depth and that consideration should be given to increasing this minimum requirement.

   The Bill does not specifically cover attributes required of Board members and we would expect membership (at any given time) to be comprised of a suitably broad range of governance skills, together with relevant food industry knowledge and experience.

4. The proposed powers of the FSS.
   Comment
   QMS understands the rationale behind broad drafting of the Bill, but considers it essential that FSS exercises its powers in a way that is proportionate to its remit.
5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).
Comment
QMS supports all measures to minimise food fraud, as well as the introduction of powers to seize and detain food which is safe but does not meet food information requirements e.g. non-compliant labelling.

We also welcome the creation of a statutory offence of failure by a food business operator to report breaches of food information law. This provides an early warning mechanism and promotes a culture of increased awareness of food fraud.

We also support the Section 30(5) public interest test in relation to the publication and disclosure of advice and information by FSS.

We recommend that FSS is sufficiently resourced to deliver these provisions effectively.

6. The provisions set out in the Bill for non-compliance with food safety and standards.
Comment
QMS believes the proposed range of new administrative sanctions (fixed penalty and compliance notices) should reduce the caseload burden on Scottish courts. However we are concerned that the level of penalties (sums and fines) is both proportionate and sufficient to achieve a balance between deterring the determined or deliberate fraudster and a single incidence of non-compliance.

7. Any other comments on the Bill that relate to areas not covered above.
Comment
QMS welcomes the fact that encouraging good nutrition and a healthy balanced diet is clearly identified as one of the main objectives of Food Standards Scotland. Section 1 (b) states an objective of “to improve the extent to which members of the public have diets which are conducive to good health.”

This is in line with the QMS health and education strategy and activities to improve understanding of the importance of a healthy, balanced diet as well as the role red plays in achieving that. Quality Meat Scotland has a dietitian and a nutritionist on its staff who deliver a programme of activity including: over 150 demonstrations in schools annually; a meat voucher scheme to ensure schools can afford to purchase quality meat for cooking lessons; awards focused on encouraging the use of quality, local produce; a sports/healthy activity bursary to encourage healthy activity; a young chef bursary; support of Champions in Schools (where one of the visits by high profile athletes is focused on the importance of nutrition); support of Street Soccer Scotland (including the launch of a new “Eat Well. Play Well” publication); strong presence at events such as the Royal Highland Show.
where we cook with 1000 children. We also work closely with organisations such as the Royal Highland Education Trust.

However, we note 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.
Food (Scotland) Bill

Scottish Retail Consortium

1. The Scottish Retail Consortium (SRC) is the lead trade association for retailers operating in Scotland including retailers large and small selling food and non-food and operating on high streets, in rural communities, out of town and online. The SRC represents all of the major food retailers and many of the quick service restaurant chains operating in Scotland. We estimate that our food retail members account for more than 90 per cent of all grocery sales in Scotland.

2. The SRC has responded to a number of requests for views on establishing a new and separate food body in Scotland including the Scottish Government’s consultation A Healthier Scotland, the Consultation on New proposed Enabling Food and Feed legislation Provisions from the Food Standards Agency Scotland (FSAS), and we also gave evidence to the Scudamore Review. We have, however, been disappointed that the points and concerns that we raised in each of these calls for evidence have not been reflected in their conclusions. In the case of the Scudamore Review, we believe the group would have benefitted from a representative with food retail expertise who could have given a different perspective to its work and possibly led to a different conclusion.

3. In addressing those issues on which the Committee has requested information our response will focus on the following:

   A. General principles of the Bill: the merits of creating a separate Scottish food body
   B. Food Information (Part 2, Section 32)
   C. Food Hygiene Information Scheme (Section 33)
   D. Administrative Sanctions (Part 3)

A. General Principles of the Bill

4. The SRC has been consistent in its opposition to the principle of creating a separate Scottish food body, preferring instead to maintain the existing structure and relationship between Food Standards Agency (FSA) UK and FSA Scotland. Our concerns can be summarised by the three following points.

   A.I Consistency in approach, communications and advice across the UK
5. The vast majority of the food sold in Scotland by grocery retailers is by businesses that operate across the UK. Similarly, for many Scottish food manufacturers their biggest market is outside Scotland. Consistent application of food safety is absolutely fundamental to their business, but also for ensuring public safety and consumer confidence. It is our concern that by fragmenting the existing regime, essentially creating two sources of advice and control within the one market where hitherto there has only been the one opinion, there is a danger that decisions taken by one body could conflict with that of the other body. This would be confusing for consumers, who will be exposed to competing messages, and also for Scottish food businesses that could suffer as a consequence.

6. An example could be the direction given to the food sector on action to take in response to a food incident. It is conceivable that the new Scottish food body and FSA UK could reach different conclusions on what action food businesses should take in terms of removing products from the market. Given that consumers are exposed, in large part, to a UK-wide media, they will be exposed to all opinions and react accordingly. It is, therefore, possible that a product deemed acceptable for sale by the new food body will still be affected if the advice from FSA UK is different. This is further complicated by the fact that FSA UK will remain the competent authority for the UK as a Member State of the EU and thus responsible for demonstrating that the necessary food safety measures have been followed. Food companies are, therefore, required to adopt those measures proposed by the FSA UK.

7. Another example is the power provided to FSS under Section 30 of the Bill, which allows FSS to develop and publish guidance on food borne illnesses. This raises the possibility of divergence in messaging between Scotland and the rest of the UK, or indeed potentially a different focus on what the priorities are. We know this from the difficulty of embedding relatively simple messages such as not washing poultry to reduce the risk of campylobacter.

8. We also have concerns, which we raise in detail below, about the divergent approach to the enforcement of food labelling. With two separate food bodies, we could have the situation where products are removed from sale in Scotland but not in the rest of the UK because the Bill, as currently drafted, doesn’t provide any provision to suspend action to withdraw in Scotland pending an appeal. Such a situation would send contradictory signals to consumers and would be logistically very burdensome for retailers.

A.II Ensuring the interests of food businesses in Scotland are recognised in future regulation
9. The overwhelming majority of legislation and controls on food operate at a European Union (EU) level where discussions on the development and implementation of that legislation are undertaken by the Member States. Whilst FSA Scotland has historically played an important role within Scotland, it is clear to Scottish food businesses that the main decisions that will continue to affect them will be taken at an EU level where it is the UK, and not Scotland, which is recognised as the Member State. Therefore, it is unclear how Scottish food interests will be recognised given that FSA UK will continue to represent the EU in negotiations on new regulations in Brussels whilst Scotland will have no representation on the FSA UK Board.

A.III Denuding existing resources by replication and undermining economies of scale

10. Finally, we are concerned that operating a separate food body in Scotland which is, essentially, designed to replicate the same functions of the FSA UK, will denude current resources through duplicated and increased operational costs whilst diluting the expertise and experience currently concentrated in FSA UK.

11. Whilst we accept there may be some issues of specific health or commercial importance to Scotland, more general food safety issues such as contaminants, microbiological issues and improvements in hygiene are common to the UK. Indeed, the recent horsemeat issue is an excellent example of how interconnected supply chains means that there will rarely be a Scottish, but rather UK and EU wide response to food incidents. It is our view that it makes little sense, particularly given current pressures on public finance, to duplicate work and lose economies of scale.

12. If the new body is established we believe that it is incredibly important that a robust protocol on ways of working is agreed to mitigate the problems outlined above, which have the potential to damage both consumer trust and Scottish food businesses. The development of that protocol needs to fully involve Scottish food retailers who will be able to bring invaluable experience and expertise to discussions. The protocol should also be transparent, so all parties from consumers to food businesses know what to expect from both FSS and FSA UK and that food safety issues are correctly prioritised, based on clear evidence and with resources maximised.

B. Food Information (Part 2, Section 32)

13. Section 15B creates a new power for authorised officers to issue a notice to detain food which contravenes food information law.
14. We do not support this provision as currently drafted. We consider it a disproportionate and an unnecessary extension of power, particularly given that there is no right to suspend detention pending an appeal, and believe that it is not justified where the issue is not one of food safety.

15. It is incorrect to justify the measures, as has been outlined in the Policy Memorandum, on the basis of the horsemeat incident. That was a problem of food fraud and controls that occurred earlier in the supply chain. All the retailers affected had labelled those products in good faith based on the clear specification they had given to their suppliers. Retailers know how important consumer trust is and would never jeopardise this by intentionally mislabelling a product. Indeed, in those cases where they were affected they took swift action, on their own volition, to remove these products. It is naïve in the extreme to suggest the incident would not have happened if these proposed measures were in place. This was fraud arising in the supply chain and by its nature the final labeller of the product was also defrauded and unaware that they were being supplied with deficient goods.

16. Retailers have treated the horsemeat incident with utmost seriousness and taken a number of proactive steps in the aftermath such as reviewing auditing of suppliers, targeted testing and shortening supply chains. These are measures that will tackle fraud, they do not affect the clear specification the retailer gives to their suppliers which is then reflected in the label on the final product.

17. Our concern is that a misguided justification has led to the development of a heavy-handed approach to tackling mislabelling, and one that does not fit with the Scottish Government’s commitment to better regulation. The major problem is the apparent inability of a food business to challenge the enforcing officer when they order products to be removed from sale. Elsewhere in the UK, the regulatory framework allows for a suspension of a similar notice whilst a review of the evidence is undertaken. This is a more proportionate and sensible approach for issues not concerning food safety. Our experience over the years of challenges by local enforcement officers is one where, in the vast majority of cases, it is actually the retailer’s interpretation of labelling legislation that turns out, ultimately, to be correct. We also note that the implementation of the new Food Information to Consumers Regulation will add to the complexity of this issue. An automatic withdrawal of products based on the judgement of a single enforcing officer which could be incorrect, or inconsistent with the approach of other enforcing authorities, could lead to unnecessary gaps on shelves, undermining consumer confidence and unfairly penalising businesses.
18. Therefore, if the Scottish Parliament is minded to support the provisions under Section 32 of the Bill, we suggest that suitable safeguards are considered to ensure that businesses are not disproportionately overburdened or that consumer confidence is unnecessarily undermined. This should include appropriate challenge from a food business to the original notice with the right to suspend action until the issue is resolved. Another very important safeguard would be to ensure that these provisions be considered in scope of the Primary Authority arrangements which are provided for through the Regulatory Reform (Scotland) Act 2014. We would suggest that the role of Primary Authority in this regard should be acknowledged in both legislation and guidance. Government policy has clearly acknowledged that Primary Authority has a key role to play, especially in times of challenging economic circumstances and public finance restraint, in ensuring that those businesses that have a PA relationship are not subjected to unnecessary enforcement or inspection decisions where there has been clear and assured advice from their PA on the issue in question. This is particularly important given Section 15C of the Bill: Duty to report non-compliance with food information law.

19. Finally, one last point we make about the practical ramifications of this section of the Bill is that any food that cannot be sold should be disposed of responsibly. For example, during the recent horsemeat incident our members ensured that any withdrawn products were used for energy production to limit the environmental impact of the waste. At other times it might be possible to re-package the product or use it in an alternative waste stream such as animal feed. Retailers have the appropriate infrastructure to deal with these situations and as they have a proven record in removing non-compliant products it is unnecessary for the new body to be given these powers.

C. Food Hygiene Scheme (Section 33)

20. We note the Bill will introduce the primary powers to introduce a mandatory food hygiene scheme. We would commend the approach of the Welsh Government who introduced a mandatory scheme in 2013. The Welsh Government, working with FSA Wales worked closely with enforcers and businesses to develop appropriate regulations and pragmatic guidance to them to ensure an effective introduction of the scheme. A similar approach which focuses on the key priority of ensuring compliance rather than enforcement is recommended.

D. Administrative Sanctions (Part 3)

23. As a point of principle the SRC does not support the imposition of fixed penalties and sanctioning in general terms. We believe that better regulation means securing compliance through a risk, evidence and advice based
approach. Fixed penalties can lead to a tick box approach to enforcement whereby businesses are reluctant to seek advice, a greater number of penalties are imposed for minor infringements and rogue retailers accept an administrative penalty as one of the costs of doing business their way.

24. Justice is about fairness, equity, evidence and proof, not just administrative expediency and cost. We are concerned that the introduction of fixed penalties could shift the burden of proof away from the enforcer having to prove that the retailer has infringed the regulations towards the retailer proving that it has not. A business accused of a breach of regulation should always be allowed to have its day in court to defend itself. Indeed the standard of proof required for a fixed penalty to be served could inevitably be lower than that required if a court hears an alleged offence. We note that the Explanatory Notes make clear that the standard of proof – i.e. beyond reasonable doubt or on the balance of probability – is to be set by regulations.

25. Like the provisions on labelling enforcement, again we see an important role for Primary Authority with regards to any enforcement action, be that fixed penalty or compliance notices. Primary Authority would act as an important check and safeguard on any enforcement action but would also ensure that there was consistency in enforcement across all 32 local authorities.

26. Furthermore, it should also be made clear that the notice should be served not just on ‘the person’ (e.g. store manager) but it should also be sent to a nominated person within the company’s headquarters. Although the Primary Authority should have been consulted on and authorised any fixed penalty or compliance notice prior to its being issued, the PA should also be notified that a notice has been served.

Scottish Retail Consortium
May 2014
Food (Scotland) Bill

Royal Environmental Health Institute of Scotland (REHIS)

The merits of creating a stand-alone body rather than enhancing the current Food Standards Agency Scotland (FSAS) arrangements

The current scope of FSAS has limited the provisions of a robust and integrated system for the effective protection and promotion of food matters pertaining to public health in Scotland. REHIS supports the creation of an independent food body which will reflect, support and respond to the evolving public health needs of the Scottish population.

Food and feed safety policy and enforcement are a devolved matter to the Scottish Parliament, and the creation of an authority which can meet and protect the specific food interests of Scotland is advocated. We are concerned about the approach taken by the Westminster Government to isolate food nutrition and labelling from the Food Standards Agency (England). This fragmented approach does not support the holistic approach to public health which REHIS promotes. It is felt that there is potential that Scotland's views on food labelling and nutrition under the English structure may become devalued, misrepresented or lost due to the perception that the Food Standards Agency Scotland works in the same way. There is a perceived risk that other responsibilities of the FSA may also be transferred to other organisations in the future resulting in further fragmentation of food and feed policy and enforcement. By creating an independent stand-alone food body in Scotland, the country's voice is protected and promoted locally, nationally and internationally and the integrated approach to food and feed policy and enforcement is safeguarded.

The scope of the objectives and functions of Food Standards Scotland (FSS), including whether and how they could support Scotland's sustainable development

The objectives of the FSS as detailed under section two of the Food (Scotland) Bill provide the foundations to build strategic and operational priorities which will protect and improve food related public health in Scotland. REHIS supports the flexible approach of these objectives which will allow the FSS to be adaptable to the identification and management of current, evolving and future risks associated with the consumption of food and other food matters. REHIS recognises that sustainable development is an overarching consideration for every policy areas and that sustainability issues are integral to the new food body. REHIS believes that the sustainability of the current public health workforce is uncertain. The delivery of official controls for the most part rests currently with local authority based public health professionals, namely Chartered Environmental Health Officers, Environmental Health Officers and other environmental health professionals such as Food Safety Officers. REHIS advocates the development and implementation of a regulated delivery framework that supports training and competency for official food and feed control in Scotland. This should also include mandatory
workforce planning to ensure the viability of the local authority public health workforce.

REHIS believes that the general functions of FSS as described under section 3 of the Bill are acceptable and will contribute to the protection and promotion of food matters pertaining to public health in Scotland.

The proposed administrative and governance arrangements for the FSS

REHIS supports the principles of proportionality, transparency, accountability and good decision-making practice detailed in section four of the Food (Scotland) Bill.

However, we believe that the new food body must also work in a consistent manner to ensure equality and fairness in how the body will discharge its duties. There is currently some geographical variation in how official controls are executed such as food premises approval and border inspection controls, and the new food body should be charged to secure consistency in the operation and discharge of official control duties. This will also align the FSS's proposed administrative and governance arrangements with the philosophy of Better Regulation as detailed within the Regulatory Reform (Scotland) Act.

In addition, REHIS believes that the independent operation of the FSS from Scottish Ministers and the Scottish Government should be emphasised within the administrative and governance arrangements of the FSS. This will enhance the credibility of the FSS within the local, national and international food and drinks industry and promote greater public and consumer confidence that the work of FSS is impartial.

The proposed powers of FSS

REHIS acknowledges the broad and wide ranging powers granted to FSS that will allow the body to carry out its functions. This will allow FSS to develop a flexible and responsive approach to food and feed standards and safety whilst promoting independence and autonomy.

The likely efficacy of the new provisions relation to food information to prevent food fraud

The provisions relating to food information to prevent food fraud as outlined under section 31 of the Bill will bring the regulatory response available to food authorities in line with similar offences relating to food hygiene. This is welcomed by REHIS.

One of the main problems with food standards regulation and food fraud is that it has the potential to cross regional, national and international boundaries. REHIS advocates a multiagency arrangement and therefore
welcomes a Duty of Co-operation between bodies and officeholders as outlined under section 16 of the Bill. This will ensure that FSS and other relevant bodies including local authorities coordinate and co-operate with each other whilst undertaking inspection and scrutiny activities.

The Provisions set out in the Bill for non-compliance with food safety and standards

REHIS advocates the introduction of alternative enforcement options to deal with food safety and standards contraventions. There is currently a gap between informal actions and reporting contraventions to the Procurator Fiscal office for consideration for prosecution. The introduction of fixed penalty notices (section 35) and compliance notices (section 41) will allow a more proportionate use of resources and more effective response to dealing with manufacturers, packagers and retailers of food.

Any other comments on the Bill that relates to areas not covered above.

REHIS welcomes the addition of the requirement of the Duty of User Focus as detailed under section 16 of the Bill. This will ensure that FSS will continually improve their approach to stakeholder engagement and promote openness, and transparency in the organisation's governance and operation. REHIS would welcome the opportunity to discuss further how the Duty of User Focus would be development, implemented and maintained within FSS and how this would impact on the work of the food authorities.

Royal Environmental Health Institute of Scotland (REHIS)
May 2014
09:48

The Convener: Agenda item 3 is continuation of our evidence taking at stage 1 of the Food (Scotland) Bill. We have one more round-table session before we hear from the minister.

I think that we are few enough in number for us to take our usual approach and introduce ourselves before we begin the evidence taking. I am the convener of the Health and Sport Committee and the MSP for Greenock and Inverclyde.


Bob Doris (Glasgow) (SNP): I am a Glasgow MSP and deputy convener of the Health and Sport Committee.


Nanette Milne (North East Scotland) (Con): I am a North East Scotland MSP.

Gil Paterson (Clydebank and Milngavie) (SNP): I am the MSP for Clydebank and Milngavie.

Archie Anderson (Association of Meat Inspectors): I am president of the Association of Meat Inspectors.

Colin Keir (Edinburgh Western) (SNP): I am the MSP for Edinburgh Western.

Richard Lyle (Central Scotland) (SNP): I am a Central Scotland MSP.

Colin Wallace (Royal Environmental Health Institute of Scotland): I am president of the Royal Environmental Health Institute of Scotland.

Rhoda Grant (Highlands and Islands) (Lab): I am a Highlands and Islands MSP.

Aileen McLeod (South Scotland) (SNP): I am a South Scotland MSP.

David Martin (Scottish Retail Consortium): I am head of policy and external affairs at the Scottish Retail Consortium.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I am a Mid Scotland and Fife MSP.

The Convener: Thank you all for that.

We have an hour and 10 minutes or so for this session. The main purpose of these sessions is, we hope, to allow the various people around the table to have a dialogue. My preference is always
to let the panellists speak but, first of all, I ask Rhoda Grant to get us going with the first question.

Rhoda Grant: What additional powers and responsibilities should the new agency have? Does it have any powers and responsibilities that it should not have been given?

The Convener: Are there any takers for that question?

Tony McAuley: I will speak on feed enforcement, which historically has been one aspect of trading standards enforcement. There is a lack of capacity in local authorities to exercise official controls on feed enforcement and there is scope for the new food body to take on some of that work centrally, or through a regionalisation process. We could build capacity for that work by having neighbouring authorities join up—one authority could lead on such work for the east of Scotland, one for the north-east, one for the north-west and so on—and by looking at economies of scale.

Expertise and capacity at a local level are gradually diminishing. The new food body could take a lead in that area and provide some momentum to drive up compliance in the area of feed hygiene and enforcement.

Colin Wallace: The institute supports the proposals on compliance notices and fixed-penalty notices. Environmental health officers and other associated food safety professionals provide a lot of assistance and support and deal with enforcement issues.

We feel that at present there is a gap with heavy rather than light enforcement. Some technical offences could be dealt with much more easily and successfully without criminalising a food business operator. I am talking about issues such as operators not registering a business and other minor matters that are not necessarily linked to public safety or food safety.

Those matters are still important, of course, and need to be dealt with. Fixed-penalty notices were used very well in enforcing the prohibition of smoking in public places—they were used not that often but just when they were required. That approach does not criminalise people who are just trying to do what they are doing and who may be acting with good intentions rather than trying to mislead the public.

The Convener: Does anyone else want to come in on the enforcement angle, or on any broader issues?

Uel Morton: On Tony McAuley’s point about feed inspection, the Government has inspectors out on farms from the rural payments and inspection department, but someone should have a look at the inspection process so that we are not sending out different inspectors to inspect different things. We should try to join things up a little bit.

The Scottish Government had a very good programme a while ago called SEARS—Scotland’s environmental and rural services—which took a joined-up approach. In the specific area of feed inspection, there is some scope for streamlining the number of inspectors who go to farms and for ensuring that there is a more joined-up approach between Government departments.

The Convener: I will bring in some of the other witnesses on that point. What prevents you from developing at present the strategies that have been suggested? Do we need the Food (Scotland) Bill to do those things?

Tony McAuley: On Colin Wallace’s point about fixed-penalty notices, in trading standards we have been using fixed penalties for quite a while now in areas such as underage tobacco sales, home report legislation and energy performance certificates, and that fixed-penalty regime has worked successfully.

I can see that such an approach—not decriminalising the issues, but having a lesser penalty—would be advantageous, and I support Colin Wallace’s point about the need to move the process forward. Feed enforcement is currently at a very low level among local authorities in Scotland, and there are big disparities. For example, City of Edinburgh Council and Glasgow City Council hardly do any feed inspections, because they do not have that many farms in their area, whereas the more rural authorities, such as those that cover places such as Inverness and Aberdeenshire, which have feed and food businesses in their area, have driven up standards internally.

However, across the board in trading standards and, to a certain extent, environmental health, capacity and resource are diminishing as councils reduce the staff head count. It is a case of maximising the staff that we have. I hope that some form of joined-up approach, whether on a regional or an inter-authority basis, will be adopted to drive up those standards and those competencies.

Following on from that, the Scottish Government rural payments and inspections division and the Animal Health and Veterinary Laboratories Agency must adopt a more joined-up approach when it comes to passing on intelligence and information to each other on who has been inspected and when they were inspected so that there is no duplication. That is extremely important. We have diminishing resources, so we need to use them effectively.
The Convener: I was trying to get at what prevents you from adopting such an approach now. There is no legal impediment to doing that at the moment. I realise that the new food standards agency could be a driver for that, but is there anything that prevents you from working more closely together and using the limited resources to better effect at present?

Tony McAuley: There are some stumbling blocks in the sharing of information between the Scottish Government and local authorities relating to data protection and data sharing. Those obstacles are not insurmountable, but I am aware that there have been data protection issues to do with our passing on information on our database to SGRPID, the Scottish Government and the AHVLA.

Uel Morton: I have an ancillary point to make. The issue comes down to something as simple as the aye been syndrome—the view is, “It’s aye been that way, and that’s the way it works.” I think that the new food standards Scotland will act as a catalyst in allowing us to review and take a view on all these areas, and to take a more sensible approach for the betterment of food safety in Scotland.

The Convener: I know that Bob Doris wants to ask another question, but I think that Rhoda Grant wants to follow up on that.

Rhoda Grant: I suppose that I am asking whether you are suggesting that, because the inspection regime currently falls to local government, local authorities should work with the Scottish Government departments that do farm inspections, head counts and the like. Given that the inspectors normally do a particular piece of work, would they require to receive a degree of training? If they were to check something else, how much training would that involve? I can see that the costs that would be incurred in staff developing their knowledge would be a barrier.

Tony McAuley: A scoping exercise would need to be carried out to find out exactly what we wanted the Scottish Government enforcement staff to do. It may well be that, in the very early stages, a partnership approach between local authority staff and Scottish Government staff could be developed to build capacity and expertise, and to enable the transfer of skills from local authority staff to Scottish Government staff. There could be a two-stage approach, the first stage of which would involve looking at the problem and working on it together; then, if the Scottish Government staff had the necessary capacity, they could receive training from the local authority staff.

Uel Morton: I have another point on the general issue of where legislation is needed. It relates to food labelling. We in Quality Meat Scotland feel that not enough weight is given to protected food names, examples of which are Scotch beef and Scotch lamb. Those are the two protected food names that QMS operates on behalf of the industry. Arbroath smokies and other products with protected geographical indication status are other examples.

We feel that the new food body should ensure that a robust approach is taken to protected food names, which are given that status because of their quality. Such products usually attract a premium in the market, and we need to ensure that there is no scope for food fraud. An example of what I am talking about is the passing off of inferior products, such as beef from Ireland or Argentina, which is cheaper, as Scotch beef. We need to ensure that the labelling regime takes account of protected food names.

The Convener: I am sure that we will return to labelling, because there have been some issues there.

Bob Doris: Mr Wallace made an interesting comment about the nuts and bolts of the bill and I want to ensure that I understood it correctly. You support the idea of fixed-penalty notices and the fine scale, but you query whether the bill would focus on food safety and food fraud rather than on administrative and bureaucratic breaches, which you said could be dealt with in a more streamlined fashion. I do not want to put words into your mouth, but I think that that is what you said. I would like to be clear about what specifically you were saying about that.

Colin Wallace: Enforcement provisions are available now, but they can end up in court by referral to a procurator fiscal and in many cases that may be like using a sledgehammer to crack a nut. We are looking at slightly lower-level offences. I know that the convener has said that we will move on to labelling issues. Currently, powers are available in relation to the labelling of unsafe food, but there are no powers for dealing with incorrect food labelling as a food standards issue.

Enough powers are available to deal with food that is potentially unsafe and environmental health professionals can deal with that, but food that is of a lower safety level—not necessarily food that is incorrectly labelled—could ultimately turn out to have food safety implications and that could be much better dealt with using lower-level measures such as fixed penalties.

Bob Doris: Perhaps I misunderstood, because I was looking at the bill as you were talking and it seems as if that will be dealt with in regulations. The idea of a relevant offence will be specified in regulations laid by Scottish ministers. Did you just
Colin Wallace: You are quite correct. The bill gives that breadth and flexibility to introduce legislation. That will not necessarily be enshrined in the bill, but secondary legislation could come from it.

Bob Doris: That is helpful. From your initial comments, I thought that some things would not be covered by fixed-penalty notices but that was my misunderstanding. I just want to be clear on that. Am I right in thinking that you are not suggesting that something will not be covered by a fixed-penalty notice? This would be a good opportunity to put that on the record, if you think that there is a gap in relation to the future use of fixed-penalty notices.

I see that you have nothing to say about that. Okay.

I would like to ask about food labelling, convener. Is that okay?

The Convener: I will bring in David Martin to respond to some of your earlier questions. We heard evidence about how seriously the courts were taking some of those issues. For many of the issues that could be resolved by a fixed penalty, there will be a penalty, whereas previously a lot of issues fell by default because of the expense and the length of time involved and because of how seriously the courts took them. It seems that, on balance, everybody supports the proposal.

David Martin: The Scottish Retail Consortium is looking at fixed-penalty notices from a different direction; we are the regulated, rather than the regulator. From our perspective, we are a little bit more sceptical about fixed-penalty notices. We understand some of the rationale behind trying to make justice more expeditious and cost effective, but if that line is to be pursued, we would be keen to have safeguards built in. 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, and I note that the explanatory notes state that future regulation will look at whether the test will be beyond reasonable doubt. Obviously, we would support that.

We think that the move towards FPNs will lower the bar somewhat and make businesses more hesitant about coming forward for advice and speaking to the enforcement agencies about compliance, because it will be much easier to slap a notice on someone for what is, in effect, a minor infringement.

Unscrupulous retailers might regard fixed penalties as the cost of doing business. An FPN will not necessarily have the impact that being taken to court and pursued for a criminal offence would have. For that reason, we said in our submission that in light of the FPN approach we would like there to be an acknowledgement that much of the provisions will be brought into the scope of the primary authority arrangements. That would deal with a lot of what Tony McAuley talked about, and I know that previous witnesses gave evidence to the committee on the advantages of such an approach.

The Scottish Government introduced the primary authority arrangements in the Regulatory Reform (Scotland) Act 2014. We thought that that was an admirable move, which we very much supported, and we have been working with the Scottish Government on a range of areas in that regard. The issue is most pertinent to food regulation. If there is a move towards dealing with more infringements by FPNs, the approach would provide us with a safeguard, in that we would have the due diligence, and dialogue with and advice from the enforcement agency could be sought without that necessarily leading to punishment. If the FPN approach is to be pursued, we want much of what we are talking about to be brought into the scope of the primary authority arrangements.

On labelling, which links to the FPN point, the better regulation delivery office has set up a group with retailers in England to look at how the primary authority will deal with the provision of food information to consumers regulation when it comes into force next year. The FIR is a complicated regulation, which will change a lot of the law around labelling. To be honest, the interpretation of the regulation is still very unclear from the perspective of both regulated and regulator.

It is good to have a mechanism whereby we can agree on our understanding of what is required, because no one wants to break the law. People want to stay on the right side of the law, but they want to know that there are safeguards.

The Convener: Let us sweep up any points about the retailers’ view of fixed penalties.

Colin Wallace: I understand Mr Martin’s point, given his members’ perspective, and I take it on board.
I want to reassure Mr Martin. 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.

Tony McAuley: I echo what Colin Wallace said about the ethos. Trading standards officers—and councils—are more focused on their single outcome agreements with the Scottish Government, and their individual service plans and business plans are very business focused and orientated towards business support. We want to drive up compliance by giving advice and support. We understand that businesses are more focused on their operation than on considering trading standards and environmental health law. Trading standards enforces something like 1,200 different acts and regulations, so we understand the complexities of the law for business.

As Mr Wallace said, prosecution and reports to the fiscal are a last resort. However, there are habitual offenders, albeit that they are a negligible percentage of business operators, who persistently try to break the law with impunity.

It is about driving up compliance by supporting local businesses and helping them to thrive and be successful.

Previously, trading standards was called consumer protection; I never liked that name. Our ethos was that we were enforcers and the first enforcement was written reports to the fiscal. We have stepped back from that approach and we now take a more light-touch approach to enforcement. I echo Mr Wallace’s point that we are there to advise businesses and support them as opposed to using a hammer to crack a nut, but sometimes enforcement is necessary.

The Convener: Is moving away from reports to the fiscal and prosecutions a consequence of your taking a more light-touch approach, or is it because a realistic view is being taken that making reports to the fiscal or pursuing prosecutions is very time consuming, expensive and uncertain in its outcome, so the fixed penalty in the bill should be used?

I presume that we have reduced the number of reports to the fiscal and prosecutions. How many fixed penalties would you expect to issue? Has there been any calculation of that in the analysis of the use of fixed penalties? What makes the fixed-penalty notice an enforcement tool? What creates a deterrent? Is it the awareness that you are prepared to use it and, indeed, the level of use? A year later, will politicians start asking why you are not using the fixed penalties?

Tony McAuley: I will give you an example, which relates to underage sales of tobacco. Trading standards officers have the power to issue a fixed-penalty notice when a trader sells cigarettes to someone who is under 18. Again, it is my staff who are involved in the process rather than me. The first fixed penalty is £200; there is an escalator if there is a second offence, so the amount goes up to £400. If there is a third offence, again there is an escalator, so the amount can be £600. On the third offence, we can apply to a sheriff for a banning order. That trader will be banned from selling tobacco products for a period of time that is set by the sheriff.

Incremental penalties are available, because mistakes happen. If a trader sells cigarettes to someone who is underage, in the first instance they are given a fixed penalty. Hopefully, that conduct would be driven up to compliance as a result of that fixed-penalty incident. The habitual trader—there are some who habitually sell cigarettes to underage buyers—will break the law because of the financial aspect: he is making more money selling cigarettes to underage schoolchildren than he is losing by paying the fixed penalty. That is why there is an escalator; we hope that it assists with driving up compliance in such cases. I do not have the figures with me.

The Convener: Those are good examples. Mr Martin, that is perfectly reasonable, is it not? Dealing with repeat offenders, giving warnings, help and assistance, making people aware and taking an incremental approach towards punishing the people who are ignoring the law—is that not reasonable?

David Martin: To some degree, but I posit that if we consider the challenge that is involved in a trading standards officer taking a retailer to court compared with the officer putting a fixed-penalty notice on the retailer, there is a difference not only in relation to the burden of proof but in how expedient the action is to take. If we are going down an FPN route, that is fine—we can accept some of the arguments around the experience of that system. However, we want to ensure that the notices are handed out fairly and proportionately and that there is an ability to some extent, as there would be through the court process, to challenge some of the decisions.

We have 32 local authorities and sometimes, I regret to say, they take 32 different decisions or interpret things differently. From our perspective, when it comes to a national regulatory approach,
we do not want that regulation to be interpreted in different ways. However, everyone is human—that is what happens. Therefore, mechanisms have to be in place to ensure that where there is a difference of opinion, for example, there is that check and that safeguard. Frankly, retailers should not have to accept an FPN simply because a trading standards officer or an environmental health officer has decided that that is their local authority interpretation of what should and should not be on a label, for example.

10:15

As I mentioned with regard to the FIR, there is still not agreement between the enforcer and the regulator on what a lot of this will mean. The fact is that a lot of the regulation on food is incredibly complicated. I am certainly not criticising trading standards officers or environmental health officers—I am positive about them, and our members tell us that they discharge their duties in a good way in Scotland. However, things slip through the net and people interpret legislation differently. It is not often that all businesses and the regulator read a piece of regulation in the same way. We just want to ensure that, before it gets to the point of FPNs, everybody is on the same page and that is where the primary authority kicks in. At present, if someone is taken to court, the two parties can fight it out and prove who has the right interpretation. If we just hand out FPNs, there will not be the same ability to challenge.

The reason why the Scottish Government introduced the primary authority arrangements last year is that, as my members, including businesses that operate throughout the UK, have told it, frankly, when it comes to this sort of issue, the regulatory environment in England and Wales is better, because we have a closer working relationship with the local authority trading standards departments and we have that safeguard. Businesses are a lot clearer. We have the due diligence, the advice and the assured guidance, which we do not have in Scotland.

Finally, if we are going to issue FPNs, our plea would be that they be issued not just to the store or store manager but to headquarters. Our members want to know if a store is perceived as not being compliant. If an FPN is just handed to the store, obviously, the chain of command might not feed that all the way up to the top.

Colin Wallace: I am afraid that I cannot agree at all with a lot of what Mr Martin said. I do not know whether the committee is aware of the Scottish Food Enforcement Liaison Committee, or SFELC, which comprises enforcers, the Scottish Government and trade bodies such as Scotland Food & Drink. It is a multi-agency body that has met regularly for a number of years, including under previous Administrations in its previous incarnations. The body provides excellent consistent advice to enforcers across Scotland, including training advice, matrices for qualifications and guides as to how the industry should comply with legislation and how enforcers should apply it. The model is actually envied by people in England and Wales. In Scotland, we benefit from having 32 authorities that can all get together regularly in one room. That group works really well, so I feel that we are more than adequately covered in that regard.

On fixed penalties, the current code of practice for food visits means that, if an officer finds a contravention, they notify the food business operator. If the contravention is still there when the officer goes back, they have to escalate the issue. After maybe two or three visits, an improvement notice will be served. Really, it is ridiculous to have to do something like that over a repeat contravention. As the convener said, it takes time to write the reports, go to court and so on. When there is a repeat contravention, a fixed-penalty notice is a means of dealing with the issue without it having to go any further.

The Convener: I will move on to labelling, given that we have had quite a good balance of views on the issues to do with fixed penalties. We do not need to resolve the issues now—we will do so from the evidence that we have received. Other aspects that have been mentioned are labelling, the FIR and the legislation that is working its way through.

Bob Doris: I will try to be brief, because some of the issues have already been mopped up. I have asked this question at each evidence session on the bill. It seems bizarre that, at present, officers have the power to seize unsafe food and courts have the power to destroy or dispose of it, but that does not apply to fraudulent food. If something is claimed to be lamb but it is beef, technically, the courts do not at present have the power to seize and destroy it. They will have that power. My understanding—I do not know where I get it from and I am happy for the witnesses to tell me what they think—is that the bill’s policy intent is to deal with not minor labelling infringements but fairly blatant food fraud within the food chain and in the retail sector.

Are witnesses content that officers should have the power to seize food and that courts should have the power, if need be, to destroy fraudulent food? It seems bizarre that trading standards officers could seize and destroy trainers that are not Adidas or Nike but that, when it comes to food, they do not have that power. Does the bill redress that balance? Does it do so in a commensurate and measured way?
I think that it is the right thing to do anyway but, more important, is there any evidence that, when food fraud has been identified, the food has continued to be in the food chain because the powers are not there to remove it? Is the approach that is taken in the bill right? To what extent is there a problem?

Archie Anderson: We condemn food because it is unfit for human consumption. No one has any objection to that whatever. However, it would seem ridiculous to condemn food that is fit for human consumption. It is true that someone is committing a fraud by selling lamb as pork or pork as lamb. However, to take your analogy with the trainers, when trainers are seized they are often sent to charities. There is no reason to condemn the food. Fraud is committed when food is sold under a different name, but that does not mean that the food is condemnable; it should be given to charities to use. For heaven’s sake, do not condemn good food.

Bob Doris: You make a reasonable point. The food should be seized and destroyed or directed elsewhere. However, my point is about whether the food is put back into the food chain and returned to the supplier for the offence to be perpetuated, rather than being seized by the courts and redeployed elsewhere.

Archie Anderson: No. It should be taken from the people who committed the fraud.

Bob Doris: That point is well made.

David Martin: Our interpretation of the bill as drafted is that without the necessary and appropriate controls we could end up with some pretty disproportionate enforcement action, if we take it to its logical conclusion. That is not to say that I do not agree with the principle of what you are trying to say, but we have to ensure that the bill does not result in some pretty calamitous outcomes, which is what—on our reading of it—it could end up doing.

I completely agree with Archie Anderson’s point about what happens if the food is not condemnable. There is also an issue about proportionality and about the consistency of interpretation of provisions such as those on labelling, which are very complicated.

We would like a two-stage approach to be built into the process. First, there should be a right to challenge the decision on whether the food should be seized and destroyed. The food should not just be taken and destroyed, at which point someone can appeal the decision and have the monetary value made up, because some important things are at risk. For example, consumer confidence is dented when there is a product withdrawal and damage is done to the supplier and the producer.

In our case, if we are forced to withdraw a product—let us say that it comes from a small Scottish producer in the Borders—because of a misdemeanour on a label, there is no guarantee that that slot will be filled again by the same small indigenous Scottish producer. It will very quickly be filled by something else, so there is damage to the producer as well as to consumer confidence. There is also damage to the retailer, as a result of a response that might be deemed to be disproportionate.

When there is an issue of food safety, we are very clear about what happens and there is regulation that deals with that. There is no question but that the product has to be removed immediately. Even in the case of horsemeat, when there was not an issue of food safety but there was an issue of consumer confidence, my members removed the products immediately. There was no question about that and it all came off the shelves. However, if the issue is to do with labelling rather than safety, there is a question of proportionality. Is it just about a misspelled label? Is an ingredient wrong? Is the product misbranded? Those issues could all be considered.

There is also the issue of consistency. Is our interpretation of the labelling regulations the same as the enforcer’s interpretation? It might not be, so we need the ability to appeal. Given that, from April, this area will be governed by the FIR, we can bring it under the primary authority arrangements, so we can have those checks and balances.

Uel Morton: It is important that the legislation targets the right person. 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.

It is important that in our efforts to move forward on this and promote the integrity of Scottish food, we look at all levels of the supply chain. Quality Meat Scotland is doing the work on farms and in abattoirs to underpin the integrity of our brands, but there is a gap, which we have started to look at since the horsemeat scandal, in terms of the integrity of further manufacturers, what they are doing with products, how they are doing it and the audits that are required.

The committee should consider whether we are targeting the right people, given who is actually committing the fraud. It is important that the penalties are proportionate to the amount of gain...
that the perpetrator has had. There must be some link with turnover or the degree of profit that that person has had. For example, horsemeat cost 70p a kilo and beef was about £3.20 at that time—it has since gone up to £4 a kilo. You can see what the adulteration factor of 25 per cent can do in terms of generating additional profit. We need to target the legislation at the unscrupulous people further back in the chain.

The Convener: Is the bill in its current form sufficient to assist you in that aim? Does it make the difference that you would want it to make in order to get that focus? It is the bill that we are looking at today. Does it do the job to help you ensure the outcome that you would want?

Uel Morton: I have read the bill and I do not feel qualified to give you an answer to that, because I am not a lawyer. I would push that question back and say that we need to make sure that the bill can achieve that aim.

The Convener: How do we do that? What does the bill need to say, not in legal jargon but in general terms?

Uel Morton: You need to be able to get further back in the supply chain. The point that I am making is that it is not necessarily down to the retailer. He is the guy who is sitting there with the product on his shelf, but he might have been duped by the unscrupulous operator further back in the chain. We need to make sure that the bill has scope to dig into the area between the primary producer and the person who puts the product on the shelf so that we can root out habitual offenders. Those offenders are probably the same people who are not paying their tax returns; people who cheat across a wide range of areas. We need to use intelligence across government to identify where some of those operators are.

Colin Wallace: This is not an option that would be used that often. Food would be detained for further investigation to get more information with regard to what is wrong and the implications. There are certain compliance measures that some of the food business operators could take in relation to rewrapping, relabelling or reprocessing that would achieve compliance. You would not need to use the tool in that case, because it would be inappropriate. Enforcers would not be going into businesses and issuing seizure and detention notices willy-nilly every day. It would happen only where the mechanism that currently exists cannot resolve the issue and where there are concerns about potential food safety issues linked to the food standards issues.

10:30

David Martin: From my perspective, the question is what we want to do with the labelling provisions. There is an issue around food safety. If the label is incorrect with respect to an allergen problem, that would be about food safety; it would not be a fraudulent label. Is the label just incorrect? Is there something on it that is misspelled, or is there something on it that has been included that should not have been included? That is a different matter.

Finally, there is the issue of food fraud. Fraud is a criminal activity. Labelling provisions will not stop criminal activity. Uel Morton is absolutely correct: that is a supply chain issue, which needs to be dealt with much earlier on in the supply chain.

I in no way belittle the seriousness of the horsemeat situation, which my members took incredibly seriously—it was a very serious issue. The retailers went to their suppliers, they gave them a schematic and asked them to give them a product and to label it, and the retailers would then sell that product. What they often asked for was British beef; what they got was neither British nor beef.

As Uel Morton has said, much of the problem stemmed from complex supply chains that were outwith the UK. Since the horsemeat issue, our members have upped the amount of random testing and auditing that they have done, as well as sharing intelligence. A working group has been set up under the Food Standards Agency. With other industry groups, our members now pool intelligence to target testing at at-risk products and supply chains. There is more auditing of supply chains, including supplier to supplier. In particular, there are more unannounced audits on suppliers, much to the consternation of some of them.

A lot of things are happening in order to root out fraud, but they have to be targeted and evidence based. In the case of horsemeat, we tested more than 10,000 products. Of those products, 0.1 per cent revealed evidence of horsemeat above the 1 per cent threshold, so they were 99.9 per cent clear. Again, I do not cite that statistic to belittle the seriousness of the incident, but it shows how targeted we must be to root out that fraud.

We need to deal with the supply chain. That involves evidence sharing and adopting a risk-based approach. It is about getting our resources in the right place. Will a label change all of that? I do not think so. If it is possible to defraud a product, it is possible to defraud a label.

The Convener: Job done. Are you all working together, as suggested, and sharing such information?
Uel Morton: There is a lot of working together across the industry and supply chains, and we need to increase that. However, the retailer has a responsibility. Retailers have adopted a global sourcing policy. They are driving what they would describe as costs out of the system, and they are taking tenders for products. That price competitiveness among UK retailers is the driver for the race to the bottom that there sometimes is. Quality can get compromised. That was the driver in the horsemeat scandal. There was someone out there who could supply a product at a cheaper price—it would be possible to get 10 burgers for 80p or whatever it was. The driver was the cost. We know that all retailers have a premium offer, a standard offer and a value offer, but the retailer has to ensure that his supply chains have the necessary integrity.

Tony McAuley: I am not particularly qualified to speak on food issues, but we in trading standards work in the general fraud environment, and horsemeat was an international fraud. It was serious, organised criminals who were involved in that exercise. If those are the people who are involved in it, they will seek an advantage where they can.

It is a matter of traceability, of being more intelligence led and of being able to pass intelligence between agencies so as to stop the frauds happening. That can involve European agencies, international agencies and our own agencies in the UK. That allows intelligence to be passed so as to identify food fraud.

As I say, however, food is not my locus, so I am not qualified to speak on that.

The Convener: Everybody would accept that the bill will not deal with such matters around the horsemeat scandal, for instance. However—and considering the good intent of the Scottish Government—we cannot, after a horsemeat scandal, not have that in our thoughts as we seek to bring in measures to protect the quality of the brand and so on.

Food fraud is a sexy title, but we have heard evidence that the issue is much more common with cod and haddock. Things need to be put in perspective, which is where the bill comes in. This is not all international fraud; it can be about cod and haddock, or lamb and beef—about what is in someone’s curry on a Friday night. Will the bill tackle such issues? Does nobody want to comment? I suppose that you do not want to speak about the bill and talk about cod or haddock, rather than horsemeat. David Martin wants to speak—I have provoked someone.

David Martin: I am happy to jump in. Having provisions to threaten the withdrawal of a product on the basis of labelling will not solve the problem of whether a fish is cod or haddock, because such provisions are for a reaction after the event. The problem needs to be dealt with much earlier in the supply chain.

We need to be sure that the supply chain has integrity. For example, when a retailer gives a supplier a specification for a product that contains elements of a fish, the retailer must ensure that that is exactly what they get in return.

Uel Morton is right that there is an onus on retailers—the horsemeat situation increased the pressure on them to do this—to ensure that they are satisfied not just with how they retail a product but with their supply chain all the way to the end. The only way in which we will do that is through a lot of the measures that we are already taking, such as targeting our testing, sharing our intelligence, auditing our supply chains more often, and taking complexity out of the supply chains—that was an issue in the horsemeat situation—and shortening them. We are doing unannounced audits on suppliers—they dislike that, because it drives up their costs, but it secures our supply chains.

Such steps are being taken but, to be frank, the bill does not deal with any of that. The bill deals with labelling.

The Convener: A fish processor recently told us that it is heavily audited by local environmental people and constantly by supermarkets. It sells into the bigger UK market and its worry is that, if labelling requirements became more prescriptive in Scotland, it would have a difficult job and incur costs in dealing with the big supermarkets. Does anyone want to reflect on that evidence from a producer about the balance?

Colin Wallace: I do not think that that is the particular issue; the concern is about misleading the consumer. We would like accurate labels, so that the consumer can make up their own mind about what they are buying. The consumer should not be misled.

You mentioned the haddock, whiting and cod issue. People should get what they ask for. Another issue is meat substitution, which could have a grave effect on people of certain religions, who would be outraged at eating something that they thought was something else.

Often, people are misled by accident, but sometimes, it happens by design. We must deal with the issue appropriately and proportionately. The bill sets out provisions to deal with all such issues.

The Convener: There is an ambition on health and nutrition. The committee is interested in whether the bill will give us an opportunity to create healthier lifestyles by promoting healthy
eating and dealing with obesity. Does that come into the same sphere?

**Colin Wallace:** Very much so. We in REHIS are keen to take that approach, but it is all about compliance at the moment. Such work has to be taken forward slowly. We do a lot of work with our communities through food and health courses. It might sound bizarre that we do an elementary cooking skills course, but the number of youngsters in schools and so forth who do not know how to cook is amazing. A lot of their parents are not aware of how to cook things properly and in a nutritious way—the way in which the likes of my mum used to cook, which she taught me. A lot of good preventative work could be done.

**Richard Lyle:** Most of the questions that I was going to ask have already been asked. I am interested in the points that have been made by Mr Morton and Mr Martin. Last week, I divulged the fact that I was a grocer for nearly 20 years, and, with the greatest respect, I do not agree with the points that Mr Martin makes about environmental health officers. I always found them quite amiable and reasonable, and they tried to help before they came along and, as Mr Martin would suggest, stuck the boot in. They are reasonable guys.

Various proposals were made on the size of the board. Three members and a chairman is too few. How many members do you think should be on the board, and what type of people would you like them to be?

**Uel Morton:** In our written submission, we suggested that three members and a chairman was too few. We feel that it is important for a balance to be struck so that there is a broad representation of people who know the industry and how it works. At the moment, the FSA national board does not achieve that because it does not appoint industry people—it says that they would have a conflict of interests. I take the opposite view, which is that we need a balance between independent board members and members who have detailed industry knowledge of how supply chains work. It is also important to strike a balance between having enough board members to reach a consensual decision on any issue under discussion and not having so many board members that the board becomes unwieldy or too expensive to service. As a layman, I would suggest having between eight and 12 members.

**David Martin:** I would not necessarily put a number on it, but there are certain principles to be observed. The board must be fully independent and free of any special interests, whether from industry, public health or any other sector that has an axe to grind. On that basis, I would preclude the retail sector and industry. As long as there are people around the table who have the relevant expertise and understanding of the sectors with which they are dealing, that will be satisfactory and will prevent any special interest bias. The Scudamore review did not manage to achieve that, as it did not have the expertise to deal with retail and anyone beyond the farm gate.

From our perspective, the board needs to be truly independent and not vulnerable to being captured by special interests or pressure from the outside. It must also be free of those on the inside. As long as there is relevant expertise and industry knowledge, I would not necessarily suggest that there should be people from industry around the table.

**Archie Anderson:** I would like to see one specialist group on the board—the consumer. The consumer should be represented on the board, as they are the end user who is going to eat the stuff. They should be represented fully.

**Uel Morton:** In response to David Martin’s point, I would say that one man’s bias is another man’s detailed insight into a particular situation.

**Colin Wallace:** I will make one final point. The balance is correct; it is the skill set that requires that board members will be specialists in other areas. I think that Mr Martin meant that he did not think that somebody from a certain sector of public health should be on the board. However, to me the bill is all about public health—it is about improving the health of the public and providing the consumer with confidence in their safety. That should be the overarching objective for any board member, and I am sure that it would be because it is the same for yourselves.

10:45

**The Convener:** Mr Martin, will you tell us what you said?

**David Martin:** I did not mean that public health should not be represented. I was talking about, for example, those who lobby on behalf of public health interests—lobbying organisations or other organisations, which are perhaps equivalent to the SRC but on the public health side. There absolutely should be a public health input—that is right—but it should not necessarily come from people who have a slightly more political agenda.

**The Convener:** The committee has had quite a lot of evidence about the need to pool resources as much as possible in relation to food research, so that we draw in all the information that we need if we are to be more proactive, not in pursuing prosecutions but in using research and knowledge to have a bigger influence. I presume that the witnesses value the current approach and want it to continue.
I see that Richard Lyle wants to come in. I was not asking your opinion, Richard, I was trying to elicit—

Richard Lyle: I thought that I would come back in on my question, convener.

The Convener: I will let you back in, as I always do, but first—

Richard Lyle: Perhaps you cannot see me, because I am sitting up here with the witnesses. I—

The Convener: Richard, I was trying to elicit a response from the panellists. If they do not want to respond, that is fine, but if they do, I will bring them in first.

Colin Wallace: You asked earlier whether we think that our collaborative working arrangements are sufficient to enable us to consider and put together all the information and intelligence, and I mentioned the Scottish Food Enforcement Liaison Committee.

I will run through who is represented on the committee. Its members include: the Society of Chief Officers of Environmental Health in Scotland; local food liaison group reps; the Association of Public Analysts; the Scottish microbiological group; Health Protection Scotland; the Society of Chief Officers of Trading Standards in Scotland; Citizens Advice Scotland; REHIS; the Convention of Scottish Local Authorities; the Food Standards Agency in Scotland; the British Hospitality Association; the Scottish Food and Drink Federation; the Scottish Retail Consortium, which is invited to come along; the consultant in public health medicine group; the Scottish Food Advisory Committee; National Farmers Union Scotland; and the Scottish Government rural payments and inspections division.

That gives you an idea of how broad the committee is. A lot of information comes in and a lot of consultation goes out about what should and should not happen. We have the building blocks to be able to continue to take things forward.

The Convener: My question was badly communicated. I was asking whether you have any influence on the development of research into issues that are pertinent to Scotland. We have heard that Scotland has particular problems with E coli 0157, for example. Will the bill give us more opportunity to focus expertise so that we get to the heart of such issues?

David Martin: Before I answer your question, I will offer a rebuttal to Mr Wallace’s point: the Scottish Food Enforcement Liaison Committee cannot hand out assured guidance that is backed by statute and enables people to know that if they follow the guidance and behave themselves they are within the law and have nothing to worry about in relation to enforcement action.

On resources, we said in our submission that our members are 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. The UK is a very integrated market, particularly from our perspective; our members throughout the UK are probably the lion’s share of the export market, if not the only export market for Scottish producers. I have seen the evidence that other witnesses have given, and the Scottish Retail Consortium has discussed the matter with the Scottish Government, and we are aware that there will be memorandums of understanding and protocols. That is all fine, but we would appreciate having a lot more detail now, as opposed to having to hope that everything falls into place after the bill has been passed.

The area is far too important for us to take a chance on it; we must be absolutely sure that the new body, when it is set up, has exactly the same resources—not a penny less—and that the resources go to everything that we want them to go to. We must have consistent, co-ordinated advice and the necessary access to and influence over the appropriate advisory committees. There is currently an element of taking things on faith. We are slightly sceptical, but we hope that, at the end of the bill process, how everything will work will be clear and transparent.

Public health is an additional area that the new body might be asked to deal with. Any addition to the body’s scope should be properly resourced.

Members of the committee might be aware that over the past three years the retail sector provided £95 million to the Scottish Government in the form of a public health supplement. The supplement would be an ideal funding source for action on public health and obesity. However, we are still clueless about how the public health supplement has been used to support public health. There is no clear audit trail on how the money has been used. Money is coming in from us again this year, which is specifically targeted for public health.

Uel Morton: We have talked a lot about food safety and labelling, and enforcement in that regard. The new body will also need to consider how to improve the national diet. The bill as drafted does not make enough provision on how that will happen. David Martin mentioned obesity; we can see the effects of obesity in Scotland in the context of heart disease and other health problems.

I know from speaking to ministers that there is a desire to create a healthier and better Scotland. At the moment, our citizens are making the wrong
choices. I would be interested to see how the committee can influence the bill so that it provides greater scope for the new food body to take more of a lead and do more educational work.

I have been at Quality Meat Scotland for eight years, and every year that I have been there we have done more and more work with young people in schools. There is a great desire for more information on how to have a healthy and balanced diet. We need to take the issue seriously and influence the citizens of tomorrow while they are at primary school and at a stage at which they will take on information, so that they will put their learning into practice when they have grown up and are raising their own families.

I agree with what Colin Wallace said about the lack of cooking skills. We do a lot of work on that, but we are a small body with a limited budget. We would like the new food body to be able to really take the issue on and we would be delighted to work with it—putting our little bit with its bigger bit—to make changes in the area.

The Convener: Does anyone else want to comment on public health?

Uel Morton: May I make another point, convener? We need to make the distinction between what we traditionally regard as public health, which is about safety, and the dietary and nutritional aspects of public health. When you ask a group of professionals about public health, they will think about the safety aspect, but the issue needs to be considered more widely.

The Convener: Okay. I thought that I would give Richard Lyle the last question, but—

Richard Lyle: I am quite happy to take that on board—

The Convener: Yes, but Bob Doris wants in. What do you think? Do you want the last question or the second-last question?

Richard Lyle: I have two quick questions. Bob can have the last question.

Bob Doris: You are too consensual, convener.

The Convener: Richard Lyle.

Richard Lyle: Thank you, convener.

I agree with Mr Morton about labelling. I had an interesting meeting with Coca Cola. Did members know that Coca Cola adjusts its formula in every country, to meet the local requirements? I found that interesting. I do not know how the formula varies between the UK, France, Luxembourg and wherever, but it changes throughout the world, which is quite interesting.

On the question of who should sit on the board, David Martin is a sceptic in a sense. I agree that the board could possibly be bigger, as I am sure that there are many people out there with the required expertise who are not the Asdas or the Morrisons, or the retail consortium guys.

The Convener: Bob Doris will ask the last question.

Bob Doris: I will try to fit a question in, but first I praise Mr Morton and Mr Anderson as the only two witnesses who have told us who should be on the board, while everyone else has ducked the question. I thank them very much for that.

On the public health levy, it is worth putting on record that it was given that name because it targeted the largest retailers selling both alcohol and tobacco.

I will not go back to the detail on labelling just now. I asked my previous question to get some reassurance that there will not be microdetail in labelling, and that the provision is more about food fraud. I think that people readily assume that, if they are paying for lamb and getting beef, that is just wrong. It is not a minor labelling infringement; it is fraud. Likewise, if a retailer is offered a deal for beef that is too good to be true, and the beef turns out to be horsemeat, because the latter is 70p a kilo while the former is £3.80 a kilo, there is a responsibility on the retailer to say something.

I take on board that you would have to follow up such an issue not only with the retailer but right through the food chain, and I am sure that the expertise exists to do that. I wanted to mop up some of those issues because I thought it was important to provide balance.

My question is on how all that fits in with the duty to report. If a retailer, or whoever it is in the food chain, gets a deal that is just too good to be true, and they know it is iffy and a bit dodgy, I would expect there to be a statutory obligation on that retailer to raise that with the authorities. Is there now a duty to report when it is believed that there could be an infringement? Some views on that would be welcome.

I do not know how widespread that is, but I praise the retail sector for its action. A representative from Tesco came before the committee the other week and said that, since the horsemeat scandal, there is much more transparency in the testing that Tesco does and in reporting the results.

Tesco is working in partnership with food standards experts and other large retailers on taking a more risk-based targeted approach to testing. There was a feeling that, before the horsemeat scandal, people sometimes tested to validate what they thought was safe. We need to build in the risk element and target products that it is more appropriate to test.
There are two aspects to my question on the duty to report. Do people see the duty as an important part of the bill with regard to everyone meeting their responsibilities? Is enough being done to provide transparency in testing by the large retailers? Is that better done voluntarily, or should we consider putting it on a statutory basis?

That is not a very brief final question, but it fits in well with previous questions.

**The Convener:** Thank you, Bob. If you agree, I will ask the panel to focus on the duty in the bill and the inspections. I would like quick responses, please.

**David Martin:** I will start with the duty. We may have slightly misinterpreted it in our reading of the bill, and we have no problem with it in principle, but I am at a bit of a loss to understand why it has been included in the bill, given that the food information regulation will make that provision anyway in April 2015. The FIR states:

“Food business operators which do not affect food information shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant with the applicable food information law.”

We will be compelled and legally obliged to report from April 2015 next year anyway, so although in principle the duty is fine, I do not understand why it is in the bill.

Tim Smith from Tesco is right about transparency. The view that transparency is key is shared by all our members, and we need to ensure that we get it right. As I have said, we have, since the horsemeat incident, tested approximately 10,000 products and shared all that information publicly and voluntarily with the FSA. However, the FSA is probably not interested in every single one of those 10,000 tests, so they are probably not a good use of resource. We are probably better off sharing trends with the FSA and making that information public on a targeted basis. That would be an easier way to make the information more relevant and digestible, and more pertinent for enforcement reasons.

**The Convener:** Thank you. Colin Wallace can go next.

11:00

**Colin Wallace:** Yes, there should be a duty to report. A lot of businesses work closely with environmental health and give us information about areas that they are sceptical and concerned about, because they know that we are there to help and to provide them with support, advice and guidance. The reason why I say that they should have that duty is that there would then be no reason for them to turn round and say, “We weren’t aware. We didn’t think there was anything wrong.” If they know that there is a duty on them, which is what we would advise, we can assist them in understanding their responsibilities.

I agree with everything that has been said about transparency. My one concern is that local authorities have consistently reduced their sampling budgets over the past 10 years to make savings and that has caused difficulties in relation to properly targeting risk-based approaches to local and national food sampling. Local authorities want to do as much as they can. Ironically, once the horsemeat DNA scandal broke, all of a sudden a flurry of samples was taken. The scandal might have been found out earlier had local authorities been sampling at the rate at which they had done previously.

**The Convener:** You mentioned that part of your role is to keep people informed about legislation. Have you been briefing people about their responsibilities from 2015? As David Martin pointed out, the food information regulation will be law in 2015. Do people know that, and have you made them aware of that in your role?

**Colin Wallace:** Environmental health personnel will discuss that with the people whom they meet on a daily basis. Environmental health is much wider than just food safety, although food safety is an integral part of that, but when environmental health personnel are dealing with other issues they advise people about what may be on the horizon.

**The Convener:** I confess that I did not know that the FIR would be law in 2015, although we are scrutinising the bill. It is important for the people who will have to apply the laws and comply with them to be well aware of them; that might be part of an education programme.

**Tony McAuley:** I concur with what has been said about the duty to report. The FIR will come into force in April next year. If a retailer or trader has guilty knowledge of a possible fraud, they must pass on that information. That duty must be applied.

I agree with Mr Wallace’s point about transparency, which is desperately needed. Ultimately, it is the consumer, as the end user, who must have all the information. Something as simple as the substitution of spirits is an example of that. If there is a Smirnoff bottle behind the bar but it is filled with supermarket vodka, that is a simple fraud, but it means that someone is paying a higher price for a branded vodka, or for whisky or some other drink, and getting a substituted spirit. Environmental health can take that as a food safety offence, and we in trading standards can take it as a trading standards offence under the Consumer Protection from Unfair Trading Regulations 2008, so we can be creative about
how we enforce the legislation, but more transparency in the marketplace is desperately needed.

**Uel Morton:** It sounds as if the duty to report is dealt with, so I will comment on testing. Testing should be proportionate, otherwise we are wasting resources. I would ask a more fundamental question, though. I would ask, why are we testing? We are testing the product to see whether it is what it says on the tin or the pack, and one of the issues that the consumer faces is that there is too much confusing information on the pack. Some of the logos and symbols that are currently being used do not actually mean anything; they have no legal definition. For example, the Scotch beef logo means that the meat has come from an animal that was born, reared and processed in Scotland, but the saltire on a packet of beef means nothing and has no legal definition. We need to ensure that we are testing for the right reasons. The information on the pack must be relevant to consumers so that they can make a decision and the enforcement authorities can enforce what needs to be enforced.

**The Convener:** Thank you—you got the last word. On behalf of the committee, I thank the witnesses for the time that they have given us this morning. The evidence that they have provided has made it an interesting session. Thank you very much indeed.

11:05

*Meeting suspended.*
On resuming—

Food (Scotland) Bill: Stage 1

The Convener: Agenda item 9 is our final evidence session on the Food (Scotland) Bill. I again welcome the Minister for Public Health, Michael Matheson, and his officials: Morris Fraser, the bill team leader; and Lindsay Anderson, a Scottish Government solicitor. Welcome to you all.

Minister, am I correct in thinking that you will not make an opening statement and that we can move straight to questions?

Michael Matheson: Yes, I am happy to move straight to questions if you wish to.

The Convener: Good. Who would like to ask the first question?

Are there no questions for the minister?

Michael Matheson: Will I go back to my statement?

The Convener: We nearly had to ask you to do that, but Nanette Milne has a question.

Nanette Milne: The financial memorandum to the bill says:

“The financial grant provided to FSS will exceed that currently provided to the FSA in Scotland by approximately £5 million”.

That increase in funding is to compensate for the extra roles that food standards Scotland will have. I presume that it takes on board the activities that will be taken away from the Food Standards Agency south of the border. Am I right in thinking that?

The financial memorandum goes on to say:

“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.”

That confirms that I was right in my assumption.

The financial memorandum also states:

“The level of that financial transfer is the subject of on-going negotiations.”

Can you provide any information on how those negotiations are going? I have been told that they are proving a little difficult, although that is anecdotal. Has a time limit been set? What is the current situation?

Michael Matheson: The Scottish Government gives funding directly to the FSA in Scotland, but funding also goes into the United Kingdom central pot for performing functions for the Scottish ministers. Some of the negotiations that are taking place are about the repatriation of some of that money.

The negotiations are at a very advanced stage. I am confident that we will reach a point of agreement and a final outcome. Essentially, we are talking about moneys that have gone from the Scottish Government to fund aspects of the FSA at a UK level and the performing of certain functions for us, covering three office bases. I am confident that we will reach agreement.

Nanette Milne: I have heard that the negotiations have not been straightforward. Can you comment on that?

Michael Matheson: They have been straightforward in that they have taken place within the machinery of Government. I do not think that there have been any particular difficulties with them, other than the fact that the two sides have taken different positions, as we would always expect in such negotiations. 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.

The Convener: Whatever the financial arrangements, we have heard in evidence—as you probably know—that the other important factor is not to disturb too much the existing networks, the exchange of information and the research that is currently carried out. The importance of that has been highlighted to us in evidence. How are you getting on with the task of ensuring that we do not cause too much disruption and that we can still use all the important networks, which we have been told should be maintained?

Michael Matheson: We are making good progress with that. We have had a very good working relationship with the FSA at a UK level from the outset, ever since we made the decision to establish the FSS and to maintain a good partnership with the FSA. There are aspects of the current arrangements that it 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.

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. There are potentially new opportunities for us in areas such as research.

We are also developing a memorandum of understanding with the FSA on accessing and sharing expertise and information among the agencies. In general, there has been a very cordial and good relationship right from the outset in looking to maintain and support access to relevant bodies of expertise in Scotland, the FSA and the rest of the UK.
11:00

**The Convener:** On the opportunities, will we be competing with the UK agency for European research funding? Does that happen now?

**Michael Matheson:** That would be taken forward on a corporate basis by the FSA at a UK level. Obviously, there are areas of expertise in Scotland. For example, Scotland is seen as a leading authority in the world on shellfisheries. Quite a bit of that research was passed to the Scottish office to conduct on the FSA’s behalf.

From an operational point of view, there will also be an opportunity for the FSS to consider where it wishes to carry out other specific research and how it wishes to fund it, whether by using its own resources or by tapping into other international resources that are available to it, particularly at a European Union level. That opportunity will exist in a way that does not currently exist for the FSA office in Aberdeen because of the corporate nature of the FSA and the way in which it operates across the UK.

**The Convener:** I wonder whether it would disturb the relationships if it was competing for European funds with the UK body.

**Michael Matheson:** I do not think that it would be a case of competing. It is about utilising expertise and areas in which the UK agency feels that it has expertise. Money is allocated on the basis of where expertise is and the quality of the research. I would not see it as being competition. The FSS will be allowed to look at areas in which it wants to build up its expertise and to apply for any funding that it thinks might be appropriate for that, as it sees fit. The approach is based on expertise and the quality of the research that will be undertaken.

**The Convener:** We have heard constantly about joint submissions and that there is no single point of expertise in respect of how to pursue funding and which issues would be suitable for research. The main thrust was to keep the network pretty tight and that it was more about joint submissions. I do not think that we received any evidence that there would be an opportunity for people to go away on their own researching. We did not seem to receive that evidence.

**Michael Matheson:** There would be absolutely no reason why the FSS and the FSA could not make a joint submission for the purpose of pursuing research.

**The Convener:** This is the first time that we have heard in evidence about the opportunities that may exist for our research institutions to work on their own. That was not in any of the written submissions; indeed, the evidence was the opposite of that.

**Michael Matheson:** I cannot comment on that. There would be no reason why, for example, a university in Scotland that wanted to do a piece of research with the FSS in a particular field would not be in a position to look at taking that forward with it.

**The Convener:** The universities can do that now.

**Michael Matheson:** They can, but the type of work that they can do is more limited because of the corporate nature of the FSA and how it carries out its research.

**Rhoda Grant:** I have a supplementary question on finances. We have received evidence that, as things stand, the financial memorandum is okay. However, there is scope in the bill to increase the duties of food standards Scotland—there was talk about nutrition, diet and the like. Will further resources become available if the scope of the agency is increased?

**Michael Matheson:** We have designed the bill 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. We are creating the footprint. However, there would have to be a reason for committing any additional responsibilities to the FSA in future. We would have to consider the evidence base and justification for doing that, as well as the cost implications, so due process would be followed before any additional duties were undertaken. Because we are not extending the role significantly, there is no need for any additional resource at present, but if that changed in future we would have to look at the financial implications of that.

**Rhoda Grant:** We took evidence on the make-up of the board. There seemed to be general consensus around the fact that a board of three would be far too small. Have you had thoughts about the size and make-up of the board and about whether it should include industry representatives or whether, as many people have suggested, board members should be independent of industry? Should there be a place on the board for trade union representatives?

**Michael Matheson:** The board will have a minimum of four and a maximum of eight members, which broadly reflects 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 have a higher number, with a minimum of five and a maximum of 10 members. If the number of FSS board members dropped down to four, that would be too low. We would want to
manage the numbers to maintain a higher level, as close to eight members as possible.

The 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.

On trade union membership, the process for public appointments to a board of that nature is through the Commission for Ethical Standards in Public Life in Scotland's public appointments process. I expect the FSS to have good industrial relations, as the FSA has, and to have in place a structure to allow union representatives to engage fully in the organisation's processes.

**Rhoda Grant:** Would a ring-fenced trade union place on the board not enhance trade union relations, and is that not commonplace on other boards?

**Michael Matheson:** No, it is not commonplace on other boards. The board has been constructed in the same way as that for any other public body. For example, health boards have employee directors who are trade union representatives with responsibility for engaging in the process. I would expect that the processes that the FSS board and chief executive put in place outwith the board structure will maintain and support good industrial relations and will ensure that trade unions have a strong voice and a role to play in helping to shape and manage the organisation. Once the board is in place, it can look at how best to achieve that.

**Rhoda Grant:** Will you legislate to ensure that that happens?

**Michael Matheson:** It is not in the bill. We have constructed the organisation in the same way as other public appointment boards are constructed, and appointments will be made on the basis of an open public appointment process.

**Nanette Milne:** The bill says that food standards Scotland will have “no fewer than 3 nor more than 7” members, but you mentioned the figure four. Will that be written into the legislation?

**Michael Matheson:** Lindsay Anderson can clarify that.

**Lindsay Anderson (Scottish Government):** That figure includes the person who is appointed as the chair. It will be three plus one, or seven plus one.

**Richard Lyle:** Rhoda Grant asked the question that I was going to ask, but I will explore it a bit further. I take the point about trade unions but if we really want the FSS board to have people from the sector that you talked about, such as environmental health officers or someone from industry, I take it that we will advertise and do interviews after the bill is passed. Who will select the board? Will it be officers or the cabinet secretary, or even you, minister?

**Michael Matheson:** The process will be the same as that which is set down by the Commission for Ethical Standards in Public Life in Scotland. An open and transparent process will be conducted, involving public advertisement, an interview panel and then recommendations to ministers about who should be appointed to the board. That is what happens with the board of the FSA. The FSA's appointments are a shared responsibility. All four ministers who are responsible for the FSA in the UK have to agree to appointments to the board, and the FSS will use the same process. It will be an open and transparent process that fully complies with the Commission for Ethical Standards in Public Life in Scotland, and appointments will be made on recommendation from the interview panel.

**Richard Lyle:** I do not doubt that. However, during the past couple of evidence sessions, there has been a lot of interest in who will be on the board. At the end of the day, various firms do not want to see someone from another firm on the board. We have well-respected people who have been consulted on food issues in the past, such as Professor Pennington. Will the board members be people of a high standard who are there to ensure that the standards of Scottish food and drink, which are the best in the world, are kept up? We want to ensure that whoever we choose and interview, the best people are on the board. Is that your intention?

**Michael Matheson:** It is certainly the intention. Obviously, it is down to individuals whether they choose to apply to be a member of the board. As I said at the outset, the FSS will be a consumer protection organisation and the board members should reflect that type of approach by having the knowledge and expertise that will assist in achieving the FSS's objectives, which will have to be submitted to Parliament.

I want the best possible people to be on the board. It comes down to who applies and to the interview panel, which will make recommendations to ministers with the objective of getting individuals who can achieve the objectives of the FSS as a consumer protection organisation.

**Bob Doris:** A line of questioning was pursued that got some quite constructive answers from the industry. A representative from Tesco talked about
the testing that those in the sector, particularly large supermarkets, would do. Following the horsemeat scandal, a number of large providers, including Tesco, are voluntarily putting much more of their testing regime into the public domain for everyone to see.

How consistent is that across all such players within the industry? Is the Government minded to have a voluntary code around that? At present, there is no statutory obligation in the bill to compel that. Where does the balance sit in working in partnership with industry and the sector not just to see the results of tests, but to provide support to ensure that an informed, risk-based approach to testing is being taken? It would be good to have more information on the voluntary basis of that, the potential for a voluntary code and the need for any statutory moves in that regard.

11:15

Michael Matheson: It might be helpful if I give a wee bit of background to the horsemeat fraud issue, as I was involved in dealing with that. Although it was a food labelling issue, not a public health issue, I was involved because of my responsibility regarding the FSA in Scotland.

One of the challenges was that, although retailers were conducting testing, the results of that testing were not routinely shared with the FSA at that time. During the horsemeat scandal, it was put to the retail industry that it would be helpful if the results of that testing were shared with the FSA so that it would have a clearer understanding of the findings. That was agreed on a voluntary basis and, when appropriate, that information was placed in the public domain.

Some retailers have a system whereby they give some indication of the outcomes from some of the testing that they conduct. It will be for the FSS to advise us on the policy and whether there should be a mandatory scheme. If the FSS advises ministers that we should move the system to a statutory footing, we will have to consult on that and consider how to take that forward. The FSS’s role will be the same as the FSA’s role at that moment, which is to advise ministers on what we should do in the area—whether the scheme should be voluntary or mandatory and what it should look like. We will respond to that advice and look to proceed with a consultation process.

Bob Doris raises an important point about the relationship between the industry and food safety bodies such as the FSA and the FSS. There is a decision to be made about whether that type of information is useful in driving forward consumer protection or whether there is a more appropriate way in which that can be achieved, and it will be for the FSS to advise the Government on how it should proceed. Its job is to advise and inform us openly, and if it says that the system should be put on a statutory footing we will consult on how we can take that forward.

Bob Doris: Thank you. That is helpful. I would like to pursue another line of questioning, unless colleagues have other questions on the subject.

The Convener: We have raised the matter of food inspection with some of our panels. We had an evidence session with fish processors when we visited Aberdeen, and they explained to us that the level of inspection for the various supermarkets is very high, whereas local authorities inspect maybe once a year. There is a lot of inspection, though, and we asked about the inspection and regulation that already goes on. The counter-view was about the importance of having independent testing and inspection, whether that is co-located in Scotland or whatever, rather than it being the responsibility of individual small councils. Do you want to comment on that, given that lots of local authorities have withdrawn their inspection and regulation services?

Michael Matheson: You raise a good point, convener. At present, the FSA, as the competent authority, works with local authorities and provides them with guidance and structure for some aspects of the testing that they should be engaging in, but there is independence at a local level in how they put that into practice.

Moving forward, testing would be an operational matter for FSS. There is an opportunity to explore how some of the testing regime is taken forward, whether there is scope for a greater element of testing at a national level and what aspects should be left to local responsibility. There is an opportunity to look at the relationship between the local level and FSS, once it is established, and at whether there should be an element of centralised testing, rather than leaving it to local discretion. The FSS would have to discuss and explore that with its counterparts in local authorities. That is an issue that merits further consideration, and I imagine that the new FSS would want to consider it.

The Convener: Bob Doris and others have discussed with previous witnesses food hygiene and safety, food quality, the labelling regime and what happens when food is mislabelled. We got a strong message from Archie Anderson at one of our recent evidence sessions that we should not be wasting good food. We discussed the consequences of finding that something is mislabelled—it is pork, not beef, but there is nothing wrong with it—and how we dispose of it. Do you want to speak to any of those issues, which have been tested in our evidence sessions?
Michael Matheson: The food and drink industry is of tremendous value to the Scottish economy. It is in our interest to have in place a robust and clear regulatory regime for food safety and food quality, given that, in general, Scottish produce is seen as being of a high quality.

The reason that the horsemeat incident was not a public health issue is that it was about labelling. It was not the case that consuming horsemeat would do harm to someone's health; the issue was that the label did not say that the products contained horsemeat. On that basis, it was fraud, because the product contained something that was not on the label.

Through the bill we are taking forward some of the recommendations that were made by Professor Jim Scudamore and his team, who reviewed the horsemeat incident. They made recommendations in relation to taking robust, appropriate and swift action if there is mislabelling. The regulatory powers that enforcement officers will have will allow them to deal with those types of things more robustly. There is a need to make sure that the public can have confidence that the labels on products actually say what the products contain. We have to balance a reasonable testing regime and the necessary enforcement powers to make sure that action can be taken quickly and robustly if there is an issue around the mislabelling of products.

The Convener: We heard last week that European regulations are already in the system—the food information for consumers regulations. You do not intend to go beyond those regulations, do you? I see Mr Fraser nodding.

Michael Matheson: The bill goes a bit further than what is contained in the regulations. The enforcement point of the European regulations is not yet clear, so there is an issue around that timeframe. We are taking things a bit further with regard to responsibility: even if someone is not selling the product, they will have a responsibility to report it if they believe that there might be an element of mislabelling. That was 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. You might not be the producer but if you are a distributor and you believe that there is an issue around mislabelling, you have a legal responsibility to report that.

The Convener: So if something looks too good to be true, you have a responsibility to report it.

Michael Matheson: Exactly.

The Convener: Would that go beyond the regulations?

Michael Matheson: That goes a bit wider than what is set out in the European regulations.

The Convener: Are there any other elements where that is the case?

Michael Matheson: It is principally just that element. There is still a lack of clarity around the timeframe.

Morris Fraser (Scottish Government): The timeframe is likely to be roughly the same as ours. There is not very much difference.

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.

The Convener: The issue was raised in relation to the experience of some manufacturers. They produce pallets of prepared food such as fish, which go to destinations such as Norwich and all over the UK, and they were anxious that any changes in labelling requirements should not harm their business. You have given us the assurance that there will be no duplication.

Morris Fraser: There is perhaps one other thing to give assurance on. The authorised officers do not only have powers to detain, seize and offer the courts an opportunity to destroy; simple relabelling and recomposition can also be carried out. The food need not be wasted just because a label is found to be wrong. The authorised authorities have the power to ask people to take certain action, which might be just to relabel, so that the food will not be wasted.

Bob Doris: There have already been answers to most of the questions that I was going to explore, and they absolutely nailed the things that needed to be asked about. However, I seek a little clarity in relation to cases of deliberate labelling fraud. Would there be an option to do more than just seize the food in such a case? I previously referred to something being wrongly destroyed—I was comparing a situation to having hooky goods, say, which may or may not be destroyed. Could an order be made to pass the food on to food banks or charities, for example?

I do not want to sound too heavy handed with regard to some elements of the industry—I am sure that those concerned are in a minority—but if someone is getting 500g of something for 50p rather than £4.99, that is blatant fraudulent activity. I do not mind if those concerned are not allowed to
Michael Matheson: The enforcement officer has broadly two options. One is that they can enforce a fixed penalty. They can prevent the person moving the food anywhere until they have done further investigations into the matter. The authorities might come back and say that the product must be relabelled to make it correct, because what is contained in the packet does not constitute what is on the label.

The other option is for the matter to be referred to the procurator fiscal. It would be taken before the sheriff court, which would determine what should happen to the food. Rather than us saying that the food should go to a food bank, it would be a matter for the courts to determine that, depending on the nature of the case.

The approach will depend on the nature of the food fraud and the type of product. For example, there is a very limited timeframe for perishable goods. As you know, food banks do not really use perishable goods to a great extent, for obvious reasons.

The Convener: Bob, you can move on to enforcement, if you want.

Bob Doris: That is exactly where I was going to go, convener.

I asked about this issue in one of our first evidence sessions on the bill. I apologise for concentrating on retailers, but they are the public face. We do not always see the food chain behind them. Let us take the case of a small independent retailer, with one or perhaps two shops. Whether what the retailer has done is deliberate fraud or otherwise—let us suppose that it is deliberate—there is a fines scale to cover it. Let us then pick Tesco. I have complimented Tesco on what it is now doing, so I pick it randomly—I am sorry for singling it out. We are talking about one similar infringement in one Tesco Metro, of which there are many right across Scotland. The footprint of Tesco across the whole of Scotland is far more substantial than that of the small independent retailer. Is the fines scale—or could it be in future—flexible enough to recognise the extent of the tradeable business across Scotland in cases of an infringement by a corporation?

Michael Matheson: An important point will be who has committed the fraud. If a product is found in a shop that is independent or part of a retail chain, an investigation will have to be carried out into who committed the fraud and where the responsibility lies. Obviously, appropriate measures will then be taken.

The Lord Advocate has told the committee that he is prepared to make available to the committee, prior to stage 2, information on the advice that he will give on the type of fine structure that should be put in place, which should reflect what the courts will do. Importantly, it depends on the scale of the fraud, who is responsible and the nature of it. That will be reflected in any fine or action in relation to criminal activity.

11:30

Bob Doris: I do not feel too bad for picking out that large retailer, as I complimented it earlier on work that it is now doing.

Last week, a retailers representative—apologies, but their name escapes me—talked about labelling and food fraud. That gentleman painted a picture of small independent producers presenting at farmers markets with things that are not labelled correctly, although perhaps not deliberately. My understanding is that the bill is not about setting up a “Yes Minister” bureaucracy on the finer points of labelling and is more about tackling overt or deliberate attempts to defraud the consumer.

Can you give reassurances that, in relation to labelling and food fraud, the bill is not trying to capture someone who has five ingredients on a label when there are actually six, where the sixth one has been omitted not because the person is trying to mislead but because of a minor technical or bureaucratic oversight? That is not what the bill has in its sights, is it? It is about the more blatant and obvious large-scale labelling fraud.

Michael Matheson: It is a question of proportionality. Where fraud has clearly been attempted or where there is a significant omission, appropriate measures will be taken and enforcement officers will inspect. Enforcement officers will have discretion to determine whether something is significant enough that they need to take some form of robust enforcement action. It is about achieving that balance. The way in which that is dealt with in practical terms will be an operational matter for FSS.

The aim is not to try to pick up small retailers who might have omitted one small point. However, if that one small point is a significant small point, that will clearly be reflected in the response from enforcement officers. The one point might be that the label says that the product has pork in it when it has beef. That may just be one point, but it is significant. Enforcement officers would use discretion in considering cases. For individuals in farmers markets, where there is a small technical infringement, I would expect enforcement officers to work on a proportionate basis.
Bob Doris: I should put it on the record that, when enforcement officers and local authorities gave evidence to us, they took the view that much of their role is about supporting compliance rather than enforcement. I have no further questions, but it is important to put it on the record that that was teased out. The minister’s evidence backs up that approach.

Richard Lyle: I take it that FSS will be based in Aberdeen. I understand that the current head of the FSA in Scotland is moving to Australia. Will we be advertising for new staff? How many staff will be employed? I take it that staff will be based throughout the country. Can you give us a short résumé of what is intended?

Michael Matheson: FSS will be based in Aberdeen, at the current FSA headquarters. The FSA has staff who are based in locations across the country, such as the meat hygiene inspectors, and they will continue on that basis.

Charles Milne, the director of the FSA in Scotland, is leaving us to go and work in Australia. There will be an interim arrangement, which the FSA at UK level will wish to put in place. A process will be put in place for the appointment of a chief executive of FSS, although the important part is first to get the board structure in place, so that the process can be taken forward.

Richard Lyle: So there will be no reduction in staff and there may be—

Michael Matheson: There may be an increase in staff.

Richard Lyle: That is the very point I was going to make. There is the possibility of an increase in staff to retain the high quality of food for which Scotland has a reputation.

Michael Matheson: Yes. All of the staff will transfer to the FSS, in line with the Cabinet Office agreement, which protects their pensions and all their other entitlements. The transfer will not result in any detriment to the terms and conditions of the staff, and there is no need or plan to reduce staff numbers in the creation of the FSS. If anything, I would anticipate that there is likely to be a need for an increase in some staff. It depends on what happens once the FSS has set out its operational plans and how it intends to take its work forward.

The Convener: I do not see any other questions from members. However, it would be remiss of the Health and Sport Committee not to say something about the ambition that food standards Scotland will have a greater influence on problems in Scotland such as diet and obesity. At the same time, we should bear in mind all of the bedding-in issues, such as duplication, and the concerns of retailers and suppliers. Does the minister want to put on record the ambition that the new body will have a greater influence on the diet and health of the Scottish population? Can we achieve that, while addressing the concerns of the retailers and manufacturers?

Michael Matheson: Since the recommendation was made to establish an independent food safety body in Scotland, I have been very clear that we should maintain the integrity of the work that the current body undertakes without compromising it in any way. That is why we have taken a relatively cautious approach. A lot of organisations out there have been saying that the new body should do X, Y and Z in addition to its current role. All of that has some merit, but the danger in creating the new body is that, if we add to the functions that it has to undertake, we may compromise some of its core responsibilities, particularly relating to consumer protection.

The approach that I have chosen is to protect the integrity of the consumer protection work that the FSS will undertake, while considering where we could add to its role. At present, the FSA feels that it has a greater role to play on the issues of diet and tackling obesity. What we are doing in the legislation is facilitating that opportunity. The FSS will not necessarily take the lead on that but the legislation will allow it to work in a co-ordinated way with the NHS and other organisations with a role to play in the obesity and dietary challenges that we face in Scotland. We will enable the FSS to take that role forward, which is one that the FSA feels is important.

As I mentioned, we have tried to draft the legislation in a way that creates a footprint to give the FSS responsibility for some of the other issues that have been raised, if there is a good case to do so. We can consider adding those functions to the FSS in the years to come. I do not have any preconceived idea that those functions have to be X, Y and Z. We want to create a body that can adapt and develop in future as necessary. I do not want to add lots of functions to the new body that could compromise it while it is trying to establish itself and to perform its important function of ensuring consumer protection and—particularly given the importance of the food industry to Scotland—maintaining public confidence in it. However, the legislation gives us the framework to add further functions as we go forward, as and when that is appropriate and subject to agreement.

The Convener: There are no further questions. I thank the minister and his officials for being with us this morning and for the evidence provided.

11:39

Meeting continued in private until 11:52.
Food (Scotland) Bill

Joyce McLean (Individual)

I am a pensioner and heartened to hear of this new body. This would be very much welcomed.

I did ask the question at a local referendum meeting as to who would be responsible for any fake food and labelling in Scotland if a Yes vote so it is very appropriate to read this additional information.

I am absolutely disgusted with the quality of food entering the food chains, especially sugar.

On watching Rip off Britain – Food I was astounded that out of the 900 items investigated a third were not as stated. Surely there is legality to cover this. Has anyone been held responsible for horsemeat scandal?

Please take note of the “Which” Independent trials on everything. This is what the Scottish Government should be gearing towards and having a person for consumer concerns.

Who is the body at the minute getting paid to oversee everything??! That’s why I welcome very much this Food Standards Scotland.

Scottish Butcher meat is about the only source one can rely on for genuine food for quality.

I have also been hearing a lot about food waste.

I occasionally buy fish & chips. There are only a few places I can get pensioners portions like Toggies in Dunbar. When I ask for junior portions – cannot get that either without having to pay for can of coca cola included. Marketing is all wrong for people like myself on fixed basic income. I begrudge getting normal fish and chips knowing full well my appetite is much reduced and wouldn’t be able to finish the portion. This makes for wastage and I hear other pensioners making the same remark. It should be compulsory for all eating places to have pensioners portions available. Just means a small fish and small portion of chips, but the will is not in the marketing.

Also this last year the big supermarkets have upped their game and reduced to almost nil small jars i.e. Sweet & Sour and about every other thing, majority of food is now big size packs – when my family of six were all at home – brilliant – but my needs have changed now and the choice isn’t there. Shocking.

Joyce McLean
April 2014
Food (Scotland) Bill

Scottish Salmon Producers’ Organisation

The Scottish Salmon Producers’ Organisation (SSPO) is pleased to respond to the request for evidence on behalf of Scotland’s salmon farmers in mainland Scotland, Orkney, Shetland and the Western Isles.

The salmon farming industry is a major contributor to the Scottish economy and a key player in Scotland’s world-renowned food industry. It accounts for approaching 40% by value of Scottish food exports. The industry is centred on the north-west coast and islands where the high quality of the marine environment is essential to the industry’s successful operation. Scottish Farmed Salmon has been awarded EU PGI status, marking its quality and distinctive origins.

Areas on which the Committee is looking for comments:

Merits of creating a stand-alone body rather than enhancing the current FSA Scotland

Comment:
The political decision to reduce the role and functions of the FSA (in England) by transferring a range of FSA England’s powers and duties to Defra created a situation where the role of FSA Scotland was different to that of FSA England. The original full ‘FSA programme of work’ was being carried out by FSA Scotland but under circumstances where significant parts of that programme were no longer the responsibility of FSA (UK). This created a clear difference between the roles of the two organisations, which needed to be addressed.

There is little logic in maintaining the present position and therefore the case for the foundation of a new Scottish organisation is readily supportable. The Scottish Government has in recent years established a Scottish food and drink policy which is distinct and different from that for England & Wales. The foundation of Food Standards Scotland has therefore substantial merit on its own account, especially with regard to its ability to develop distinctive policies and strategies to support Scottish Government policy and to work with Scottish stakeholders.

The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

Comment:
Food and drink is one of Scotland’s key areas for economic growth and development. Reflecting this, the Scottish Food & Drink policy has been a huge success. It has brought together all Scottish food production and manufacturing sectors under the over-arching umbrella of Scotland Food & Drink and has provided for an increasingly coordinated approach to build on Scotland’s food quality and provenance and address the food export market.
This has seen food exports increase from £3.7 billion in 2007 to £5.3 billion in 2012; and the target of achieving £7.1 billion by 2017 now looks fully achievable. In this context having a dedicated FSS organisation can be regarded as a distinct advantage.

**The proposed administrative and governance arrangements for the FSS**

**Comment:**
The proposed administrative and governance arrangements are satisfactory in most regards, however there are some exceptions:

a) **Under section 6(1)(b),** the present proposal is for a Board with a minimum of 3 and a maximum of 7 members, in addition to the Chairman. For the FSS to retain public confidence both amongst citizens in general and amongst citizens from particular social-economic groups and interest groups (including food producers and businesses) 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).

b) **Under section 6(5).** The period of membership needs to be further defined and not left wholly for Ministers to decide. It is suggested that this period or term of membership should be no more than 3 years.

c) **Under section 6(7).** ‘A person may be re-appointed on, or after, ceasing to be a member’ should be further defined to add a limit on the number of consecutive terms that can be served. It is suggested that no member shall serve more than two consecutive terms.

d) **Under section 7(d):** The term ‘the Scottish Administration’ needs to be clarified or defined. I assume that this means someone in the employment of the Scottish Government but if that is the case it would be better to say that.

**The proposed powers of FSS**

**Comment:**
These sections raise a number of significant issues:

**Section 15(1):** As stated, this section is too wide-ranging in its implications. It is suggested the following wording be added: ‘...considers necessary or expedient, within the limits of its powers and in accordance with other relevant laws or regulations, for the purposes of, or in connection with its functions.’

**Section 15(2)(b).** The terminology ‘reasonable cost’ is problematic since it raises the question of what is ‘reasonable’. This would be better worded: ‘----
may not however (b) make charges for facilities or services provided by it at the request of any person, including Ministers, which exceed the reasonable cost of providing the facilities or services, as determined by the assessed costs of the provision or by relevant market comparisons’.

Section 18(1) and 18 (2) and 19 (1). These sections are drafted in a way that provides powers for Food Standards Scotland to undertake or to commission others to undertake research of any type, without restriction. The provision is to have unrestricted access to any business or facility in Scotland for a research purpose. To have these powers for the purpose of investigation as a basis for potential enforcement or for investigation of fraud is appropriate. However, for an open-ended power for ‘research’ they are wholly disproportionate. They ignore the natural rights of those who are conducting business in Scotland and raise issues about a business’s rights to safeguard its intellectual property rights, its manufacturing art and commercial confidential aspects of its business operations.

The fundamental issue arises from the way that Section 18 is structured because it gives FSS the same powers with regard to ‘research’ as it (rightly) has in connection with the investigation of a potential enforcement or fraud.

It is suggested that this problem should be addressed by disconnection of the linkage between Section 18(2) and section 19(1) as follows:

Change title of Section 18 to Research

Insert new title prior to Section 18 of Acquisition of information

Reword section 19 (1) as: (1) Food Standards Scotland in support of its statutory investigations carry out observations (or arrange for observations to be carried out on its behalf by another person) with a view to obtaining information about –‘

Section 19(2)(c): There is a technical shortcoming in the drafting of this section. As currently worded it would not encompass shellfish or plant aquaculture or fishing. It is suggested this be reworded as: (c) premises, businesses or operations involved in aquaculture and fisheries.

The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).

Comment:
The new duty to acquire, compile and keep under review relevant information of itself will do nothing to prevent food fraud. Food fraud, when it occurs, is a significant, deliberate and usually well planned crime. Therefore it is not the act of acquiring and keeping information that is the key consideration; it is the technical- and market-intelligence of knowing what information is required and how to interpret it. Often detection will depend on perception of risk rather than initial detection of the problem from any hard information. Information
from within the market-place on prices and supplies of product may be particularly important in this regard.

**The provisions set out in the Bill for non-compliance with food safety and standards**

**Comment:**
The compliance provisions in the Bill are broadly comparable with the provisions of other recent similar legislation. However, as they are set out in section 28 they make it all the more important for the problems in sections 18 and section 19 to be resolved.

**Any other comments on the Bill that relate to areas not covered above.**

**Comment:**
We have no further comments to make

Scottish Salmon Producers’ Organisation
April 2014
Food (Scotland) Bill
Nourish Scotland

Background

1. Nourish Scotland is a not-for-profit organisation campaigning for a fairer food system. We want to see a sustainable food system in Scotland based on ecological farming practices and short supply chains. Changing our food culture and our public health and consumer policies is key to achieving this. Nourish facilitates this change through engaging with organisations, community initiatives, politicians and officials. We work to influence policies from local to EU level and provide a platform for networking and sharing best practice. We make sure that food is brought to the fore in public debates of various kinds, making the link between a localised food system and its positive outcomes for economic development, job creation, skills development, public health, environmental stewardship and justice.

2. Nourish is pleased to be able to comment on the Food (Scotland) Bill. Our answers to the questions set out in the Committee’s call for evidence are set out below.

Creating a new stand-alone body for food in Scotland

3. Nourish generally supports the creation of a new stand-alone body to replace the FSA (Scotland). As noted in the accompanying documents, Scotland has distinct diet and nutrition issues and a distinctive food and drink industry. The creation of the new body should allow specifically Scottish solutions to be developed.

4. However, we also recognise that much of the policy in this area is driven by the implementation of European Directives. It will therefore be important that the new body finds ways of ensuring that it has an effective voice in Europe and that it works effectively with UK partners to ensure that policies are implemented in a way that maximises consistency where this is both possible and desirable. Many Scottish producers sell UK wide and consumers also move around. Nourish would wish to minimise any additional compliance costs on producers who might have to comply with more than one regime and reduce any scope for consumer confusion. It will also be particularly important to work closely with UK colleagues on the handling of any food borne or animal disease outbreaks or other such emergency responses.

Scope, Objectives and Sustainable Development

5. Nourish agrees that the new body should have the primary responsibility for protecting the public from risks to health arising from food and protecting consumers interests in relation to food. Many of the roles the body will play in relation to these powers can be characterised...
as technical, advisory, administrative and enforcement based and these roles are appropriately held by an arms length agency. Nourish is not entirely convinced that the policy role of promoting a healthier Scottish diet sits well with these other functions. Given the fundamental importance of promoting public health in Scotland there is an argument that this should remain a core government and NHS role. We are concerned that the current proposed mix of functions will make for an uneasy organisational culture mix. Should this proposal go ahead there will have to be considerable effort put into recruiting staff with appropriate expertise and ensuring that these staff operate in a joined up way with central government, the NHS and Health Scotland.

6. In the event that the new body does take on a policy role, Nourish would recommend that this role encompass a more holistic range of food based matters rather than just being diet-related. Food policy in Scotland is very much a jigsaw of overlapping departmental responsibilities and we see little sense in removing one small piece and giving it to a separate body. It will be difficult to make serious progress on improving the Scottish diet without also tackling issues of access and affordability, cultural change, food labelling, advertising and so on. For these reasons we believe that if the body is to have a policy-making role, it should be a broad and holistic one, encompassing food poverty, provenance, environmental impact and other considerations rather than just being diet-related. Rather than just promoting a healthier diet, it should be considering the role that food can play in achieving Scotland’s public policy objectives. To make real progress we must adopt not just a healthier, but also a more sustainable diet in order to become healthier, wealthier, fairer, greener, stronger and safer.

Administrative and Governance arrangements

7. With the caveat set out above in relation to policy, we agree with the decision to constitute the new body as a non-ministerial office reporting to the Scottish Parliament. It is important that food safety, labelling, research and other consumer protection measures are within an arm’s length body, independent of ministerial interference.

8. Nourish recognises that the FSA (Scotland) generally operated in a transparent way, with open meetings and the publication of its advice to Ministers. It will be important for that to continue. We also support the provisions requiring the new body to publish a statement setting out how it will perform its functions. We welcome the requirements for the body to operate in a way that is proportionate, transparent and accountable and to consult those affected by decisions, to base decisions on best available information and to make the reasons for decisions publicly available. Transparency and accountability must also flow through to the composition of the body and it is important that the board and any committees it establishes are representative. While we recognise the need for industry input to ensure services are effectively
designed and delivered, the body needs to put consumer protection and public health at the heart of its ethos and to guard against capture by “big” food interests. For example, research should not be funded by industry and decisions about commissioning research should be made independently. We would like to see civic and consumer based organisations more involved in consultation and research decisions to ensure that the design of these reflects public needs and enhances participation levels.

**Enforcement, Investigation and Sanctions**

9. Nourish supports the new provisions in relation to food information law. It is important that consumers have confidence that food is what it is claimed to be and is labelled as. We also support the introduction of fixed penalties for minor, low-risk breaches and the introduction of compliance notices as a more flexible enforcement tool. However, it will be important to retain the ability to prosecute for serious, high-risk fraud or food safety breaches. It would be good to see some early actions taken against operators who mis-label or otherwise fraudulently sell foodstuffs, in order to send out a deterrent message.

**Conclusion**

10. Nourish generally welcomes the creation of a new stand-alone body to deal with food safety and consumer protection issues. We have reservations about that body adopting a policy role. However, if this role goes ahead we recommend that the body’s policy role should be a wide-ranging one, allowing it to take a lead on the development of a healthier and more sustainable food system in Scotland rather than just dealing with the promotion of a healthier diet.

_Nourish Scotland_

_April 2014_
What information is the Committee looking for?
The Committee invites comments on the following areas:

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

   The Scottish Food Enforcement Liaison Committee (SFELC) supported the Scottish Ministers announcement in June 2012 to create a separate arm's-length body to carry out the functions currently undertaken by the Food Standards Agency in Scotland (FSA).

   SFELC agrees with the Scudamore report that Scotland has unique and complex problems in relation to diet, obesity and certain food borne diseases and also that food safety should not be divorced from nutrition and labelling and standards. Since food law enforcement is both a public health measure and an aspect of business regulation, SFELC sees merit in having a new food body to provide advice on food safety, nutrition and labelling which reflects the particular issues in Scotland.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

   SFELC fully supports the objectives established in Section 2 and welcomes the emphasis on protecting the public and the interests of consumers.

   SFELC feels that Parts 2 and 3 of the Bill will support Scottish food businesses and assist compliant food businesses to develop and prosper. SFELC believes these new provisions will link into the National Performance Framework outcomes relating to economic potential and living longer, healthier lives.

3. The proposed administrative and governance arrangements for the FSS

   SFELC believes Part 1 of the Bill makes suitable provision for the administrative and governance arrangements but could be enhanced in some respects.

   SFELC believes the requirements of Section 4 adequately set out the governance arrangements for FSS, however, SFELC would suggest that a sub-section (e) is added to indicate that decisions should be taken in keeping with the objectives set out in Section 2.
SFELC supports the provision of Section 5 which will provide a good degree of accountability for FSS.

In relation to administrative arrangements SFELC would suggest that a new Section is included in Part 1 in relation to the provision of advice and information to the general public with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which FSS considers significantly affect their capacity to make informed decisions about food.

SFELC would suggest that FSS form a committee similar to SFELC in terms of Section 12 to facilitate liaison with all parties with an interest in food, the two way exchange of advice, the provision of guidance and to assist in ensuring consistent enforcement of legislation.

4. The proposed powers of the FSS

SFELC fully supports the powers of FSS. In particular SFELC welcomes the ability FSS will have to make provisions for a mandatory food hygiene information scheme. SFELC believes the new provisions relating to Administrative Sanctions will enhance the ability of FSS and food authorities to deal effectively with non-compliance and protect the interests of compliant food businesses and consumers.

5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).

SFELC welcomes the new provisions relating to food information and feels they will provide a means to effectively deal with food where food information law has been contravened or is suspected of being contravened.

SFELC believes the provisions of the new Section 15C are consistent with existing provisions relating to first buyer sampling of milk and will permit responsible food businesses to report concerns they may have in respect of their own product analysis.

SFELC feels these new provisions will help in the detection of food fraud and provide a means to deal with the food subject of the fraud. However, the new provisions are unlikely to deter unscrupulous individuals from seeking a commercial advantage at the expense of responsible food businesses and to the detriment of the consumer.

SFELC believes that effective enforcement of food information law and food standards will help prevent food fraud and that the new provisions in relation to food information will help in this respect.

6. The provisions set out in the Bill for non-compliance with food safety and standards.
SFELC supports the introduction of administrative sanctions and feels these will enhance the effective enforcement of food legislation. The introduction of fixed penalty notices will allow food authorities to have an effective sanction that does not criminalise food businesses.

SFELC feels there will be a particular benefit from compliance notices in relation to labelling offences and will fill a gap that currently exists in relation to enforcement powers available to deal with food standards breaches.

7. Any other comments on the Bill that relate to areas not covered above.

In view of the new provisions for food information and the mandatory display of rating information, SFELC would recommend that FSS consider introducing a food standards element to food business rating schemes. This would address the existing anomaly where a business could have a ‘pass’ standards for hygiene, but also have significant food standards non-compliance at the same time.

Scottish Food Enforcement Liaison Committee (SFELC)
May 2014
Food (Scotland) Bill

MRC/CSO Social and Public Health Sciences Unit, University of Glasgow

The MRC/CSO Social and Public Health Sciences Unit at the University of Glasgow carries out research to provide the most robust and timely evidence possible to inform policies to improve population health and reduce inequalities in health. The Unit receives core-funding from the Medical Research Council and the Chief Scientist Office in the Scottish Government Health and Social Care Directorates, as well as grant funding for specific projects from a range of sources. Its aim is to promote human health by the study of social, behavioural, economic and environmental influences on health, and its five objectives are:

- to study the multiple interacting processes through which social, behavioural, economic and environmental factors influence physical and mental health over the lifecourse;
- to discover mechanisms which can modify these processes and have the potential to improve population health in a complex world;
- to develop translational interventions which harness these mechanisms to improve public health and reduce social inequalities in health;
- to evaluate interventions and policies in terms of their ability to improve public health and reduce social inequalities in health;
- to influence policy and practice by communicating the results and implications of research to policy, professional and lay audiences.

The Unit therefore welcomes the proposal to establish a new independent body that will seek not just to protect people in Scotland against food-related risks but also to improve their diet. We particularly welcome the commitment to take ‘radical action’ to improve diet and nutrition, similar to the public health action on alcohol and tobacco\(^1\). An important aspect of those actions is that they involve measures to change the environment within which people make choices, for example by making it illegal to smoke in public places or to advertise tobacco at the point of sale, or by restricting availability or increasing the price of alcohol, rather than focusing primarily on individual attitudes, knowledge or behaviour.

Experience in many areas of public health policy has shown that individually focussed interventions, unless they are combined with action at a structural or environmental level, are expensive and likely to fail, or to succeed at the expense of increasing health inequalities.\(^2\) If it is to improve diet and nutrition

\(^1\) Food (Scotland) Bill. Policy Memorandum, SP Bill 48-PM, Session 4 (2014), para 13.
at a population level, without widening inequalities, the FSS must take a similarly broad approach to the determinants of dietary behaviour. It must address the way food is produced and marketed in Scotland, for example through regulation of advertising, rather than simply providing the public with information, advice or encouragement to eat a healthier diet.

We also welcome the proposal to give the new body powers ‘to ensure it has access to sufficient information to be able to exercise its functions and duties effectively – especially engaging in, co-ordinating and sharing research and gathering information.’ The Scottish Government’s actions on alcohol and tobacco have been accompanied by substantial programmes of ex ante appraisal, monitoring and evaluation, and it will be important to take a similarly thorough approach to actions to improve diet and nutrition.

As well as protecting the public as a whole, the establishment of the FSS marks a major opportunity to develop and test ways to improve nutrition via settings such as schools and their surrounding environment, public sector workplaces and prisons, where government, local authorities and other public and private agencies can directly influence what people eat. For example, research by this unit has shown that football clubs can be an effective setting for weight loss interventions and this pioneering approach is now being adapted to other sports clubs, and to secure settings such as prisons. In other research, we have shown that there is a dense clustering of food outlets around secondary schools – 35 on average within a ten minute walk. Outlets selling food near schools offered meal deals and promotions to pupils that contrasted sharply with the food available in school canteens, and pupils who bought their lunch outside school tended to buy convenience foods of poor nutritional quality.

At present, the evidence base for effective action to tackle obesity is relatively weak. Given the uncertainty about ‘what works’ a systematic approach to identifying promising approaches, developing them in the light of theory and the best available existing evidence, and then implementing them in ways that

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3 (Food (Scotland) Bill. Policy Memorandum, SP Bill 48-PM, Session 4 (2014), para 17.
allow for rigorous evaluation of both effectiveness and cost-effectiveness, is a necessity.

Although, as noted, there are examples in Scotland of good practice, this approach is not by any means applied to all public health policies (or public policies in general). A 2009 report by the House of Commons Health Select Committee on the UK Government’s policies for tackling health inequalities remarked that ‘All the reforms we have discussed are experiments on the public and can be as damaging (in terms of unintended effects and opportunity cost) as unevaluated new drugs or surgical procedures. Such wanton large-scale experimentation is unethical, and needs to be superseded by a more rigorous culture of piloting, evaluating and using the results to inform policy.’ More recently a National Audit Office review of evaluation in Government found that although the Government’s own guidance set out an expectation that all significant new policies should be subject to proportionate evaluation, many departments failed to do this, cost effectiveness studies were rare, quality of evaluation evidence was variable and over half the evaluations reviewed were not fit for purpose.

In its evidence to the House of Commons Health Select Committee, the SPHSU set out a number of guidelines that evaluation of new policies should follow. In summary these include:

Development of a clear theory of how the policy is expected to achieve the desired effect

Adoption of a prospective, controlled study design, and consideration of the possibility of adopting one of the range of randomised designs

Prior specification of the primary outcomes according to which effectiveness will be measured, and objective measurement of harms as well as benefits

Appropriate lengths of follow-up, relative to the outcomes of interest, and incorporation of methods of measuring long-term and potentially adverse consequences

Collection of information about how the intervention is implemented in practice, and how impacts vary by gender, age, ethnicity and measures of socio-economic status

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Collection of information on costs and provision for an economic evaluation.

These recommendations were accepted by the Select Committee, and we believe they apply equally to the evaluation work that the FSS must do if it is to exercise its functions and duties effectively. An important point to note is that the way in which new policies are implemented may have to be modified if their effectiveness is to be measured. For example it may be necessary to phase the implementation of the policy, area by area (ideally with the order of implementation decided at random), to enable controlled comparisons. If there is genuine uncertainty about the effectiveness or cost-effectiveness of the policy, then the disadvantage of an initially slower implementation should be outweighed by the benefits of good information about impact.

There is a 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 who can assist FSS in implementing the approach we have outlined. The costs associated with food borne illness, estimated in the policy memorandum as £140 million per annum, and obesity, estimated by the Scottish Public Health Observatory at over £450 million per year in 2007-8⁹ and forecast to rise steeply in future, should mean that, as well as being feasible, the cost of conducting such research should be far outweighed by its benefits.

MRC/CSO Social and Public Health Sciences Unit, University of Glasgow
May 2014

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⁹ Scottish Public Health Observatory. Obesity- key points.
Food (Scotland) Bill

SMaSH (Scottish Managed Sustainable Health network)

Recent legislation has proposed the establishment of Food Standards Scotland. The call for evidence on this legislation includes a request for comments on the scope of the objectives of the proposed Food Standards Scotland agency, including whether these objectives would support sustainable development in Scotland. Description of the legislation highlights that the proposed objectives for Food Standards Scotland are deliberately wide in scope, and could allow the agency to contribute to policies on food sustainability and food poverty. Health is also a key focus of the proposed objectives.

SMaSH welcomes the consideration of food sustainability and food poverty issues in this proposed legislation. These issues, alongside health and the reduction of health inequalities, are considered by SMaSH to be crucial challenges, of increasing importance, for Scotland.

Food sustainability is a broad, complex and global issue. The UK food system could have a sizeable impact on climate change - it has been estimated that it contributes approximately 18.5% of total greenhouse gas emissions in the UK.\(^1\) Improvements in sustainability, such as reductions in food waste, have significant potential to reduce this environmental impact.\(^2\) Alongside this, food poverty may be increasing in Scotland, with evidence of substantial increases in the use of food banks in recent years.\(^3\) These examples – the fact that food is wasted whilst many people struggle to afford to eat well – highlight conflicting aspects of our current food system but also the potential for shared solutions that a single agency may be well placed to develop.

Importantly for SMaSH, both food sustainability and food poverty have links to health. This could occur through the impact of food production on climate change, or through methods of food production impacting on the price, accessibility and nutritional value of food.

These links emphasise how important it would be for any agency concerned with food and health to also prioritise food sustainability and food poverty. An ideal system would protect and promote health and sustainability whilst reducing health inequality, although it is likely that tensions could arise from attempting to achieve all three of these aims.

A broad range of food policies is likely to impact on health, food poverty and food sustainability, including policies that initially appear to be unrelated to these issues. It may therefore be appropriate for Food Standards Scotland to consider formally assessing the impact of the majority of, if not all, food policies on health, sustainability and inequalities.

Successfully improving the sustainability of our food system and tackling food poverty whilst promoting health would be extremely valuable to Scotland. However, the complexity of the issues involved means that it would be challenging work that would require a long-term, collaborative approach. A number of organisations are already working on these issues and it would be important for Food Standards Scotland to actively engage with them. Not least, with the NHS in Scotland and members of SMaSH.

Health Protection Scotland, part of NHS National Services
May 2014
Food (Scotland) Bill

NHS Lothian

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

Comments: The Duty of partnership under the Public Health Act and Category 2 status under the Civil Contingencies Act previously existed de facto at United Kingdom level under previous arrangements. The FSA could also work with veterinary authorities, SEPA and licensing bodies on food and feed controls.

The benefit of a stand-alone body is its independence from government and the food industry – this, along with transparency in its ways of working, is important in relation to building public trust and confidence in the information provided.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

Comments: The three core objectives - encompassing food safety, nutrition and wider food-related consumer interests – are broad. While it is important at this Bill stage to avoid being too prescriptive in the FSS’ objectives and functions, in order to allow flexibility in its approach in the long-term, it will be very important to ensure that the FSS has clear areas of focus and strong formal links with other bodies and government departments with similar objectives and functions.

Concerns have been raised that there could be a conflict of interest between working for safer food/improving diet and supporting the growth of the Scottish food and drink industry. Focusing FSS’ role for the food and drink industry so that it was focused on sustainable healthy produce would harmonise that conflict but the safety function would need to be organisationally maintained with clear statutory and regulatory authority. By working across the food supply chain, there is also the opportunity to expand the evidence-base in relation to interventions that promote both public health and environmental sustainability.

We note that there is no mention within the list of functions of dietary surveillance and research, which are key functions of the FSA at present in relation to improving the diet of the public. It is important that the FSS maintains these functions, particularly in relation to understanding the relationship between food and health inequalities within Scotland.
3. The proposed administrative and governance arrangements for the FSS

Comments: The administrative and governance arrangements are clearly outlined and appear to allow the FSS to work independently and transparently while having a close relationship with Ministers.

4. The proposed powers of the FSS

Comments: It is positive that the FSS is granted powers to work independently to carry out its functions, and that field staff in particular have the power to enter premises and carry out their role effectively.

5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).

Comments: It is positive that the Bill allows authorised officers to detain food that may contravene food information law, but not possible to comment on whether this in itself is likely to prevent food fraud.

6. The provisions set out in the Bill for non-compliance with food safety and standards.

Comments: The administrative sanctions outlined appear to be an efficient and cost-effective way of penalising non-compliance. For FSS to achieve its potential, the role of environmental health in local authorities must also be strengthened. The Scottish Government should implement the recommendations on the future of the environmental health profession.

7. Any other comments on the Bill that relate to areas not covered above.

Comments: It is not clear from the Bill or explanatory notes how the FSS will link with other bodies that have similar objectives and functions. It is important that there are clear mechanisms through which the FSS, NHS, government, local authorities and third sector communicate and collaborate to ensure that the public have access to consistent, evidence-based messages on nutrition, affordable healthy food and the skills necessary to prepare healthy meals. More working in collaboration with other statutory agencies to issue guidance on control of food-borne diseases would also be welcome.

The creation of a new food body for Scotland provides an opportunity to focus on understanding the dietary attitudes and behaviours of our population and identifying policies and interventions that can tackle issues around food poverty, sustainability and health inequalities. There also needs to be thorough thought into how the FSS achieves its objective of improving the Scottish diet in ways that complement broader public health programmes, e.g. life-stage approaches such as the Early Years Collaborative.
It is not clear from the Bill where leadership for improving the diet of the Scottish public will sit. Clarity of roles and leadership areas will be crucial in moving forward.

The budget arrangements for the FSS may be an area of concern. The explanatory notes outline an additional annual cost of around £5 million, which may be offset by a transfer from the UK-wide budget. This is as a result of the new FSS performing roles that were previously carried out in England. It is important, in the light of the current financial climate, that duplication of effort doesn’t lead to additional costs overall. The increased overall running costs of food standards and safety within Scotland may lead to difficult decisions over what type of work is funded in future.

NHS Lothian
May 2014
NFU Scotland

1. NFU Scotland supports the creation of Food Standards Scotland (FSS) and welcomes the opportunity to contribute to how we believe it can function for the optimal benefit of the Scottish food industry.

The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

2. NFU Scotland believes that a stand-alone food body, with responsibility for food safety, standards and nutrition in Scotland, is the best way to respond to the unique issues in relation to diet, obesity and food-borne diseases in this country. We believe that FSS will have the flexibility to respond to and target resources towards these key issues in Scotland which may differ from the rest of the UK.

3. NFU Scotland has strongly supported the idea that the delivery of Official Controls including the Meat Hygiene Service (MHS) will be better carried out by a stand-alone Scottish food body as it will deliver a more streamlined service that is cost effective and suited to the Scottish industry.

4. We hope that FSS can facilitate closer working amongst the considerable scientific expertise which exists within Scotland and allow the development of science based, Scotland-specific policy priorities for the food industry. Research commissioned by FSS should focus on Scottish issues and should work to safeguard our export potential.

5. However, it is important that FSS continues to work closely with the FSA for England, Wales and Northern Ireland, the wider research and scientific base throughout the UK and also the EFSA and European research institutes to draw on the larger resources available and to ensure consistency amongst policies where necessary. Basic standards set by FSS should be equivalent to European and UK standards to ensure that the Scottish industry does not suffer through gold plating of legislation.

The scope of the objectives and functions of the FSS, including whether and how they could support Scotland's sustainable development

6. NFU Scotland is satisfied with the scope of the objectives and functions of FSS.

7. Whilst there is no specific mention of it in the Food (Scotland) Bill, NFU Scotland is unsure of the scope of the term ‘sustainable development’ in the question above and would reiterate that FSS should not become more actively involved in areas such as food poverty, food security, sustainability or wider environmental matters. Specialist agencies with
appropriate expertise already exist for these issues and duplication of this effort is not beneficial.

8. NFU Scotland believes that the best way to ensure the sustainable development of Scotland’s food and drink industry is to ensure that consumers trust that food produced in this country is as safe as it possibly can be.

9. One way that FSS can support the development of the food industry in Scotland is by streamlining the processes it oversees to reduce financial and time burdens on food businesses, including in relation to Local Authority on-farm inspection requirements. We appreciate that this is not within the remit of this Bill but wish to draw attention to the issue at this opportunity. We are hopeful that FSS will take this into consideration when considering how best to operate in Scotland.

10. NFU Scotland believes that FSS delivery of Official Controls in Scotland will allow for better targeting of resources. Consideration should be given to how this could be done more effectively and we raise the possibility of surveillance activities, disease controls, hygiene inspections, animal welfare inspections and so on being delivered under one single veterinary delivery body. We are therefore positive that work is underway at FSA Scotland (in future FSS) to determine a model which will incentivise more efficient use of resources and we look forward to contributing to that discussion.

The proposed administrative and governance arrangements for the FSS

11. NFU Scotland agrees with the approach being taken to ensure that FSS is independent from Government and the food industry but are keen to ensure that effective links with Scottish Ministers and public bodies/office holders with relation to food safety or animal feed matters are maintained. We are satisfied that there are provisions in the Bill to ensure that this will be the case.

12. FSS must demonstrate transparency and objectivity and we are satisfied that the Bill highlights the need for the body to operate in a way which constitutes good decision making including consultation, recording decisions made and making them publicly available.

13. NFU Scotland suggests that the proposed size of the board is too small to ensure a balanced range of views and would suggest a minimum of six and maximum of ten board members. It should also be possible for the board to co-opt specialist expertise on when required. We also believe that there should be a specific legislative effort to include industry representatives at board level.
The proposed powers of the FSS

14. NFU Scotland is satisfied with the proposed powers of FSS. We are positive about the effort to expand the scope of the powers to include the ability to regulate compliance with the Food Information for Consumers regulation and to seize and detain food which is found to be in contravention of this regulation. This sends a strong message with regards to the severity of food fraud.

15. In Section 2.3 we suggest the addition of c) is transparent and based on sound, scientific evidence.

16. Section 15.1 we suggest the following “Food Standards Scotland may do anything within the limits of its powers, in accordance with other relevant laws or regulation and in response to identified risk, which it considers necessary or expedient for the purposes of or in connection with its functions.

17. NFU Scotland would suggest that there is a need to reconsider section 19 which relates to the power for FSS to carry out observations with a view to obtaining information. There is potential for information sharing amongst industry partners and government departments (e.g. Farm Assurance schemes and SGRIPD) which could reduce the duplication of effort and reduce the burden on businesses. Consideration should be given to how to facilitate this through this legislation.

The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident)

18. NFU Scotland is positive about new provisions in the Food (Scotland) Bill which attempt to tackle food fraud. Disingenuous labelling can devalue the reputation of important agricultural products and undermine consumer trust in the food industry.

19. We have some query around the resources available to deal with such issues and would highlight that although food fraud is an important issue, FSS priorities should lie in ensuring food safety.

The provisions set out in the Bill for non-compliance with food safety and standards

20. NFU Scotland is satisfied with the provisions set out in the Bill for non-compliance with food safety and standards.
21. With regards to fixed penalty notices Part 3 (40:1) of the Bill states that ‘Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers’. NFU Scotland queries whether this will affect the perception of FSS as a non-ministerial body and suggest that the present arrangement is continued whereby ‘any sums received by the Agency shall be paid into the Consolidated Fund’. It is vitally important that FSS is seen to operate at arms-length from Government.

NFU Scotland
May 2014
Food (Scotland) Bill.

British Dietetic Association

The British Dietetic Association welcomes the opportunity to respond to the call for written evidence to inform Stage 1 consideration of the Food (Scotland) Bill.

The introduction of this legislation, to enable the creation of a standalone body, provides a real opportunity to build on and provide a co-ordinated approach to all aspects of food and nutrition, develop further the work underway to improve food and nutrition and ensure food and nutrition are established firmly on the agenda as key to the health of the people of Scotland.

The objectives of the body detailed in the Bill are quite broad and while the inclusion of food, diet and its link to health is welcomed, there is little further detail relating to this within the Bill. The devil will be in the detail, how this is developed, how this fits with current work and organisations already involved in work in this area and the consultation/engagement arrangements put in place to ensure that key stakeholders/expertise are sought as necessary. The British Dietetic Association will be an important stakeholder to work with this food body to provide expert input relating to nutrition and diet.

The British Dietetic Association, founded in 1936, is the professional association for registered dietitians in Great Britain and Northern Ireland. It is the nation’s largest organisation of food and nutrition professionals with over 7,000 members.

Registered dietitians are the only qualified health professionals that assess, diagnose and treat diet and nutrition problems at an individual and wider public health level. Uniquely, dietitians use the most up to date public health and scientific research on food, health and disease, which they translate into practical guidance to enable people to make appropriate lifestyle and food choices.

Dietitians are the only nutrition professionals to be statutorily regulated, and governed by an ethical code, to ensure that they always work to the highest standard. Dietitians work in the NHS, private practice, industry, education, research, sport, media, public relations, publishing, NGOs and government. Their advice influences food and health policy across the spectrum from government, local communities and individuals.

British Dietetic Association
May 2014
Food (Scotland) Bill

The James Hutton Institute

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements

We are in broad agreement that the creation of a new body is the way forward for Scotland but have concerns that there is little room for comment since this pathway seems fixed. The existing remit of FSAS has changed significantly over the last few years (and in actual fact diminished) with the removal of aspects dealing with food labelling and nutrition to DEFRA and the Department of Health. In particular, this lack of leadership in the area of food labelling has seen confusion with advice given by DEFRA, GOV.UK and the NHS (http://www.nhs.uk/Livewell/Goodfood/Pages/food-labelling.aspx). In addition to this the industry has driven forward a more simplistic (consumer friendly) nutritive value labelling system following frustration with the aforementioned confusion surrounding the legislative system. We feel that FSS can act a single point for such issues. However, on this point there will still be potential duplication of effort being delivered by NHS Scotland examples of which can be found at http://www.knowledge.scot.nhs.uk/taysidenutrition/family-nutrition/food-safety-and-nutrition-labelling.aspx which then feeds through to several other sites out with the control of FSAS (e.g. British Retail Consortium, an industry driven body). Similarly, the advice and guidance on diet in respect to food is currently delivered by multiple sources: Scottish Government (http://www.scotland.gov.uk/Topics/Health/Healthy-Living/Food-Health, FSA, NHS Scotland The Food and Drink Federation (https://www.fdf.org.uk/delivering-healthy-growth/know-your-food-and-diet.aspx) etc. Even if FSS can cut through this confusion and establish itself as THE body to be contacted it would serve as a simpler, cleaner system for government, industry and the consumers alike. Furthermore, some attention needs to be given to widening the scope to include diet. The new body will need to work with other agencies (e.g. Heath Protection Scotland and equivalent south of the boarder and the aforementioned bodies, agencies as well as research institute and the HEIs) to ensure that roles & responsibilities are not duplicated and that experiences are shared to disseminate knowledge and add value to the FFS effort.

2. The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development

Care needs to be taken in the breadth of activities undertaken by FFS. As outlined in their financial section the estimate for the annual running costs are ~£15.7M and this is stated to be roughly equivalent to the current FSAS budget. However, the plan to bring in diet and labelling as part of the remit (currently not part of FSAS) would bring the financial viability of this into question and we suggest that this should not progress or at the most be limited to regulatory and legislative aspects. At current costs this would then
severely compromise the ability of the new FSS to deliver on the aims for commissioning research, an aspect that will be crucial for Scotland’s sustainable development. Currently research with respect to diet and health in relation to food and drink is delivered through the RESAS research strategy and it has been extremely successful in engaging with the industry, policy and stakeholder at Scottish, UK, EU and international levels with the associated funding leveraging significantly more funding from those sectors and funders. To now disengage this system and take it under the auspices of a body much more versed and comfortable with regulation and statutory requirements is completely counter intuitive and unproductive.

One can argue that the FSS should not form a direct part of Scotland’s sustainable development plans as it needs to be an independent body that polices the food and feed sector. However, it can provide evidence-based support for Scotland’s Food and Drink policy and thus sustainable development particularly via direct and regular interaction with Scotland Food and Drink Ltd. This policy looks to stimulate sustain and growth economic growth in the sector but, as with the existing FSA(S), impartiality means that direct industry engagement through construction of products and processes cannot occur. Indeed this issue of impartiality and independence is recognised in the Bill (pg16).

However, the assembly of committees dealing with aspects that will impinge on Scotland’s sustainable development should be pursued. For example the significant research ongoing in the industrial and academic sectors targeting food ingredients, nutritional enhancement etc. of Scottish produced food and drink will require monitoring of, and approval by, an Advisory Committee on Novel Foods and Processes, an analogue to that already in FSA UK. This can be commensurately smaller and link with the UK version.

3. The proposed administrative and governance arrangements for the FSS

These seem sensible although we have concerns about the financial aspects. With respect to item 42 in the Bill Explanatory note (Financial Memorandum), the following is stated;

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.

There is no guarantee that this financial transfer will happen and provision for failing to achieve this (i.e. the development of a programme risk assessment) must be implicit in the FSS plan. Indeed a failure to achieve this transfer will reduce the budget from £15.7M to £10.7M and would be devastating blow to the FSS, seriously undermine its aims and will have serious consequences for
the maintenance of the staff transferred over from the FSAS to FSS. In fact, the proposed budget and other items transferable from UK FSA should be scrutinised in detail.

Beyond this point the plans for the governance and administration with the implicit transfer over of the expertise in FSAS is logical. However, does this direct transfer deliver an FSS that is fit for purpose? The aim to adopt a broader remit in the FSS to cover areas not previously addressed by FSAS (diet and food labelling) suggests that skill bases will be missing or at the very least require optimising. This will mean that the estimate of staffing may have been underestimated and require a different administrative structure with a time lined partnership with other aforementioned sister agencies (see Q1) to embed these skills.

4. The proposed powers of the FSS

These are appropriate for devolved government body. The expansion of the powers beyond the current FSAS remit are to be applauded, specifically the development of the new laws allowing the FSS officials (or those with the devolved power) to detain or seize and remove food which does not comply with food information law and the identification of it being an offence to fail to report suspicions of where food may not comply with food information law and/or fail to comply with a request for information. Both of these should supplement the regulatory (and legislative) powers of the FSS and act as a stark message to potential transgressors.

The plan to expand the Food Hygiene Information Scheme from a voluntary to mandatory scheme (Part 33 of the Bill) is also a positive step. However, there is no information as to whether such a scheme will incur additional staff time & cost to monitor and enforce.

5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).

There is nothing in the bill that suggests that the FSS will be any better prepared to prevent incidences like the recent horsemeat incident, the substitution of cheap fish for more expensive cuts (http://www.dailyrecord.co.uk/news/scottish-news/new-food-scandal-cheap-fish-1769860) or the current lamb meat substitution (http://www.food.gov.uk/news-updates/news/2014/apr/testing#.U1a1n_lWck). The key ability to inhibit such incidences is a funded proactive, randomised and regular sampling process. This needs a combination of increased monitoring and enforcement that operates with the sector associations. This can operate under both a carrot and stick approach with FSS approval for those that pass and stiff penalties (see Q4) for those that fail, in particular repeat offenders.
6. The provisions set out in the Bill for non-compliance with food safety and standards.

By and large these seem entirely appropriate and reflect the transfer over from the FSAS. However there is scope for being more equitable in the assignment of compliance notices and fixed penalties. These appear to take no account of the size of the company and the opportunity to introduce a sliding scale for company size should be exercised as this would reflect their potential negative impact on the public. Also the use of these fixed penalties need to be assessed with respect to repeat offending and other options such as the barring the company CEO/Owner/responsible person from working in the commercial food sector for a limited time period or ever again. As a country trading on quality food and drink these extreme measure need to be at least in evidence to protect the Scottish Food and Drink industries from rogue opportunists.

We are very encouraged that proactivity is evident via the new food law provisions, specifically the provision allowing enforcement officers from FSS, or local authorities, to detain or seize and remove food which does not comply with food information law. This means “safe” food can be seized and check for authenticity, e.g. meat substitution. Furthermore, the second new food law provision in the Bill has ensured that it will be an offence for failing to report suspicions of where food may not comply with food information law and an offence to fail to comply with a request for information. This extends the reach back from the main offender likely to be penalised under the first law and if used correctly will sends a clear message out down the food supply chain.

7. Any other comments on the Bill that relate to areas not covered above.

We have identified several areas where detail is lacking and would have been of benefit as part either of the bill or the supporting material and we have identified these below:

1. There is a concern that much of the specifics with regard to the FFS are not explicit. For example, in Part 1 of the bill and with reference to its objectives the following is identified; 
   *The risks referred to in subsection (1) (a) include risks caused by the way in which food is produced or supplied*

How far do the FSS activities go in relation to the production and supply of food and drink? For example is storage, packaging transportation etc. encompassed as part of this? Furthermore, within the background section of the Bill Policy memorandum Explanatory note (item 11) it states that

*The full range of policy areas will be developed through 2014 and will be set out in the new body’s strategic objectives and corporate plan as it begins its work in 2015*
This is a risky way of developing the FSS as these tenets of operation need to be established at the outset as part of the Bill so that they become enshrined as part of purpose with slight modifications for operational efficiency identified later. Furthermore, to identify the policy ranges and strategic objectives later but within an already established operational budget immediately sets limitations of depth and/or extent of delivery. Logically this then suggests that prioritisation will be employed for delivery and targeting but how this will be decided upon or the weight given (compliance to law, diet, nutrition, safety etc.) is not clear.

2. With regard to the membership of the FSS board, the reasons for non-membership are explicit but the requirements for membership in terms of skills and experience in the food, drink, nutrition, diet and legislative sectors are neither mentioned nor alluded to.

The ability, or indeed aim, to form subcommittees to update the latest evidence base (a science committee), advances in the sector (Advisory Committee on Novel Foods and Processes) is not identified. If FSS is to be part of Scotland’s sustainable development these should be “in with the bricks” of FSS’s establishment. Indeed, within the Bill (Acquisition of information. Section 18, Duty to acquire, compile and keep under review relevant information) the necessity to monitor developments in science, technology and other fields of knowledge and, where needed, commission and/or coordinate research is explicitly stated. This is laudable and necessary. However, it should be made clear that added value will be sought by integration with other national or EU food standard bodies (e.g. EFSA, FDA, FOSHU, Food Standards Australia New Zealand etc.) on common issues and approaches. For example the horse/lamb/fish substitution scandals would benefit from pooled resources and approaches developed in concert with these other sister authorities/bodies.

3. There is no provision for a time lined independent review of the FSS. A new body needs to be benchmarked quickly following establishment and an 18/24 month light-touch review undertaken by independent assessors would facilitate the correction of any mistakes, addressing mission drift and a revitalisation of the targets in light of societal, economic and scientific/technological changes in Scotland.

The James Hutton Institute
May 2014
Food (Scotland) Bill

British Medical Association Scotland

The BMA in Scotland welcomes the opportunity to provide evidence to the Health and Sport Committee at stage 1 of the Food (Scotland) Bill. The BMA supports the dual role of Food Safety and Food Standards to be delivered by the new body created in this Bill - Food Standards Scotland (FSS). We welcome the objectives of Food Standard Scotland laid out in the Bill and the wide scope of the organisation’s objectives and functions which will allow the FSS to be flexible in its involvement in a broad range of policies.

The BMA welcomes the intention for the FSS to be independent of Government and the food industry. The BMA firmly believes that commercial industry should not have a role in the development of public health policy. There is a fundamental conflict of interest when industry is focused on making a profit and health professionals are attempting to improve public health.

During the Scottish Government’s consultation on creating a new food body the BMA raised some issues of concern in regards to food safety and the development and implementation of policy on food standards. Some of these are not directly addressed in the bill due to the wide nature of the objectives and functions but the BMA hopes that these issues are still considered as the Bill progresses and particularly when formulating any guidance for the FSS.

Food Safety
Recent public health risks have emphasised the importance of having rigorous safety standards that food producers and retailers must adhere to as well as effective inspection processes. However as many producers operate outside of Scotland it will be important that the new Scottish body works closely with the bodies responsible for food safety and standards in the rest of the UK and EU. The BMA supports the comments in the explanatory notes that FSS will not be limited to work only with public bodies and office-holders in Scotland but will include the rest of the UK and the Europe.

Food Standards – Policy development and implementation
While efforts have been made to try to develop policies and frameworks to address the growing obesity problem in Scotland, these have been piecemeal and disappointingly ineffective. The BMA believes that the role of the FSS should include co-ordinating activity and provide leadership to deliver an effective health and nutrition policy.

While the BMA is not looking for the following points to be included on the face of the Bill we hope that when setting out the priorities of the FSS these issues are discussed and included within their remit for the development and implementation of policy:

Labelling: The BMA is disappointed at the lack of progress on traffic light food labelling and would welcome more concerted action on this issue by new body.

Research: The BMA believes that the new body should champion evidence based practice and policies and undertake, fund and promote research in Scotland. Research should be focused on interventions and policies that will have the greatest impact on reducing the burden in Scotland.

Education: Health Scotland provides much of the public engagement/education programmes on healthy matters in Scotland. The BMA recognises that the new statutory objective on diet will allow for further
development of the relationship between the new FSS and Health Scotland working together on issues such as diet and nutrition and welcomes the aim to allow that relationship to remain flexible.

The BMA believes that there is a growing need to consider the ‘obesogenic’ environment which greatly influences the choices people make.

For example, as well as ensuring that the legally required standards for school meals is met, the body should have a role in extending food standards to other public sector organisations e.g. hospitals and care homes.

The body should also consider how to limit the influence of the junk food industry and develop opportunities for the healthy choice to be the easy choice. For example, banning junk food advertising before the watershed and limiting the advertising and provision of ‘unhealthy’ products in the health environment e.g. in hospitals, or at sporting events such as the 2014 Commonwealth Games.

In summary the BMA supports the general principles of the Food (Scotland) Bill but believes that for the new body to be effective in tackling Scotland’s problems with food safety and standards it needs to provide strong leadership, champion evidence based practices and policies and work to develop opportunities for the healthy choice to be the easy choice.

**British Medical Association Scotland**

**May 2014**
Food (Scotland) Bill

The Royal Society of Chemistry

The Royal Society of Chemistry is the world’s leading chemistry community, advancing excellence in the chemical sciences. With over 49,000 members and a knowledge business that spans the globe, we are the UK’s professional body for chemical scientists; a not-for-profit organisation with 170 years of history and an international vision for the future. We promote, support and celebrate chemistry. We work to shape the future of the chemical sciences – for the benefit of science and humanity.

The Royal Society of Chemistry is pleased to respond to the Health and Sport Committee’s call for evidence.

We welcome the proposal for the new food body, Food Standards Scotland (FSS), to be independent, transparent and at arm’s length from Government. Given this independence, however, there will need to be clear routes of communication with the relevant Health and Social Care Directorates and the Minister for Health and Wellbeing in Scotland.

An independent evidence base for food safety requires an independent scientific process for which adequately trained and resourced personnel would be paramount. It will be important that sufficient sampling takes place so that food safety issues are picked up early and standards are ensured. Having a broad range of scientific expertise is important for ensuring that the full range of challenges can be suitably addressed. Scientific and policy based staff should be able to forge strong links with the wider academic community in order to remain at the forefront of knowledge and be able to adopt and share best practice.

Last year’s horsemeat scandal highlighted the importance of control of the entire food chain. There has been a sustained decrease both in the number of Public Analysts within the UK over the past four decades and in the resources available to them to undertake their job. FSS should ensure that there are enough Public Analysts available in Scotland and ensure that they are properly resourced.

The Royal Society of Chemistry awards the Mastership in Chemical Analysis (MChemA) which is the statutory qualification for appointment as a Public Analyst and Agriculture Analyst (www.rsc.org/MChemA). We work closely with the Association of Public Analysts (APA) and its Training Committee to ensure that candidates have the appropriate skills and knowledge to qualify.

In principle, expanding the role of the FSS to address public health problems in Scotland is welcomed as long as the necessary scientific and technical expertise is sufficiently provisioned and adequately resourced.
Nutrition is a major, modifiable and powerful factor in promoting health, preventing and treating disease and improving quality of life. Over-nutrition and reduced physical activity have contributed to the growth of diseases such as obesity. Understanding the interaction of food intake with human health and providing food that is better matched to personal nutrition requirements is therefore essential.

The chemical sciences are key to identifying alternative or parallel supplies of ‘healthier foods’ with an improved nutritional profile. One of the main challenges is to produce food that reduces the fat, salt and sugar components that can be detrimental to health, while maintaining positive customer perception and satisfaction.

The FSS, in its role of overseeing food standards and the nutritional challenges facing Scotland, could ensure that these issues are addressed by funding new research and evaluating the latest research already available.

As well as being a driver for improvements in health through changing diet and improving nutrition, the FSS has the opportunity to ensure Scotland is continually researching and recommending new technologies that improve food safety and reduce food waste and waste from food packaging.

There is an unacceptable amount of food wasted in all stages of the supply chain. The UK food industry alone accounts for about 10 million tonnes per year (10 per cent) of industrial and commercial UK waste. Packaging and food waste are the two most significant waste issues for the industry. The main challenge is to find ways to minimise this waste or, within the context of lifecycle analyses, use it for other purposes.

The areas noted above are areas where the FSS could increase its scope and remit in order to maximise its impact on the entire food process. We believe this would lead to improved health outcomes and an improved environment, also creating a more sustainable environment for food production.

We hope that the Committee will find this useful in scrutinising the Food (Scotland) Bill and would be pleased to answer any questions you may have.

The Royal Society of Chemistry
May 2014
Food (Scotland) Bill

NHS Ayrshire and Arran

I refer to Draft Call for Evidence in relation to the Stage 1 consideration of the Food (Scotland) Bill and now provide comments on behalf of NHS Ayrshire and Arran as detailed below.

The Health Board understands that 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 FSA, with three key objectives:
  i. To protect the public from health risks associated with food consumption
  ii. To improve diets
  iii. To protect other interests of consumers related to food
- Establish new food law provisions designed to protect and improve public health

The Health Board is supportive of the Bill in relation to:

1. The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements
2. The scope of the objectives and functions of the FSS
3. The proposed administrative and governance arrangements for the FSS
4. The proposed powers of the FSS
5. The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).
6. The provisions set out in the Bill for non-compliance with food safety and standards.

NHS Ayrshire and Arran
May 2014
Food (Scotland) Bill

Scotch Whisky Association

The Scotch Whisky Association (SWA) is the trade body representing over 90% of the Scotch Whisky industry, including distillers, bottlers, blenders and brokers.

Scotch Whisky plays a significant role in the Food and Drink sector representing 85% of Scottish food and drink exports. Scotch Whisky is generally considered to be a responsible and compliant industry with regard to food safety. In addition, responsible alcohol consumption is an aim of both the Scottish Government and the Scotch Whisky industry and we work collaboratively in a number of areas to help tackle alcohol misuse.

The functions of Food Standards Scotland (FSS) as detailed within this bill are directly relevant to our industry as a producer of Scotch Whisky and a Scottish food manufacturer. The Scotch Whisky Association is therefore delighted to have the opportunity to submit comments on the Food (Scotland) Bill to the Health and Sport Committee.

Part 1 – Food Standards Scotland

The Scotch Whisky industry is concerned with the objectives of the bill as set out in Part 1 Section 2(1).

In particular, the industry notes that objective (c) which is to protect the other interests of consumers in relation to food is defined in Part 4 Section 54 as (a) the labelling, marking, presentation or advertisement of food and (b) the descriptions which may be applied to food.

It is important to note that the Scotch Whisky Regulations (2009) set out in law the definition for the production, marking and labelling of Scotch Whisky. These regulations are used by the Scotch Whisky Association to combat Scotch Whisky fraud on a global basis and every company producing Scotch Whisky, which can only be made in Scotland, must adhere to these regulations.

The SWA would therefore welcome a commitment to include within the regulations, that will accompany the Food (Scotland) Bill, recognition that the Scotch Whisky Regulations (2009) provide the definition of Scotch Whisky, or acknowledgement that where regulations already exist relating to the marking, labelling or advertising of a food product that these regulations should take precedence over the general requirement in the Food (Scotland) Bill. The industry would not welcome changes, or new provisions that would conflict with the Scotch Whisky Regulations (2009). Such a move would cause confusion and could dilute the enforcement of the regulations which could, in turn, weaken our position when combatting producers of fraudulent products around the world. This work is essential to maintain the integrity and quality of our product and help to increase exports of our product.
In addition, it is important to note that all labelling of food products must adhere to the EU acquis, i.e. Regulation 1169 / 2011, among others. The European framework provides harmonised information for all EU consumers and facilitates the free movement of goods. While there are also some national rules among the EU’s 28 Member States (only in non-harmonised areas), where they exist they create barriers to free movement, complicate trade and add costs to business. We hope the new Bill will not seek to introduce additional labelling requirements.

With regard to advertising, there is currently an effective regulatory system in place composed of a mixture of self-regulation (non-broadcast) and co-regulation (broadcast) enforced by the Advertising Standards Agency. It is unclear how this objective of FSS would interact with the current regulatory system for advertising in the UK. Consideration should be given with regard to the message given out with Scotland to export markets and differences introduced between north and south of the border, which many businesses view as one market. We therefore ask that the FSS should be required to consult on any proposed changes to the labelling, marking and advertising of food with affected industries.

Part 1 Section 15 details the general powers of Food Standards Scotland stating that: the FSS may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

Tax decisions taken at home are often cited by Governments around the world as an excuse for higher taxes and/or discriminatory trade barriers. We believe that domestic decisions surrounding labelling and advertising could have similar implications, which would negatively affect the economy.

The SWA asks for the requirement for FSS to consider the wider implications of any decisions to be included within the Bill, particularly with regard to the possible effect on exports. Any actions taken by the FSS should seek to help grow the food and drink industry on an international scale which is consistent with the benefit of the Bill, as detailed within the Policy Memorandum, to support the growth of the Scottish food and drink industry by providing a strong international reputation for safe, quality food.

The only comment the SWA would like to make regarding the administrative and governance arrangements for FSS as covered by sections 4, 5 and 6 is to suggest that a Memorandum of Understanding with the FSA in London should be considered to ensure that the flow of information between the two organisations and advice continues.

Part 1 Sections 18-21 detail the power of those accessing information under this Bill. The Scotch Whisky industry is happy to comply with regulators accessing information relating to the production of Scotch Whisky. However, we hope that an understanding of the unique production process of Scotch Whisky will be taken into consideration when requests are made and that adequate timescales will be adopted for the provision of such information to ensure that production is not interrupted. For example, it is important to note
malt distilleries are batch processes whereby certain aspects of production occur within certain timescales and not continually or on demand.

Part 1 Section 21 makes it an offence for an authorised person carrying out an observation to disclose or use information gathered which relates to a trade secret outwith the course of their duties. According to the explanatory notes, this relates to giving a trade secret gathered during an observation to a rival business. Although we welcome this inclusion, we note that it does not prohibit FSS from using its own powers under Section 30 to publish or disclose information.

Section 30 sets out protection surrounding the Publication and disclosure of advice and information and we seek further clarification regarding the level of this protection and how it is to be applied.

The SWA understands that this section does not authorise publication or disclosure of material which, according to Part 1 Section 30 (3) (a) and (b), is prohibited by an enactment, or would constitute or be punishable as a contempt of court or (5) if the disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.

We believe that ‘consideration of confidentiality’ relates to commercially sensitive information. Clarification that this is indeed the case would be welcomed. Only three ingredients can be used to make Scotch Whisky – water, grains and yeast and the way in which it is made is set out in the Scotch Whisky Regulations (2009). Despite this, many methods are used to acquire differences in taste, strengths and features of the vast range of Scotch Whiskies are individual to each brand. Each of these methods could be viewed as commercially sensitive. In addition, companies would not be willing, for example, to provide cereal tonnages and spirit yields as this would provide competitors with production volumes.

In order to avoid any doubt during further consideration of this Bill and its accompanying regulations, the SWA requests that a detailed list of areas that would be considered as confidential or commercially sensitive by the FSS should be provided within the regulations. The SWA would be keen to have sight of these regulations in draft.

Given that it is impossible to reverse a decision once information has been published particularly in today’s electronic age, we seek assurances that consideration of confidentiality should be adopted as the starting position prior to any publication. That way, information could be published if deemed appropriate, rather than automatically published unless confidentiality was deemed an issue. In addition, further detail as to the manner in which information could be published, the notification of such publications and the level of detail published would also be welcomed.
Part 2 Food and feeding stuffs

The SWA is content that Section 32 15A (a) states that food information has the same meaning as Regulation (EU) No.1169/2011 of the European Parliament and notes that this section gives power to Scottish Ministers to give effect to requirements in EU law on food information.

Part 2 32 15A (b) states that food information law is defined as any enactment relating to food information as the Scottish Ministers may by regulations specify. The SWA is keen to see the detail of the regulations which will provide additional information to this area. We also highlight, again, the need for any such regulations to adhere to, or complement, current legislation affecting Scotch Whisky.

The Scotch Whisky industry welcomes Section 32 15B which creates a new power to issue a notice to detain food which contravenes food information law. This is defined within the Explanatory Notes as where the description of the label does not match the content.

Currently, officers have powers to detain or seize and remove food which is deemed unsafe but no such powers for food which is safe but doesn't meet food information requirements. We welcome that this Section will strengthen against mislabelling which will provide additional help to protect our product.

Presently, the existing FSA takes responsibility for products deemed to be unsafe to humans.

HMRC takes on responsibility where suspicious products pose a risk to tax revenues and Trading Standards step in for cases of inappropriate labelling within their own areas.

There remains a regulatory gap however for food fraud where goods are labelled to look like something that they are not (for example a spirit that says it is ‘Scotch Whisky’ on the label but is in fact a mixture of whiskies from other countries). Such goods may carry a genuine duty stamp and may pose no risk to health and may be labelled appropriately but they may be misleading consumers and undermining the reputation of Scotch and indeed individual brands of spirit. We believe that the inclusion of the new food information law will help begin to bridge this gap.

Section 32 15C creates a duty to report non-compliance with food information law. It places a new duty on Food Business Operators to inform FSS where food information law is, or has been, contravened. The SWA welcomes this inclusion which will provide additional protection to the consumer covering quality, provenance, authenticity, composition and labelling. It will also assist in cases whereby fraudulent whisky, which is falsely labelled as having been made in Scotland, is on the market. We hope that the FSS will work actively
with the licensed trade to share information and intelligence. We would also seek assurances that 15C would only come into force when the goods are placed on the market and are available for sale to the consumer. Prior to this in the supply chain, companies may wish to remove the product for aesthetic reasons or other non-compliances with internal standards and we would not wish any requirement for these to be formally reported.

In addition, in Europe, we have an on-going issue of concern with the importation of bulk spirits labelled as “whisky”. Although the goods may comply with the laws of their home countries, they do not meet the EU whisky definition. We hope that this Bill will assist with preventing such products being allowed to circulate in Scotland.

Section 34 Animal feed stuffs

Section 34 allows Scottish Ministers to make regulations in relation to animal feed stuffs. The SWA acknowledges that this is a fall-back power only and it is included in the Bill to guard against any unforeseen circumstances in which the other existing animal feeding stuff regulations based on European requirements are insufficient for Scotland’s needs. Some by-products of the Scotch Whisky production process are provided to the animal feeds market. We therefore ask for the Scotch Whisky industry to be fully consulted should any additions or further regulations surrounding this issue be considered.

Part 3 Administrative sanctions

Part 3 sets out provisions for non-compliance with food safety and standards. As mentioned earlier, in food safety terms, Scotch Whisky is generally considered to be a responsible and compliant industry. Over the years, we have developed good relationships with the regulatory bodies that monitor compliance relating to food safety and production.

Fixed Penalty Notices

The SWA is keen to see the regulations relating to Section 51 which will provide the list of activities to be covered by fixed penalty notices and compliance notices and Section 59 (2) and (3) which will highlight orders under affirmative procedure and those covered by negative procedures.

We note that Part 3 Section 39 states that a fixed penalty notice can be withdrawn. Further information surrounding the circumstances leading to this withdrawal would be welcomed.

We note that an appeals process for fixed penalty notices has been omitted from this Bill which leaves businesses with no means to question a fixed penalty notice. Section 47 provides details of appeals against a compliance notice however no such process has been included for fixed penalty notices. The SWA would welcome an appeal process for fixed penalty notices to be included within the Bill.
In terms of the application of fixed penalty notices, the amount applied should be proportionate and consistent. In addition, the penalty system is to ensure compliance and penalise non-compliance of the law, not to generate income which is why we welcome that money raised from fixed penalty notices are paid over to Scottish Ministers rather than enforcement authorities.

Part 3, Section 49 states that before making any regulations under this Part, the Scottish Ministers must – (b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations. The SWA would welcome consultation with regard to the drafting of regulations that may affect the Scotch Whisky industry.

Costs

The Association notes that the budget for FSS is expected to increase by 50%. We appreciate that there will be no financial implications for business in terms of charges related to this increase. However, we understand that secondary legislation will be required for regulating Animal Feed Stuffs as well as the Food Hygiene information scheme and that the costs associated with this will be covered when consulted on.

Conclusion

In conclusion the SWA would like to underline the need for Food Standards Scotland to continue to work alongside UK, EU and international decision making bodies. Continued effective communication with the FSA London and with Europe is critical to ensure effective national food regulations and compliance.

We are also keen to be involved with the consultation of the draft regulations in areas that will affect our industry. The Scotch Whisky Association would be happy to provide additional information or oral evidence if required.

Scotch Whisky Association
May 2014
Food (Scotland) Bill

Scottish Association of Meat Wholesalers

These are the views of the Scottish Association of Meat Wholesalers, which represents the red meat slaughtering and processing sector in Scotland. Our members are responsible for the slaughter of 99% of the cattle, sheep, and pigs processed in Scotland and we are regulated by the Food Standards Agency. We advocated the establishment of a stand-alone meat inspection service in Scotland and this was implemented by the Scottish Government in 2013 in response to the enquiry conducted by Professor Scudamore.

Our response to the questions posed in the call for evidence is below

THE MERITS OF CREATING A STAND ALONE BODY RATHER THAN ENHANCING THE CURRENT FSA SCOTLAND ARRANGEMENTS

Scotland has different needs and priorities for food, health, diet and nutrition than the rest of the UK. It has different problems which require tailored solutions unlikely to be fully understood or appreciated by the FSA in London who would still ultimately manage an enhanced FSA Scotland. Experience on meat hygiene issues is that the FSA UK is distant and disengaged when it comes to Scottish issues. Since the establishment of the stand-alone Scottish meat body in Aberdeen last year we have developed a partnership approach which has yielded mutual benefits to consumers and industry through better understanding and shorter lines of communication.

THE SCOPE AND OBJECTIVE FUNCTIONS OF THE FSS INCLUDING WHETHER AND HOW THEY COULD SUPPORT SCOTLAND’S SUSTAINABLE DEVELOPMENT

The delivery of Food Safety and Food Standards currently involves the FSA and Scottish local authorities carrying out specific duties across the sector. A Scottish body would be better placed to ensure a co-ordinate approach giving better scrutiny to the areas most likely to be at risk. This would result in better communication and co-ordination, better targeting and better use of resources all to the benefit of consumer protection. More focus could be given to the sustainability of the meat industry and processing facilities, including those in remote and island areas. Food inspectors could be trained in other kinds of official control duties, leading to a better organised, more effective and efficient work force. Cost savings would result from such organisation.

THE PROPOSED ADMINISTRATIVE AND GOVERNANCE ARRANGEMENTS FOR THE FSS

We agree that FSS should have operational independence but that it is correct that the Scottish Government should be able to influence FSS transparently in matters of public interest. The FSS should be governed by a board of suitably qualified directors.
THE PROPOSED POWERS OF THE FSS

Food safety and food standards are crucial to consumer protection. Breaches of safety and standards can result in very serious consequences so it is right that FSS should have sufficiently strong powers to investigate potential or suspected non-compliance.

THE LIKELY EFFICACY OF THE NEW PROVISIONS RELATED TO FOOD INFORMATION TO PREVENT FOOD FRAUD

Experience of the horsemeat scandal has highlighted where there are potential weaknesses in the supply chain and where there is potential to exploit these. The additional powers that would be available to the FSS would enable them to investigate future incidents more quickly and effectively. Co-ordination with local authorities and industry would be better, and information more accessible. Improved surveillance, intelligence gathering, research and communication would result in Scotland and the UK. The FSS could also have a more prominent role in international surveillance and collaboration.

THE PROVISIONS SET OUT IN THE BILL FOR NON–COMPLIANCE WITH FOOD SAFETY AND STANDARDS

The Bill will rectify a significant deficiency in current provisions regarding food standards by enabling the seizure and detention of food pending further investigation and the seizure and destruction of non–compliant food or labelling. Seizure and destruction powers already exist in relation to food safety. The creation of new non–criminal enforcement sanctions is also helpful.

Scottish Association of Meat Wholesalers
May 2014
Food (Scotland) Bill

NHS Forth Valley

1. **The merits of creating a stand-alone body rather than enhancing the current FSA Scotland arrangements.**
   The creation of a stand-alone body will provide Scotland with greater flexibility and autonomy in developing and setting policy as it sees fit. This would facilitate ‘fit for purpose’ policies tailored to the Scottish Public Health and Food Safety environment which is occasionally in variance to the rest of the UK. However, a new stand-alone body may struggle to achieve the critical mass of specialist required to deliver its remit if it is not adequately resourced.

2. **The scope of the objectives and functions of the FSS, including whether and how they could support Scotland’s sustainable development.**
   Having all aspects of Food Policy vested in one body brings with it the advantage of ensuring that policy initiatives are linked, and support each other. It also formalises the statutory responsibility for ongoing work and simplifies the multi-agency approach required when dealing with Health Improvement issues such as improving diet and nutrition as well as Health Protection issues like food-borne disease.

   Any action to clarify the lines of responsibility and reinforce the key drivers for Health Improvement such as diet will support Scotland’s sustainable development.

   It has been highlighted that the scope and functions of this new body will, in time, be set from the extensive range of suggestions received during the 2013 consultation on its remit and governance arrangements. Caution needs to be exercised here. There is a danger in setting the roles and powers of the FSS too wide in that it may struggle to deliver across an extremely broad remit, particularly if it is not adequately resourced.

3. **The proposed administrative and governance arrangements for the FSS.**
   These seem reasonable and appropriate.

4. **The proposed powers of the FSS.**
   The new powers proposed for the FSS to seize and detain food that does not comply with food information law will provide significant reassurance to the Public with regards to knowing what they are consuming, particularly for those who may have concerns based on religious or health grounds.

5. **The likely efficacy of the new provisions related to food information to prevent food fraud (such as the recent horsemeat incident).**
The introduction of new administrative sanctions comprising of compliance notice and fixed penalties is likely to lead to an increase in the effectiveness of the FSS and Local Authorities in enforcing the food safety laws. Currently the complex body of evidence and the extensive resources required to prosecute offenders often acts as a deterrent in taking these actions forward.

These new powers are quite significant changes which will not only provide significant reassurance to the public but also contribute to the statutory legislative foundation for a safer food industry.

6. **The provisions set out in the Bill for non-compliance with food safety and standards.**
   Please refer to response no.5.

7. **Any other comments on the Bill that relate to areas not covered above.**
   The new FSS if adequately resourced and should be well placed to make a significant difference in the Health of the population with its objective to improve the extent to which consumers have diets conducive to good health, as well as protecting the public from risks to health. The new powers are timely following the recent horse meat scandal and should make a significant difference in reducing the likelihood of such incidents taking place in the future.

NHS Forth Valley
May 2014
Health and Sport Committee

Food (Scotland) Bill: visit to Aberdeen

26 May 2014

The following members took part in the visit to Aberdeen: Duncan McNeil (Convener), Rhoda Grant, Colin Keir, Richard Lyle, Aileen McLeod, Nanette Milne, Richard Simpson.

1000 Food Standards Agency Scotland

Members held discussions with the following FSA staff:

**Charles Milne** – Director
**Ian McWatt** – Head of Operational Delivery
**Elspeth Macdonald** – On secondment to London Regulatory project, prior to this Head of Policy and Operations
**Peter Midgley** – Head of Policy and Operations
**Lorna Murray** – Head of Communications & External Engagement
**Garry Mournian** – Head of Corporate Support
**Andy Morrison** – Acting Head of Enforcement
**Bill Adamson** – Head of Regulatory Policy
**Jacqui McElhinney** – Head of Food Safety Monitoring & Policy
**Susan Pryde** – Head of Nutrition Science & Policy
**Peter Morgan** – Director, Rowett Institute
**Alex Johnstone** – Rowett institute
**Professor Hugh Pennington**

Presentation by Charles Milne:

- FSS has the opportunity to address the following pressures:
  - That local authorities are under pressure
  - International issues such as trade
  - Horsemeat incidents and food/organised crime
  - Social challenges of diet and nutrition

- FSS will be able to:
  - Be more flexible and focussed
  - Underpin economic growth
  - Work closely with the meat industry
  - Provide greater clarity of role, for example in working with the health service

- In general FSA Scotland is content with the contents of the Bill. Although concerns relate to:
  - The name of the organisation - FSS!
  - Ensuring there are enough resources for the expanded remit
  - The drivers of diet and nutrition (was not sure what he meant by that!)
  - No powers of entry to a dwelling (section 20)

- FSA Scotland has an enforcement branch that largely works with local authorities. It works with local authorities to support use of the “food law code of practice”.
• There is a food safety unit working on shellfish sampling; food borne disease strategy (where they monitor risks, and carry out research because of Scotland’s high incident of food borne disease).

• The point was made that most regulation originates in Europe

• The diet and nutrition branch within the FSA Scotland cuts across government departments. Susan Pryde talked about monitoring the food and drink sector and the “responsibility deal” in Westminster. Tesco recently made an announcement about moving confectionary and drinks from till points.

• The operational delivery branch conduct the “official controls” in 117 meat establishments. It also carried out animal controls for other government department. The FSA charges for vet and inspection services. It is a large and flexible service and would have a significant in animal disease control, for example in the event of a foot and mouth outbreak.

Discussion

• Current budget is about £11 million (RESAS research is not included in that and LA budgets for inspections is not included in that).
• Scotland has TB free status
• A food business needs to be registered before it opens. It does not have to be licenced. It will be inspected in due course.
• Vet medicine regulation is reserved.
• Penalties for food fraud are small, but the potential rewards are large.

Rowett Institute

• The Rowett institute’s role is to provide scientific advice. It works on subjects across the board from molecular issues to human behaviour.
• The Institute receives around £9 million per annum research funding from RESAS in the Scottish Government to deal with nutrition and food.
• They link with the other research institutes including, Morden, James Hutton Institute and SRUC (formerly SAC), which gives them a field to fork perspective.
• Two reports were mentioned: first, Myers et al (2014) in Nature about decreasing CO2 in agriculture is leading to a decrease in nutritional quality of food; Second, the “Livewell” report about reducing meat consumption in order to reduce Climate change.
• Alex Johnstone talked about her work with Marks and Spencer “fuller for longer” range of food.

Professor Hugh Pennington

• Prof Pennington said that the biggest problem in Scotland is campylobacter because there are more incidents of this than other diseases, but this is not a particularly Scottish problem.
• Private water supplies are a problem for food borne diseases. These are regulated by SEPA.
• Ecoli is a particularly Scottish problem, and especially a North east of Scotland problem – but no-one seems to know why that is the case.
• He argued there is a need for co-ordinated research on these bugs, especially as the research can be very expensive.

Discussion

• It was felt that the FSA (or FSS) should not co-ordinate all research in the food area because research needs to be independent, and there is a need to maintain links with other research institutes.
• The links to UK FSA advisory committees must be maintained. FSS Scotland said these links would indeed be maintained.
• Hugh Pennington was not clear why the Bill held back on the food hygiene information scheme. He said there was evidence from the USA that such a scheme was effective.

1100 Joseph Robertson (Aberdeen) Ltd

Michael Robertson, Managing Director

• The company concerned about increasing costs associated with the Bill that might come from different systems in Scotland and the rest of the UK. This would increase costs and decrease competitiveness. Labelling and regulation must be the same in the rest of the UK and Scotland.
• There was some discussion about inspections and that local authority inspection was not as high quality as the retailers own inspection. Was there a need for local authority inspection if the industry was inspecting itself?
• Turnover increased from £10.2 million in 2008 to £22 million (estimated) in 2014.

1230 CFINE

Dave Simmers, Chief Executive

Presentation content:

• CFINE improves health and well being, contributes to regeneration, increases employability and creates employment in and with disadvantaged and excluded geographical and interest communities by promoting the consumption of fruit, veg, pulses, healthy snacks and encouraging and supporting volunteering which brings a range of personal, family and community benefits. CFINE now operates in Aberdeen City, Aberdeenshire and West Lothian.
• Presently c100 Community Food Outlets (CFO’s) located in regeneration areas, facilities for people with disabilities and sheltered housing complexes; prices as affordable as possible.
• FareShare whereby supermarkets’/food producers’ surplus produce are collected and distributed to people in food poverty, for example, facilities for people who are homeless and women who have experienced domestic abuse. More than 400 tonnes distributed saving 200 tonnes of carbon emissions.
CFINE has recently become the lead partner in the Food Banks Partnership Aberdeen involving 19 partners. FBP is providing emergency food parcels to those in need but also offering support and information on money, health and well-being and employability to support people out of their dependency; FareShare now within the Partnership.

CFINE, as a social enterprise, sells fruit/ veg/ other produce on a commercial/ competitive basis; is now supplying fruit to companies including around 80 from the oil sector (many in the Healthy Working Lives scheme), restaurants, sandwich bars etc. All profits are invested in the health and community development work CFINE carries out in disadvantaged, excluded and vulnerable communities.

CFINE bases: CFINE purchased the Fruit Mart at Longside, North Aberdeenshire in November 2010 with support from Aberdeenshire Fairer Scotland and Social Firms Scotland. It now has a unit in Stoneyburn, West Lothian and premises in 4 Poynernook Road, Aberdeen, purchased with BIG investment in 2009.

CFINE staff team 36 strong, (8 f/t, 28 p/t; 26 (78%)) recruited from the priority communities – and more than 130 volunteers and 28 adults with learning difficulties in work, supported placements: 17 at the Fruit Mart, 7 in Aberdeen and 6 in West Lothian.
Food (Scotland) Bill: Financial Memorandum

Dear Duncan,

The Finance Committee issued a call for evidence on the Food (Scotland) Bill’s Financial Memorandum (FM) on 7 April 2014. A total of nine responses were received and these are attached.

**Funding of Food Standards Scotland (FSS)**
Quality Meat Scotland notes 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 SG. The level of this financial transfer remains subject to negotiation and is therefore as yet unknown. This unknown creates uncertainty in the financial model.”

**Remuneration of Food Standards Scotland Committee members**
The Scottish Food and Drink Federation (SFDF) compares the provisions in the Bill that indicate that remuneration will be provided to non-Food Standards Scotland members of committees it establishes to the existing position in relation to the Food Standards Agency. SFDF notes that currently Scottish Food Enforcement Liaison Committee (SFELC) members do not receive any payment and that “office bearers in particular devote much time to work related to the committee”. SFDF comments that “this could be a new and significant on cost”.

This is a point that was also made by SFELC in its own submission. While not quantifying what the potential cost might be, SFELC did offer an indication of the level of work currently undertaken by its members stating that “SFELC office bears can spend over 100 hours per year on work related to the committee”.

Guidance
The use of guidance was identified by some local authority respondents as being important in avoiding significant additional costs in relation to the exercise of the powers conferred by the Bill. For example, in relation to the powers for detention and seizure of food, West Lothian Council stated that “a significant cost element can be avoided if the direction and guidance for the use of these powers ensures a sensible and proportionate expectation on enforcement officers.” A similar view was expressed by South Lanarkshire Council.

Administrative sanctions
Responses commented on the potential costs and savings in relation to Part 3 of the Bill which provides for administrative sanctions, by way of fixed penalty notices and compliance notices, as an alternative to seeking prosecution for relevant offences.

Some respondents questioned whether the fixed penalty notice arrangements in the Bill will result in financial savings by reducing the number of prosecutions that will be brought forward. For example, West Lothian Council noted that “reports for prosecution consume officer time and opportunity costs” and that “as the fixed penalty notice arrangements do not have a mechanism for recovery of non-payment then there is still potential that a report for prosecution will have to be made thereby increasing the impact.”

Other respondents, such as the SFDF, noted that “the anticipated reduction in prosecutions may not be realised as the administrative sanctions may be used for offences not currently reported to the Procurator Fiscal”.

SFELC also note that the Bill does not define a relevant offence for which an administrative sanction may be applied so “it is not possible to be completely certain in relation to this aspect”.

From the perspective of food businesses, SFDF commented on the potential impacts of administrative sanctions, stating that—

“Where additional costs of administration and enforcement fall to local authorities, it could lead to a possible scenario where they may seek to recover these costs, possibly through an increase in the number of enforcements and/or through charging.”

SFDF also notes that, while the use of administrative sanctions may reduce costs to business in relation to court cases, there is currently “no clarity on what routes of appeal would be open and the costs associated with these.”

Wider issues
A number of local authority respondents commented on the reference in the Policy Memorandum to potential new areas of responsibility that could be extended to FSS. For example, East Ayrshire Council stated that—

“this would require clarification, the provision of more detail and further consultation as this may have an impact on the financial proposals (in terms
of associated costs) and also the removal of duties and powers from local authorities in terms of public health protection.”

North Ayrshire Council also commented on the potential for future costs should the scope or remit of FSS vary considerably.

The idea of further funding being provided to local authorities was raised in the submissions from both Renfrewshire Council and North Ayrshire Council. Renfrewshire Council stated if it is found not to be the case that the costs set out in the FM are 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.”

North Ayrshire Council stated that “when dealing with large scale food fraud incidents, North Ayrshire Council recommends that FSS operates a fund which Local Authorities can apply to for financial assistance, such as that currently provided by the Food Standard Agency.”

Conclusion
Your committee may wish to consider the above information along with the attached submissions in its evidence session with the Minster in charge of the Bill.

Yours sincerely,

Kenneth Gibson MSP,
Convener
WRITTEN SUBMISSIONS TO THE FINANCE COMMITTEE

COSLA
East Ayrshire Council
North Ayrshire Council
Quality Meat Scotland
Refrewshire Council
Scottish Food and Drink Federation
Scottish Food Enforcement Liaison Committee
South Lanarkshire Council
West Lothian Council
FINANCE COMMITTEE CALL FOR EVIDENCE

FOOD (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM COSLA

COSLA welcomes the opportunity to submit evidence in relation to the Financial Memorandum associated with the Food (Scotland) Bill. COSLA is the representative body of all 32 Scottish local authorities, with Councils responsible for ensuring that food safety and standards are maintained by relevant businesses in their respective areas.

COSLA is comfortable with the cost assumptions for Councils contained within the Financial Memorandum for the proposals as currently drafted in the Bill.

Although not a direct financial issue, it is important to note that we would not want to see this Bill contribute to the longer term erosion of duties that we have already seen taken place, which has now reached a point where viability of the environmental health service provided by Councils starts to be questioned.
FINANCE COMMITTEE CALL FOR EVIDENCE

FOOD (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM EAST AYRSHIRE COUNCIL

Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

1. East Ayrshire Council took part in the initial discussions relative to the new Food Body for Scotland through Environmental Health colleagues and their professional bodies. No comments on financial assumptions were made or specifically raised at that time.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Not applicable

Did you have sufficient time to contribute to the consultation exercise?

3. Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?

4. 

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

5. 

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. 

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. As a general comment East Ayrshire Council would concur, and are comfortable with, the cost assumptions in the Financial Memorandum and advise that in terms of the financial proposals currently put forward in the Bill there would be no specific concerns subject to the undernoted comment in the wider issues section.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes in terms of the cost assumptions made and the subject areas covered therein.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. It is noted that the Policy Memorandum refers to possible additional suggested areas for the new Food Standards Scotland to have a role in. These areas include those which local authorities currently enforce (animal health, water quality (natural mineral water), Animal bi-products, eggs, organic food labelling, poultry meat.). This would require clarification, the provision of more detail and further consultation as this may have an impact on the financial proposals (in terms of associated costs) and also the removal of duties and powers from local authorities in terms of public health protection.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Comments were submitted following the initial consultation but no financial matters were raised.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. n/a

Did you have sufficient time to contribute to the consultation exercise?
3. Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?
4. The FM appears to include all direct, significant costs associated with the introduction of the Food (Scotland) Bill.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. The costs that appear to fall to Local Authorities comprise the following:
   a) the transportation, storage & administration costs incurred when seizing foodstuffs breaching food information law (food standards);
   b) administrative (printing etc) & training costs associated with the use of the new fixed penalty and compliance notices;
   c) Running costs of a mandatory Food Hygiene Information Scheme.

   a) Although it is difficult to quantify or accurately predict the cost of using the new seizure power due to variances in the size and nature of each incident, North Ayrshire Council believes that the estimated costs seem reasonable, provided the number of incidents remain low. Budgetary provision should already be in place for ‘food hygiene’ seizures which have been available to Local Authorities in their current form since 1990.
b) North Ayrshire Council agrees that the costs of introducing new sanctions such as fixed penalty notices will be minimal and should be offset by the amount of time and costs incurred preparing prosecutions etc.

c) Provided the mandatory scheme follows the voluntary FSAS scheme operated currently by North Ayrshire Council, no significant costs will be incurred.

The FM states that there should be no anticipated significant additional cost to Local Authorities associated with the new duty to report non-compliance with food information. However, this new duty may result in a significant number of low level complaints being made (particularly by businesses in receipt of foodstuffs) which will require investigation by Local Authorities. This may have an impact on resources, depending on the level of service being provided.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

6. The financial costs highlighted could be dealt with within existing budgets for incidents involving low risk or local issues. However, when dealing with large scale food fraud incidents, North Ayrshire Council recommends that FSS operates a fund which Local Authorities can apply to for financial assistance, such as that currently provided by the Food Standard Agency.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. Yes – most costs are based on current costs where a comparison for similar work is available.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Assuming representations or appeals following service of fixed penalty notices are made to Local Authorities, it is not clear if the costs incurred when hearing appeals have been included. This would only have an impact if numerous appeals were made which is unlikely. Therefore any costs incurred in this manner are expected to be absorbed into current work streams.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
No future costs can be predicted based on the information provided at this time, although there may be indirect costs if the scope or remit of Food Standards Scotland varies considerably.
CONSULTATION

*Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?*
1. QMS participated in a consultation prior to the Bill. QMS did not comment on any financial assumptions.

*If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?*
2. n/a

*Did you have sufficient time to contribute to the consultation exercise?*
3. Yes

**Costs**

*If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?*
4. We are not aware that the Bill has any financial implications for our organisation itself. The Bill will however have financial implications for the red meat industry through Food Standards Scotland delivery of official controls.

*Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?*
5. QMS has no basis for arriving at a conclusion as to whether or not the costs or savings in the FM are reasonable or accurate. We note it is intended that the increased running costs of FSS will be offset through a financial transfer from the FSA UK-wide budget to SG. The level of this financial transfer remains subject to negotiation and is therefore as yet unknown. This unknown creates uncertainty in the financial model.

*If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?*
6. n/a

*Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?*
7. There is currently a lack of clarity over the scope of the new organisation and any increase in its range of activities will need appropriate financial resource.
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. No comment

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. We are aware of regulatory change at an EU level. Any changes to the legal framework could well have future cost implications for FSS. This is almost impossible to quantify at this stage.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, however we did not comment on financial assumptions

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. NA

Did you have sufficient time to contribute to the consultation exercise?
3. Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?
4. The financial implications for Local Authorities, including Renfrewshire Council, are based on a number of assumptions, which appear to be reasonable. Matters such as training to ensure Local Authority are familiarised with new measures are likely to be reasonably accurate. Food Standards Scotland should provide the necessary training to local authorities at no cost to the LAs. There may be more uncertainty with estimates of the level of additional work generated by the new provisions to be introduced. Depending on policy and guidance from the Food Standards Scotland, this may be greater than estimated. Should this be the case, additional resources may be required.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. As with the response to question 4, the assumptions made appear reasonable at this stage, but until the Bill is enacted and the Food Standards Scotland has been established, there will be some uncertainty over this.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. If the assumptions made in the Financial Memorandum prove to be accurate then costs for Local Authorities should be contained within existing budgets. In practice, if this is found not to be the case, 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.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7.
Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Yes

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. This is could be the case but it is not possible to quantify these at this stage.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

1. SFDF took part in the preceding consultation exercise. In considering finances we felt that it is important to take into account the nature of the food and drink manufacturing industry which works across UK boundaries. Companies that manufacture and market food and drink products to consumers in Scotland are not all based in Scotland. Similarly, companies in Scotland sell their products to consumers in other parts of the UK and further afield. Sales to the rest of the UK are a vital part of the Scottish Government’s food and drink policy. Divergent approaches to food safety and standards by Scotland and the rest of the UK could bring extra burdens and costs.

We also said that in order for the FSS to be successful and independent, it is vital that it is appropriately resourced to deliver all aspects of its remit, retain experienced staff and be to be able to recruit or access expertise to fill skill gaps, particularly where these have previously been filled within the context of the FSA UK.

Any expansion of the scope proposed in the draft Bill needs to provide clear definable benefits that are evidence based. It would also be prudent to get the FSS set up to work efficiently and effectively based first on the current model before looking to extend the scope, in order to manage the change process, the learning curve of the team and to ensure adequate resources for any additional responsibilities.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. No, the additional costs to industry of working with two potentially different regulatory regimes in Scotland and the rest of the UK is not explored.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

4. Whilst there are no direct implications for SFDF, we have highlighted in this response where there may be financial implications for the companies we represent.
Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

5. There are too many uncertainties to be able to consider estimated costs and savings; therefore in the absence of further information, it is not possible to comment. In particular there is no decision going forward with respect to the shape and scope of the FSS, beyond that which is currently stated in the Bill. Paragraph 22 on page 5 of the policy memorandum states that “no decision have yet been taken on any of these suggestions for widening the remit – each would need to be considered in detail and consulted on specifically. The Scottish Government will begin work on this once the Bill has been introduced.” However no indication is given as to whether FSS would be expected to pick up additional responsibilities within existing budgets; or if the Scottish Government would increase the budget in line with such responsibilities; or indeed if additional costs would be passed to industry. These issues need to be explored in more detail, not only for industry and other stakeholders but to ensure the effective delivery of existing food safety and standards functions within the proposed new FSS structure.

SFDF notes that the budget of £19.2m is offset by income from industry and government departments and without seeing the detail of these, we are unclear what guarantees there are that the £3.5m from other sources will be sustained year on year. This could have a significant impact on FSS functions going forward.

There could be increased staff costs on those given. Whilst existing staff will transfer, the break from FSA may result in the need to create new posts and/or acquire expertise that does not currently exist within FSS and which has previously been available from FSA. This would come at a cost. The FM already refers to the need to increase the FSS private office function. Recruitment costs of £20k have been included but if new staff posts have to be created this could be more. There are no guarantees that the necessary expertise and calibre of staff required in the FSS will be available from within Scottish Government.

The estimated costs for shared services which are anticipated will be available from the Scottish Government should be clarified.

Development and implementation of food safety and standards policy is critically dependent on access to high quality evidence, analysis and advice. Currently this is available through a number of FSA committees, advisory bodies and funded research. The Bill does not provide clarity on the extent to which such arrangements will continue nor on how gaps would be filled and funded in an independent FSS. There needs to be consideration of the potential costs of accessing the evidence, advice and analysis currently provided within the FSA framework.

With respect to sanctions, the anticipated reduction in prosecutions may not be realised as the administrative sanctions may be used for offences not currently reported to the Procurator Fiscal. Neither the Bill nor the FM defines what a ‘relevant offence’ will be, so it is not possible to be certain regarding estimated costs.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. This is not applicable for SFDF as an organization, but there is a potential risk for our member companies. We cannot comment further on costs without more clarity.

**Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?**

7. SFDF notes the Bill indicates that FSS committee members “are entitled to such remuneration as FSS may determine” and remuneration will be provided to non-FSS members of committees it establishes. Currently SFELC members receive no payment and office bearers in particular devote much time to work related to the committee. This could be a new and significant on cost.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. See responses to other questions in this document.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. The potential extension of the remit of FSS will be considered by Scottish Government once the Bill has been introduced. No reference is made in the FM to such an extension, the costs associated with extending the remit and whether these would have to be met from the proposed FSS budget of £19.2m or whether the SG would make additional funds available - for transitional arrangements and ongoing costs.

It is not clear under the Delivery of Official Controls if the anticipated level of charging for official controls will create costs or savings. There is a risk that there could be a reduction in overall FSS budget which could reduce FSS services more generally.

There is potential for additional costs to be passed to businesses as new legislative controls are introduced. SFDF would like reassurances that new controls will not be overly burdensome and will be cost neutral. This is of particular importance to small businesses, which comprise the majority of food and drink businesses in Scotland.

With respect to the administrative sanctions, it is unclear from the Bill how these will work in practice. Where additional costs of administration and enforcement fall to local authorities, it could lead to a possible scenario where they may seek to recover these costs, possibly through an increase in the number of enforcements and/or through charging.

In addition, while businesses which are the subject of administration sanctions may, theoretically, save costs associated with a court case, there may be costs associated with appeal. At this stage there is no clarity on what routes of appeal would be open and the costs associated with these. Furthermore, while some businesses may be attracted to the reduced costs and bureaucracy associated with administrative
sanctions, others may prefer to retain the right to a full hearing through the court system.

We would be happy to discuss the points made in this response in more detail.

Dr Colette Backwell  
Director  
Scottish Food and Drink Federation
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. The Scottish Food Enforcement Liaison Committee (SFELC) took part in the preceding consultation exercise but did not make any comment on the financial assumptions.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. SFELC felt that there was sufficient time to respond to the consultation.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. The Bill will not have financial implications for SFELC. Parts 2 and 3 of the Bill will have financial implications for SFELC members and it will be for individual committee members to comment on this aspect.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. SFELC considers the costs and savings are accurate if the assumptions they are based on are realised. SFELC is aware that some local authorities have concerns about the assumptions made in the FM; these include a potential increase in costs associated with additional revisits following the introduction of a mandatory food hygiene information scheme.

6. SFELC would also suggest that the reduction in prosecutions may not actually be realised as the new administrative sanctions may be used for offences which are currently not reported to the Procurator Fiscal. The Bill or the FM does not define what a ‘relevant offence’ will be so it is not possible to be completely certain in relation to this aspect.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
7. N/A

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
8. N/A

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

9. SFELC believes there is a cost that the FM has not considered. Section 12 of the Bill indicates that FSS will provide remuneration to non-FSS members of committees it establishes. The FM does not appear to consider these costs for FSS. SFELC office bears can spend over 100 hours per year on work related to the committee. This could be a substantial new cost for FSS if in the future members or office bearers (or their employer) of committees such as SFELC receive remuneration for their participation.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

10. SFELC is not aware of any potential future costs associated with the Bill other than those outlined in question 8 above. SFELC anticipates that any costs associated with subordinate legislation would be considered during the consultation stage for the subordinate legislation.
FINANCE COMMITTEE CALL FOR EVIDENCE

FOOD (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. South Lanarkshire Council (SLC) took part in the preceding consultation exercise but did not make any comment on the financial assumptions.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. SLC felt that there was sufficient time to respond to the consultation.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. Parts 2 and 3 will have financial implications for SLC; however, SLC believes that the FM does not accurately reflect the potential costs that the new provisions could introduce.

5. Regarding the extension of seizure and detention of food provision, basing the costs on current seizure and detention activities relating to serious food safety issues will under estimate the costs associated with the new provisions. Composition and labelling issues will potentially occur far more frequently than failures for food safety reasons and therefore the potential number of seizures is likely to increase. In addition, the potentially large quantities, batches and consignments implicated will add a significant impact in respect of the staff, logistics and financial costs of addressing such matters by local authorities.

6. In relation to the provisions for a mandatory food hygiene information scheme, the existing costs are heavily subsidised by FSA through the provision of certificates and promotional materials. If FSS did not continue this level of support then an additional cost would be placed on local authorities. South Lanarkshire Council anticipates that the introduction of a mandatory scheme would significantly increase the number of revisit requests for non-serious contraventions if the current ‘pass’ standard is used. This will result in an increase in the time to be allocated to low risk food safety activities and increase the travel costs for councils. The FM does not take account of this foreseeable consequence of a mandatory scheme.

7. The administrative arrangements for fixed penalty notices will also add to the existing administrative burden of local authorities. Whilst some prosecutions may be avoided by the introduction of fixed penalty notices, prosecutions will still be sought for serious breaches and potentially where fixed penalty notices are not paid.
Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

8. SLC considers the costs and savings are accurate if the assumptions they are based on are realised. However, SLC has raised concerns about these assumptions in Q4 above. SLC would suggest that the reduction in prosecutions may not actually be realised as the new administrative sanctions may be used for offences which are currently not reported to the Procurator Fiscal. The Bill or the FM does not define what a ‘relevant offence’ will be so it is not possible to be completely certain in relation to this aspect.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

9. SLC is satisfied that it can meet the majority of financial costs that will arise as a result of the Bill. The unaccounted costs highlighted in Q4 could create demands for resources that are difficult to achieve. This will largely depend on the guidance on how the new provisions are to be used. SLC hopes that the introduction of a mandatory food hygiene information scheme will help improve compliance levels and will therefore eventually help balance the additional resource requirements introduced by the Bill.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

10. SLC does not have all the background information and has raised concerns on some of the assumptions made so cannot comment on this aspect.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

11. SLC believes there is a cost to local authorities that the FM has not considered. Currently the Food Standards Agency does not compensate local authorities for the time local authority staff contribute to advisory committees and/or working groups supporting the work of the Agency. Section 12 of the Bill indicates that FSS will provide remuneration to non-FSS members of committees it establishes. SLC is aware that local authority office bears of existing committees such as the Scottish Food Enforcement Liaison Committee can be spending over 100 hours per year on work related to the committee. In the current environment of financial and resource constraints affecting the public sector, it is reasonable to consider whether this level of support can continue to be provided to FSS.

12. The Bill contains provisions relating to compliance notices which do not appear to be considered in the FM. The introduction of any new enforcement powers will have costs associated with familiarisation and implementation of the new powers.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
13. SLC anticipates there will be future costs associated with the Bill via subordinate legislation. It is not possible to quantify the costs until the details of the subordinate legislation are available. SLC expects that these will be adequately considered during the consultation stage for the subordinate legislation.
FINANCE COMMITTEE CALL FOR EVIDENCE

FOOD (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM WEST LOTHIAN COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. There was no formal opportunity to discuss any specific financial elements which would be considered in the bill. However, through various invitational consultation events and professional working groups council officers made comment in regard to potential benefits, consequences and other considerations of matters considered in parts 2 and 3 of the bill and highlighted in the financial memorandum.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. No. Specific comments were made in regard to provisions for food hygiene information scheme and fixed penalty notices.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. The main implications for West Lothian Council are outlined in parts 2 and 3. The costs presented cannot be determined as accurate as they can only draw on basic assumptions and non-specific cost elements of current working practices. The main elements for consideration in parts 2 and 3 are new provisions and it is not appropriate to consider these solely in context of existing arrangements.

5. In regard to the extension of seizure and detention of food provision it is a bold statement to suggest there will be very little cost implications for local authorities. If this is based on current seizure and detention activities relating to serious food safety issues as opposed to potentially administrative and labelling issues it is an incorrect comparison to draw. There are potentially far more failures for labelling of food than for food safety reasons, and therefore the potential volume of seizures is likely to increase. Equally given that very large quantities, batches and consignments could be implicated the staff, logistics and financial costs of addressing such matters could be a significant burden on local authorities.

6. In regard to the mandatory requirement for the food hygiene information scheme it fails to anticipate properly the additional cost elements for local authorities. Currently all certificates and materials are produced by the Food Standards Agency. Local authorities currently have postage and staff admin costs to cover the issuing of certificates.
7. There is also scheme management time for reporting and uploading information to the website, and also officer time in carrying out further visits if required. The impact to date has not been significant because the scheme is voluntary. If made mandatory then local authorities would need to widen the scope and numbers of businesses in the scheme, would need to potentially spend time in enforcement visits for businesses not displaying information, and also the follow up requests from improvement required businesses may increase.

8. The costs of producing the scheme materials appears to be diverting to local authorities as well. It is a false assumption to make that local authority costs of involvement in the current voluntary scheme are justification for running costs being managed by a mandatory scheme. With a voluntary scheme local authorities can assess the benefits and costs of the scheme in considering whether to continue supporting it – they cannot do this with a mandatory scheme. This could effectively impact on the provision of budgets and staff resources to other higher priority work.

9. The fixed penalty notice costs are misleading in representing benefits as financial savings. Reports for prosecution consume officer time and opportunity costs.

10. However, as the fixed penalty notice arrangements do not have a mechanism for recovery of non-payment then there is still potential that a report for prosecution will have to be made thereby increasing the impact. Even if anticipated as an option for not reporting for prosecution, officers will still have done a significant amount of the work in evidence gathering and statement taking.

11. Local authorities will also have to create new systems for this work through invoicing, payment collection and transfer to the Scottish Government. The proposals included in the financial memorandum clearly fail to recognise the work involved and therefore the costs.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

12. The costs presented cannot be determined as accurate as they can only draw on basic assumptions and non-specific cost elements of current working practices. There are also assumptions made in regard to financial costs which are not clearly explained as to whether these are opportunity (i.e. staff time) or real additional costs or savings.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

13. It is not appropriate that these costs should be a burden on local authorities. If the proposals are to be adopted and extended then there should be adequate resourcing provided to accommodate them. Some suggestions for consideration in addressing costs are outlined below:

14. In terms of seizure and detention powers being extended – a significant cost element can be avoided if the direction and guidance for the use of these powers ensures a sensible and proportionate expectation on enforcement officers. There
should also be a centrally held fund for local authorities to claim from should expensive enforcement action be required and they are unable to recover the costs from food owner or business operator. This is a potential cost which has not been considered in the evidence presented in the memorandum.

15. The costs associated with the food hygiene information scheme could be minimised by leaving it as a voluntary scheme and not increasing any further the burden on local authorities. If however it is made mandatory then all costs associated with it should be met by the Scottish Government through Food Standards Scotland.

16. In regard to fixed penalty notice provisions it is accepted that local authorities currently have an opportunity cost impact in terms of reporting to the procurator fiscal. However, as pointed out above the evidence in the memorandum over simplifies the potential savings through failure to consider all processes and work activity elements of the proposals.

17. Whilst it is important that fixed penalty income does not come to local authorities there should be an appropriate administration cost apportioned to local authorities for issuing and collection of penalties, and this can be deducted from the money transferred to Scottish Government. The money raised could also help fund business improvement schemes, food hygiene information scheme etc.

**Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?**

18. No additional comments. Responses to questions above already reflect a number of issues for consideration.

**Wider Issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

19. The bill appears to contain some elements of additional cost in regard to compliance notices which are not mentioned. It appears this would be a cost to local authorities. There are also parallel provisions with existing functions carried out by the Food Standards Agency Scotland which if extended or amended by Food Standards Scotland could have additional resource and cost implications for local authorities. These should be fully considered and consulted on before any changes are introduced.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these cost?*

20. There will be costs associated with future provisions within the bill – particularly subordinate legislation. It is not possible to quantify costs without knowing the details of said provisions. However, as above, these should be fully considered and consulted on before any changes are introduced.
Delegated Powers and Law Reform Committee

34th Report, 2014 (Session 4)

Food (Scotland) Bill

Published by the Scottish Parliament on 13 May 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

34th Report, 2014 (Session 4)

Food (Scotland) Bill

The Committee reports to the Parliament as follows—

1. At its meetings on 1 and 22 April and 6 and 13 May, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Food (Scotland) Bill at stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

3. In this report the following expressions bear the following meanings:
   
   “FSA” means the Food Standards Agency;
   “FSS” means Food Standards Scotland;
   “the Bill” means the Food (Scotland) Bill;
   “the 1990 Act” means the Food Safety Act 1990; and
   “the 1999 Act” means the Food Standards Act 1999.

OVERVIEW OF BILL

4. The Bill was introduced by the Scottish Government on 13 March 2014. The Health and Sport Committee is the lead Committee.

5. The Bill makes provision for the establishment of FSS, an advisory body which will replace the current operations of the FSA insofar as they relate to Scotland. The Bill confers specific objectives on FSS, which are to protect the

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1 Food (Scotland) Bill [as introduced] available here:
http://www.scottish.parliament.uk/S4_Bills/Food%20(Scotland)%20Bill/b48s4-introd.pdf

2 Food (Scotland) Bill Delegated Powers Memorandum available here:
http://www.scottish.parliament.uk/S4_Bills/Food_DPM.pdf
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; and to protect the other interests of consumers in 
relation to food. The Bill also makes provision in relation to the membership of 
FSS, its governance and accountability.

6. Part 2 of the Bill makes provision in relation to food information law. The 
Scottish Ministers are given power to define the term “food information law” in 
regulations. New provision is inserted into the 1990 Act to deal with contraventions 
of, and non-compliance with, food information law, including the creation of 
offences and provision for the seizure and disposal of food.

7. Part 3 of the Bill establishes a new regime of administrative sanctions in 
relation to “relevant offences”, a term which is defined in the Bill to mean offences 
under food legislation which are specified by the Scottish Ministers in regulations. 
The administrative sanctions the Bill creates are fixed penalty notices and 
compliance notices. The administrative sanctions scheme is largely supplemented 
by subordinate legislation making powers which will be used by Ministers to 
provide much of its operational detail.

8. Part 4 of the Bill makes provision for interpretation, and Part 5 of the Bill 
makes general provision in relation to subordinate legislation, ancillary provision 
and commencement.

DELEGATED POWERS PROVISIONS

9. The Committee considered each of the delegated powers in the Bill. At its 
first consideration of the Bill, the Committee determined that it did not need to 
draw the attention of the Parliament to the following delegated powers:

- Section 32, inserting a new section 15A into the 1990 Act – power to 
specify enactments as “food information law”
- Section 33, inserting a new section 16(1)(da) into the 1990 Act – power to 
make provision for a food hygiene information scheme
- Section 35(2) – power to specify the sum of money to be paid under a fixed 
penalty notice
- Section 35(4) – power to specify the standard to which an authorised officer 
must be satisfied before issuing a fixed penalty notice
- Section 36(2) – power to specify the period of time within which payment of 
a fixed penalty notice is to be made
- Section 41(3) – power to specify the standard to which an authorised officer 
must be satisfied before issuing a compliance notice
- Section 42(3) – power to specify a minimum period of time within which 
steps are to be taken to comply with a compliance notice
Delegated Powers and Law Reform Committee, 34th Report, 2014 (Session 4)

- Section 51 – power to specify “relevant offences” under food legislation for the purposes of Part 3
- Section 52(1) – power to specify the meaning of “food” and “animal feeding stuffs”
- Section 57 – power to specify aircraft, ships, boats or other water-going vessel which are not to be considered “premises”
- Section 60 – ancillary provision
- Section 62 – commencement

10. At its meeting of 22 April, the Committee took oral evidence from Scottish Government officials on a number of the delegated powers in the Bill. In light of the responses received, the Committee agreed that it was content with the following delegated powers (which the Committee considered together) and did not need to comment on them further:

- Sections 36(3) and 42(4) – power to make provision about the form and content of fixed penalty notices and compliance notices

Recommendations

11. The Committee’s comments and, where appropriate, recommendations on the remaining delegated powers provisions in the Bill are detailed below.

Section 34 – power to make provision for the purpose of regulating animal feeding stuffs

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative

Provision

12. Section 34 of the Bill confers a power on the Scottish Ministers to, by order, 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 specific provision which may be made using this power is provision which applies, or which is equivalent to, any of the provisions of the 1990 Act, including any power in that Act to make orders or regulations or to give directions.

13. This power, which is subject to the affirmative procedure, also permits Ministers to apply the provisions of the 1990 Act either with or without modifications, and to modify any enactment.

Comment
14. The Committee asked the Scottish Government why the power in section 34 of the Bill is drafted in such wide terms. The Committee also asked whether it agreed that the power as drafted would enable the Scottish Ministers to make subordinate legislation which applies offence provisions under the 1990 Act for the purpose of regulating animal feed, and to use the power to modify any such provisions which are applied so as to remove the restrictions which the 1990 Act places on the maximum penalties that may be imposed in relation to those offences.

15. In response to the Committee’s questions, the Scottish Government explained that the power in section 34 of the Bill is largely a restatement of an existing power in section 30 of the 1999 Act which is currently available to Ministers to use. The Scottish Government considers it to be more convenient to have that power set within the context of the new Bill, as opposed to remaining separately within the 1999 Act.

16. The Committee is not persuaded that the Scottish Government has provided sufficient explanation for taking the power in section 34 of the Bill. The Committee does not consider that the fact that a very similar power already exists in section 30 of the 1999 Act is by itself sufficient justification for the taking of the present power in equally wide terms. The Committee also notes that the power in section 30 of the 1999 Act, the existence of which the Scottish Government appears to rely on as a justification for taking the present power, does not appear to have been used by the Scottish Ministers for the purpose of regulating animal feed. In the Committee’s view, this places further emphasis on the need for the taking of a very similar power to be properly justified by the Scottish Government.

17. The Committee also notes that the drafting of the power in section 34 of the Bill would permit the application of offence provisions under the 1990 Act, and the modification of those offence provisions in a manner which removed or altered the maximum penalties that could be imposed for those offences. The Committee considers that, as a general matter of principle, the prescription of maximum penalties is a matter for primary, as opposed to subordinate, legislation and that where a delegated power seeks to permit the modification or removal of maximum penalties in subordinate legislation, the need for such a power ought to be fully explained by the Scottish Government. In the context of this Bill, the Committee does not consider that section 34 has been adequately justified by the Scottish Government.

18. The Committee accordingly draws the lead committee’s attention to the width of the power in section 34 of the Bill, on the basis that the Committee considers that the Scottish Government has not provided sufficient justification for the taking of a power in such wide terms, having particular regard to the fact that the power could be exercised so as to make subordinate legislation which applied offence provisions under the 1990 Act, but which removed the restrictions which the 1990 Act places on the maximum penalties which may be imposed for offences under that Act.

Section 48 – power to make supplementary etc. provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative

Provision

19. Section 48(1) of the Bill confers power on the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under Part 3 of the Bill (Part 3 establishes a regime of fixed penalty and compliance notices for “relevant offences” in food law, which are to be specified by the Scottish Ministers in regulations made under section 51 of the Bill). The power in section 48 is restricted to supplementary, incidental or consequential provision necessary for the purposes of Part 3 only. A more general power to make ancillary provision for the purposes of the Bill exists at section 60.

20. Section 48(2)(a)-(c) lists particular types of provision that may be contained in regulations made under section 48(1). Section 48(2)(a) provides that Ministers may make regulations under section 48(1) for the purpose of “facilitating, prohibiting or restricting” the issuing of a fixed penalty notice or a compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission. Section 48(2)(a) also provides for converse provision to be made, namely provision “facilitating, prohibiting or restricting” the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission. Section 48(4) defines the term “another sanction” for the purposes of section 48(2)(a) and section 48(5) provides that the Scottish Ministers may modify that definition by regulations.

21. Section 48(2)(b) provides that regulations made under section 48(1) may include provision for early payment discounts in relation to fixed penalty notices. Section 48(2)(c) provides that regulations may apply with modifications, or make provision equivalent to the sections of the 1990 Act relating to offences which are listed in section 48(2)(c)(i)-(xii).

22. Section 48(3) of the Bill provides that regulations made under section 48(1) which contain the provision mentioned in section 48(2)(a) may also make such modifications of sections 37 and 44 of the Bill as the Scottish Ministers consider necessary or expedient in connection with the provision. Sections 37 and 44 of the Bill refer to the effect of, respectively, a fixed penalty notice and a compliance notice on criminal proceedings. Regulations made under section 48(1), including those which are made for the purposes listed in section 48(2), and which contain the provision mentioned in section 48(3), are subject to the negative procedure.

Comment

Section 48(1)

23. The Committee asked the Scottish Government why section 48(1) of the Bill was drafted in such wide terms, and also why that provision was considered to be
necessary, given that section 60 of the Bill provides a free-standing power to make ancillary provision for the purposes of, or in connection with, the Bill.

24. In response to the Committee’s questions, the Scottish Government explained that it was considered to be of assistance to readers and users of the legislation to include an ancillary power in relation to the scheme of administrative sanctions established by Part 3 of the Bill in the same place as the provisions which establish that regime. The Scottish Government also explained that the additional detail in sections 48(2)-(5) as to the manner in which the power in section 48(1) could be exercised was intended to be helpful, and to avoid debate over the scope of the power in section 60 at a future date.

25. The Committee considers, having regard to the answers provided by the Scottish Government, and subject to the Committee’s further comments below, that the power in section 48(1) of the Bill is acceptable in principle. While the Committee observes that there is a clear degree of overlap between the power in section 48(1) and the power in section 60 of the Bill, it considers that the inclusion of the additional detail regarding the exercise of the power in section 48(1) in sections 48(2)-(5) is helpful to readers and users of the legislation as a matter of principle.

Section 48(2)(a)

26. The Committee asked the Scottish Government how the power in section 48(1), when used so as to make the provision mentioned in section 48(2)(a), would be exercised. In particular, the Committee asked why section 48(2)(a) contemplates regulations being made for the purpose of “facilitating” the issuing of further administrative sanctions where other types of such sanction have already been issued. In response to the Committee’s questions, the Scottish Government explained that the power to make the provision referred to in section 48(2)(a) will enable the Scottish Ministers to regulate the relationship between the administrative sanctions created by the Bill and other types of sanction which already exist in food legislation, and to streamline the sanctions process in circumstances where there has been more than one breach of food law by the same individual or food business. Section 48(2)(a) is intended to enable Ministers to control the manner in which the various sanctions fit together, and to manage any overlaps. The Scottish Government officials explained in their evidence to the Committee that while the use of the word “facilitating” in section 48(2)(a) is perhaps not common in legislation, its meaning in the context of this power is clear.

27. The Committee considers that the exercise of the power in section 48(1) of the Bill for the purpose mentioned in section 48(2)(a) is acceptable in principle, having regard to the further explanation provided by the Scottish Government. The Committee accepts that it is necessary for the Bill to contain provision which will allow the Scottish Ministers to regulate the administrative sanctions scheme set up by Part 3 of the Bill once that scheme comes into force and its practical operation can be assessed. The Committee further accepts that the power to do so requires to be drafted flexibly in order to accommodate the different types of provision that may require to be made in its exercise.
Section 48(3)

28. The Committee also asked the Scottish Government for further explanation as to how the power in section 48(1) of the Bill, when exercised so as to make the provision referred to in section 48(2)(a) and which also includes the provision contemplated by section 48(3), is intended to be exercised, and in what circumstances it might be considered necessary or expedient to make provision modifying the effect of sections 37 and 44 of the Bill. The Committee also asked the Scottish Government why it was considered appropriate in principle to permit the modification of sections 37 and 44 of the Bill through subordinate legislation. The Scottish Government explained to the Committee that the purpose in section 48(3) for which regulations may be made under section 48(1) would again enable Ministers to regulate the relationship between the different administrative sanctions created by the Bill and the manner in which criminal liability is discharged where those sanctions are complied with. The provisions are intended to address the possibility that a fixed penalty notice and a compliance notice may be issued simultaneously and to simplify the procedure in that type of case in order that those who receive a fixed penalty notice or a compliance notice are able to understand their position and the steps they are required to take next.

29. In response to the Committee’s questions, the Scottish Government agreed that the power in section 48(1), when exercised for the purpose in section 48(3), would permit the modification of sections 37 and 44 in a manner which completely removes the discharge of criminal liability which those sections make provision for, although it was explained to the Committee that the Scottish Government does not intend to use the power for that purpose. The Scottish Government also noted that the power may only be exercised where the Scottish Ministers consider it necessary or expedient to do so, and that any exercise of the power in section 48(3) of the Bill would have to be lawful and within vires.

30. The Committee remains concerned about the power in section 48(1) of the Bill, when exercised for the purpose mentioned in section 48(3). The Committee considers that sections 37 and 44 of the Bill are key provisions in the scheme of administrative sanctions established by Part 3 of the Bill. At present, section 48(3) is drafted in a manner which would permit regulations made under section 48(1) to modify sections 37 and 44 in a manner which entirely removed the discharge of criminal liability which those sections seek to provide where an administrative sanction has been issued and complied with.

31. The Committee notes that the Scottish Government has indicated that it does not intend to use the power for the purpose of removing the discharge of criminal liability which sections 37 and 44 provide. The Committee accordingly considers that it would be appropriate for the purpose in section 48(3) for which the power in section 48(1) may be exercised to be drawn more narrowly so as to restrict the exercise of the power in a way which removed the discharge of criminal liability where an administrative sanction has been issued and complied with, given that the Scottish Government has explained to the Committee in evidence that the power is not intended to be exercised for that purpose.

32. The Committee draws the power in section 48(1) of the Bill, when exercised to make regulations which include the provision in section 48(2)(a)
and which also make the provision contemplated by section 48(3), to the attention of the Parliament. When exercised so as to include the provision in section 48(3), the power in section 48(1) of the Bill permits the modification of sections 37 and 44 of the Bill without apparent restriction.

33. **Bearing in mind the explanation provided to the Committee by the Scottish Government as to its intended use of the power for the purpose mentioned in section 48(3), the Committee recommends that the Scottish Government gives consideration to amending the Bill so as to restrict the exercise of the power in these circumstances so that it does not permit the wholesale removal of the discharge of criminal liability which sections 37 and 44 provide in circumstances where an administrative sanction has been issued and complied with.**

**Sections 48(3) and 48(5)**

34. The Committee asked the Scottish Government why, when sections 48(3) and 48(5) of the Bill expressly contemplate the textual modification of primary legislation, the negative procedure affords the appropriate level of scrutiny over the exercise of those powers. In response to the Committee’s questions, the Scottish Government explained that the focus of these powers is narrow, and related to the operational detail of the administrative sanctions regime set up by Part 3 of the Bill. As such, the negative procedure had been considered to afford the appropriate level of scrutiny over the exercise of these powers.

35. While the Committee accepts that sections 48(3) and 48(5) of the Bill have a narrow focus, it considers that the modifications to the text of the Bill which could be made in exercise of those powers are significant. In particular, the power in section 48(1), when exercised for the purpose mentioned in section 48(3), permits the modification of sections 37 and 44 of the Bill without apparent restriction. The Committee considers that any modification to those sections would be of significant interest to the Parliament. As such, the Committee considers that the power in section 48(1), when exercised for the purpose mentioned in section 48(3), and the power in section 48(5), should be subject to the higher level of scrutiny afforded by the affirmative procedure. This is also consistent with the Committee’s general approach, which is that powers to modify primary legislation should be subject to the affirmative procedure unless there is a good reason why negative procedure is appropriate.

36. **The Committee recommends that the Scottish Government gives consideration to amending the Bill at Stage 2 to make subordinate legislation made under section 48(1) of the Bill which contains the provision mentioned in section 48(3), or which is made under section 48(5) of the Bill so as to modify the definition of the term “another sanction” in section 48(4), subject to the affirmative procedure.**

**Section 50 – power to issue guidance to enforcement authorities**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Lord Advocate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Guidance</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>None</td>
</tr>
</tbody>
</table>
Provision

37. Section 50(1) of the Bill confers power on the Lord Advocate to issue, and from time to time revise, guidance to enforcement authorities as to the exercise by them and their enforcement officers of their functions under Part 3 of the Bill in relation to fixed penalty notices and compliance notices. Section 50(2) of the Bill imposes a duty on enforcement authorities to comply with such guidance as may be issued under section 50(1) and to ensure that their enforcement officers also comply with such guidance or revised guidance in exercise of those functions.

Comment

38. The Committee asked the Scottish Government whether it was intended that the guidance issued by the Lord Advocate under section 50 of the Bill would be published, given that the power in section 50 of the Bill was not addressed in the Scottish Government’s DPM. In response to the Committee’s questions, the Scottish Government explained that the decision as to whether the Lord Advocate’s guidance would be published was a matter for the Lord Advocate’s discretion, on the basis that the matter relates to the enforcement and operation of the new regime of administrative sanctions created by Part 3 of the Bill.

39. The Committee considers that, as a general matter of principle, guidance prepared by public authorities should be made available in the public domain. The Committee recognises, however, that there may be circumstances in which the publication of certain aspects of guidance to enforcement authorities may not be suitable for publication. The Committee accordingly considers that it may be possible to amend section 50 of the Bill so as to include a general requirement for the guidance issued by the Lord Advocate under section 50(1) of the Bill to be published, subject to an exception in circumstances where the Lord Advocate considers that publication of the guidance would be prejudicial to the effective exercise by enforcement authorities and their officers of their functions. The Committee observes that an approach of this nature is taken to the publication of delegations and directions made by Revenue Scotland under section 4 of the Revenue Scotland and Tax Powers Bill, currently undergoing Stage 1 scrutiny in the Parliament.

40. The Committee recommends that the Scottish Government gives consideration to amending section 50 of the Bill so as to require the publication of guidance issued by the Lord Advocate under section 50(1) of the Bill subject to an exception in circumstances where the Lord Advocate considers that publication would be prejudicial to the effective exercise by enforcement authorities and their authorised officers of their functions under Part 3 of the Bill.
Present:

Richard Baker  
Mike MacKenzie  
Stuart McMillan (Deputy Convener)  
Stewart Stevenson

Nigel Don (Convener)  
Margaret McCulloch  
John Scott

Food (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Morris Fraser, Bill Team Leader;
Lindsay Anderson, Solicitor, Scottish Government.

Food (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.
The Convener: Item 2 gives members an opportunity to ask Scottish Government officials questions on the Food (Scotland) Bill. I welcome—after some delay—Morris Fraser, who is the bill team leader, and Lindsay Anderson, who is a solicitor. I thank you for being here and again for your patience. We have some questions for you and, provided that I can find the list in the right order, I will tell you who is to start.

John Scott (Ayr) (Con): It is me.

The Convener: Thank you, John.

John Scott: Good morning. Section 34 of the bill allows provision to be made for the purpose of regulating animal feeding stuffs that applies any provision in the Food Safety Act 1990—with or without modifications—or which is equivalent to any provision in the 1990 act. Why is it necessary for the power to be drawn in such wide terms?

Lindsay Anderson (Scottish Government): Section 34 contains not a new power but a rewriting of a power that exists in section 30 of the Food Standards Act 1999 and is available to ministers at present. When the bill was drafted, a decision had to be taken on whether we should amend the 1999 act, which we could have done by consequential amendment. However, we decided—mainly because consultation with the Food Standards Agency would be required, and given that draftsmen talk about orphan powers that are left in an act and are no longer relevant once a new bill is passed—that, rather than leave the power, we would replace it with a new power in the bill. Section 34 reflects a power that already exists.

I appreciate that members do not have the 1999 act in front of them, but it is drawn in almost identical terms and includes the ability for ministers to use provisions from the 1990 act in regulations that they make, as under section 34 of the bill. It was decided that it would be more convenient to have the power in the act that deals with the new food body and the new powers that the Scottish ministers are being given than to abandon that power—as it were—in the 1999 act. The breadth of the power is not new; it reflects what the Scottish ministers already have the power to do.

John Scott: We are living in rather different times from 1999. Because of the BSE outbreak, there was much interest in animal feedstuff at that time. I am not certain why we still need such wide powers, but I hear what you say.
The power in section 34 of the bill could be used to apply offence provisions under the 1990 act for the purpose of regulating animal feeding stuffs. Do you agree that the power to modify the provisions in the 1990 act that are applied for that purpose could be exercised to alter or remove any restrictions or limitations on the penalties for those offences that the 1990 act might otherwise impose?

Lindsay Anderson: Again, the power is not that unusual. I know that the committee spends quite a lot of time on considering food statutory instruments, and the 1990 act provides a lot of the enabling powers for implementing European obligations. Sections 16, 17 and 48 of the 1990 act contain the main powers that are used in that context, and those powers are similar to those in section 30 of the 1999 act. We are re-enacting section 30 of the 1999 act in section 34 of the bill, which has a similar provision to apply the 1990 act provisions and to adapt them to the terms of the regulations.

That is all that the power in section 34 reflects. The device is quite common and can be found elsewhere in the bill. From a purely technical point of view, I would say that it is very consistent with the provisions of the 1990 act and a well-understood body of law, including the many Scottish SIs that are made every year under the 1990 act. The policy point of view is more Morris Fraser’s area than mine. The device is not unusual in food legislation and is well understood by the readers and users of food legislation.

John Scott: I take it that you agree with the proposition that I put. If so, will you explain why it is appropriate to take a power in subordinate legislation that, as we understand it, could be used to apply offences with unrestricted penalties?

Morris Fraser (Scottish Government): That brings us back to Lindsay Anderson’s point about consistency. That can be done already under the 1990 act. Nothing novel is being introduced in that sense. The provisions are being made consistent with what already exists.

The Convener: If unrestricted penalties concern us, which they always do in principle, should we address the question to the policy committee, so that it may consider why the Government is happy to take the policy under the 1990 act into the bill?

Morris Fraser: Yes.

Margaret McCulloch (Central Scotland) (Lab): It seems that the effect of exercising the power under section 36(3) or 42(4) to prescribe additional information that is to be included in a fixed-penalty notice or a compliance notice will be that the information to be included in each type of notice will be specified in two places: the bill and any subordinate legislation that is made in exercising the powers. Will you explain why it was not considered that it would be clearer to take a power to modify sections 36(1) and 42(1), so that the information to be included in a fixed-penalty notice or a compliance notice was specified in the same place?

Morris Fraser: It is technically true to say that such information could be in two places, but there will be only one list. Some things are must-haves, which will be included in the bill. To allow fixed-penalty notices and administrative and other sanctions to work together, other things may be brought in.

The provisions allow us to have a bit more flexibility than we would have through just putting everything in the bill. We would not want to be too restrictive by saying only in the bill what must be in the fixed-penalty notice. When the Food Standards Agency consulted on the matter, it envisaged a blanket power simply to have the new sanctions. Our approach has been to put as much detail in the bill as we can—hence the two places. We have a list of must-haves, although we do not want to be too prescriptive, and we want to future-proof the bill—we do not want things that will happen in the future to be missed out.

The Convener: On that same front, can you suggest anything that you think you might need to add? There is an element of futureproofing that simply says that it would be sensible to have the power in case we ever have a requirement—I think that we would understand that—and there is another respect in which we might see the list coming and wish to prepare for it. I guess that we would prefer you to see the list coming and prepare for it in a different way.

Morris Fraser: Absolutely. We would probably have things suggested to us in consultation. If we do something by order, people will have a chance to comment on that. I cannot think of an example off the top of my head, but I could probably go away and think about it and send something to you. I would not like to commit to anything specific at the moment.

Lindsay Anderson: The point of the section, believe it or not, is simply to be helpful. In setting up a new system, the Scottish Government is conscious that the administrative sanctions system is new. There is nothing similar in food law at the moment, although there are administrative sanctions systems in other areas, so the section is intended to give the system room to develop. The most likely scenario would be one in which it becomes apparent over time that additional information would be useful to recipients, and that is the main motivation. It is supposed to be a helpful provision, given the novelty of such a system in this area of law.
The Convener: I understand that. It makes perfectly good sense. Has any thought been given to the idea that, once a list is modified for any reason, the whole list should then be reproduced in another place so that somebody who is seeking the law has to go to only one place? I think that that is fundamentally what we would like to see.

Morris Fraser: In administrative terms, the list will be held on a website. I know that that is not the same as it being in the bill, but as time goes on people tend to use the original bill as a definitive list less and less because they know that amendments will be made in the normal course of things. Food standards Scotland will put the list on its website, and the Scottish Government will no doubt ensure that that happens, so there will be one place to go. Does that answer the question?

The Convener: Yes. Although lawyers may go back to the original materials, most people who have to fill in a form will go to where they find the form.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Section 60 provides that “any supplementary, incidental or consequential provision” and “any transitional, transitory or saving provision” may be made. Those are six headings with which we are familiar. Why is section 48(1) needed?

Morris Fraser: In policy terms, section 60 is very broad. Section 48 is much more specific. It has a similar effect, but I would argue that section 48 contains a more targeted and more specific order-making power, which we put in that section to help the reader to understand that there is always a power for the legislation to be changed. If we wanted to be as helpful in section 60 as we are in section 48, section 60 would have to be very long rather than just having the six headings that we are used to in those two categories.

We want to be as helpful as we can be in section 48, and our being helpful there helps the reader because the provision is right beside the rest of section 48. If we had put the provision in section 60 instead, it would have made section 60 very long.

Stewart Stevenson: I am more fundamentally puzzled as to why it needs to be in the bill at all. I can understand why one might put what is essentially in section 48 into the delegated powers memorandum that is available for people to read, because it touches on the exercise of delegated powers. I make a slight caveat in that section 48(4) gives some definitions that may add to people’s understanding, but it does so only in the context of the knowledge that section 48 is not adding a single power to the bill in any way, shape or form, because those powers are already in section 60. Is that the case, or am I misunderstanding the bill from my non-legal, simple-minded point of view?

Morris Fraser: Lindsay Anderson might have a view on the legal aspect. From a policy perspective, my reading of section 48 is that, even if it is small, it adds—

Stewart Stevenson: Can you help us to understand what it adds? We can then see whether it should be there. It seems difficult to work out what is not included in section 60 as it is cast. I am not seeking to rebut the point that section 48 is helpful in terms of explanation, but I wonder whether it is necessary to put section 48(1) in the bill for readers to have access to that information.

11:00

Lindsay Anderson: There are some differences between section 48 and section 60. Section 60 is broader in that it allows for greater amendment of primary legislation, including the bill, as is quite often the case with ancillary provision. Section 48 is more limited because we are only able to alter the provisions—

Stewart Stevenson: Forgive me for interrupting. It would be helpful if you could point to any aspect of section 48 that is not created as a power by the quite modest and standard section 60.

Lindsay Anderson: I think that section 48 is there to avoid a debate about the width of section 60. It is probably there to be helpful, and there is this idea of having all the relevant provisions in one part. I can see that—

Stewart Stevenson: Would it be just as helpful if what is essentially in section 48 was put in the delegated powers memorandum as an illustration and explanation of what might be done with the section 60 powers?

Morris Fraser: It would be fair to say that.

Stewart Stevenson: Okay. That is sufficient for our purposes for the moment. We are not trying to examine policy matters as that is not our role as a committee, so I do not want to do that. The convener would surely pull me up if I strayed into policy matters.

Turning to section 48, because it is in the bill—what you have just said might suggest that the Government could consider whether section 48 is needed, but that is for another day in another place—section 48(2)(a) relates to fixed-penalty notices, compliance notices and other administrative sanctions. Will you flesh out the relationships between the various administrative
sanctions so that we can better see how the secondary legislation aspects interact?

Morris Fraser: A compliance notice is a useful tool for an authorised officer who perhaps notices something minor that is technically an offence. At the moment, the only sanction that is on offer to them is to prosecute, which might be totally disproportionate. As with improvement notices under the 1990 act for food safety purposes, the idea is to introduce something that is slightly more useful and practical—in other words, a notice saying that someone must make an improvement or face a penalty. We think that that is an entirely proportionate approach to take to minor offences.

Stewart Stevenson: It also gives legal force to something that officers could do informally anyway.

Morris Fraser: Yes, absolutely. At the moment, officers can either have a word with someone informally or take them to court. There are probably only about 15 prosecutions a year. That could suggest that everyone is doing absolutely wonderful work and there are never any breaches of food safety or food hygiene regulations. However, I think that it suggests that there is a lack of tools available to enforcement officers in local authorities and the Food Standards Agency. The compliance notice will give officers another tool as it carries slightly more force than just advice and there is a penalty for not complying with it.

The next step up from a compliance notice is a fixed-penalty notice, which can be used for something that is not such a minor offence or perhaps for an offence that has been committed several times and would normally attract prosecution. The authorised officer and the food business could agree that it would be more appropriate to have a fixed penalty for the offence than to go through with prosecution, in which case a fixed-penalty notice will be issued. After a certain time, the notice will be due for payment, and failure to pay is also an offence.

The compliance notice and the fixed-penalty notice cover two different levels. However, circumstances can arise where somebody does two or three different things wrong. Some of those things might require a fixed-penalty notice and some might require a compliance notice, rather than one blanket notice being issued. There are two separate powers, but notices might be issued simultaneously to the same business, so we must have a way of organising how notices fit together and how they fit with other enforcement tools that are available under the bill, such as improvement notices.

Stewart Stevenson: Section 48 talks about facilitating the issuing of further administrative sanctions. What does that mean? Will you give an example of how that facilitation would come into play?

Morris Fraser: The facilitation would be the ability to combine two types of notice. Combining them and seeing how they react with each other would require facilitation.

Stewart Stevenson: Is “facilitating” a standard legal term? I have not seen it in other legislation. The bill refers to “facilitating, prohibiting or restricting”. Will it be easy for the courts—if a case goes there—to interpret the word “facilitating”?

Morris Fraser: It is a legal term. I ask Lindsay Anderson whether it is standard.

Lindsay Anderson: I am not sure that I can think of another example off the top of my head.

Stewart Stevenson: So the term has the dreaded status in the civil service of being novel.

Under section 48(5), ministers may modify the arrangements, but the provisions seem quite unlimited. Ministers could modify the definition of “another sanction”. The power seems to be impossibly wide. Will you give examples of what would justify changing the definitions and going to the heart of some of what the bill will do?

Morris Fraser: The power is not to create a new sanction but to describe another one.

Stewart Stevenson: That is a bit subtle for me. Are you saying that the power could be used to redefine the sanctions but not to create a sanction?

Morris Fraser: None of the sanctions in section 48(4) is created by that subsection; the items in the list are created elsewhere. Subsection (4) just defines; it does not set sanctions. Subsection (5) involves that terrible term “futureproofing” again. To ensure that something that is enacted is applicable along with the other sanctions as part of the toolkit for environmental health officers, we have a definition. Sanctions are not being created; there is a wide power of definition.

The Convener: That is helpful.

I cannot help wondering whether there are precedents in health and safety law, such as factories acts, for what the bill does. Perhaps you will not want to talk about that now but, if other people ask you about the policy background, that information might be helpful.

Morris Fraser: Thank you.

Stuart McMillan (West Scotland) (SNP): Section 48(3) permits the modification of sections 37 and 44 by regulations that are made under section 48(1) for the purposes that are mentioned in section 48(2), when ministers consider that
necessary or expedient. Sections 37 and 44 relate to the effect of a fixed-penalty notice or a compliance notice on criminal proceedings. Will you explain how the power is intended to be exercised? In what circumstances might it be necessary or expedient to modify sections 37 and 44?

Lindsay Anderson: The issue goes back to what Morris Fraser said about the regulation of the relationship between the different penalties that we are creating. The provisions address the possibility that a fixed-penalty notice and a compliance notice will be issued at the same time. Both notices have the same effect on criminal liability, but that is discharged in different ways, which depend on the type of notice.

The provision in section 48(3) is to help to regulate that process, so that there is not a discharge of criminal liability in both cases and the way that the two notices act together to discharge liability can be regulated. It was again thought that it would make more sense, if both a fixed-penalty notice and a compliance notice were going to be issued, to have one point at which liability was discharged in the observance of the two notices. Otherwise, there would be a slightly strange position whereby both notices discharge liability, but the effect that discharge with respect to one notice would have on the person’s obligations under the other notice would not be obvious. That is why section 48(3) is in the bill.

Stuart McMillan: Is it viewed as more of a simplification of the procedure?

Lindsay Anderson: Yes, in an instance in which it is decided that the two notices can be served with respect to the same set of circumstances. The provision is intended to simplify the situation for the recipient of the notice when there is a layering of notices, so that their position is clear and they know exactly what they have to do and what the effect of that will be on their liability.

Stuart McMillan: My second question is on sections 37 and 44. Can you explain why it is appropriate to permit the modification of sections 37 and 44 using subordinate legislation? We must bear it in mind that sections 37 and 44 of the bill prohibit the bringing of criminal proceedings in circumstances in which a fixed-penalty notice or, as the case may be, a compliance notice, has been issued. They also prevent conviction in cases in which payment has been made under a fixed-penalty notice or the terms of a compliance notice have been met.

Lindsay Anderson: I suppose that the answer is the same as my previous one. The provision is there to regulate the relationship between the two notices. It is obviously not completely unheard of to give ministers a power to alter the terms of primary legislation through regulation. To go back to the discussion that we had about section 60, that section is broader and section 48 is narrower, so the provision is about allowing an amendment of the primary legislation only in very specific circumstances. The provision was thought appropriate because of the significance of what sections 37 and 44 deal with and the fact that they deal with liability. It is necessary to make that very clear when both types of notice are being used in one set of circumstances.

Morris Fraser: The provision makes it clear how the liability and obligation are discharged in relation to the two; it is about simplification.

The Convener: Would you accept, though, that the bill, in principle, allows the Government to alter the intention of sections 37 and 44 that something might be discharged and that it could do so by subordinate legislation?

Morris Fraser: I think that that is right, although it is not the intention.

The Convener: I am not arguing that the Government would want to do that, but at this end of the table we worry about what it is able to do.

Morris Fraser: I will turn to a lawyer at this point to ensure that I am not saying the wrong thing and making a promise that cannot be kept.

Lindsay Anderson: I suppose that this is a lawyer’s answer: any change must be necessary or expedient in connection with the operation of the act; it would have to be exercised in a way that was lawful within the vires of the power. As I say, the intention is to regulate the liability. Beyond that, it would not be for me to comment on the policy.

John Scott: Nevertheless, it appears that in general the bill is largely about taking many more powers or the broadening of powers. If that is the case, what is the justification for it?

11:15

Morris Fraser: The broadening of powers is very much in reaction to the horsemeat scandal and subsequent situations, and they come from the Scudamore expert advisory group that the Scottish ministers set up and from the Elliott review for the UK, which called for a broadening of food safety and, in particular, food hygiene. People are looking at ways to tackle food fraud and so on.

The bill is not aimed specifically at that situation, though. The broadening of powers comes from that, but it also comes from stakeholders such as local authorities, which are clear that they see the bill as a very welcome tool. The bill does broaden
powers, but it also offers more practical administrative and non-court, rather than quasi-judicial, options to help food businesses and local authorities to avoid very costly prosecutions and so on. There is a widening of the available arsenal that is welcomed by stakeholders.

The Convener: I thank John Scott for his question, but we have to be careful not to get into the policy issue. What Mr Fraser said was helpful, but when we are considering law that is widening powers that in future could be—I hesitate to use the word “abused”—used by Governments to do something expedient, which is a historical word of some significance, we as legislators should ask why that is being done. We have heard what has been said on that, and I do not think that anything needs to be added.

Mike MacKenzie (Highlands and Islands) (SNP): Sections 48(3) and 48(5) contemplate potential modification of primary legislation. Why do you consider the negative procedure to be appropriate for that purpose?

Lindsay Anderson: It was thought that section 48 was relatively limited in that it applies as a specialist power for part 3 of the bill in relation to regulations made under that part. To that extent, the powers in section 48 are supplementary and incidental, but they are only for specific purposes. It was therefore thought appropriate to go with the negative procedure for that.

Morris Fraser: No new offence is being created. Section 48 just covers operational details and gives flexibility, rather than powers that could be much more widely used.

Mike MacKenzie: Okay. I am not absolutely certain that that satisfies me, but we might think further about it.

Is it intended that the guidance issued by the Lord Advocate under section 50(1) of the bill will be published? If so, why is it not considered necessary to include a requirement for such publication on the face of the bill?

Morris Fraser: It is really a matter for the Crown Office and the Lord Advocate to decide how best to make information about what they do available to the public. I do not know whether my colleague thinks that it is worth explaining a bit about that.

Lindsay Anderson: There is probably not a huge amount that we can say about it. Obviously, it is a matter that will be for the Lord Advocate’s discretion, given that it is in relation to an enforcement and operational matter. The Crown Office would have to answer the question whether guidance should be published about it. The committee should probably ask the Crown Office about that.

Morris Fraser: I am not an expert on this, but my understanding is that the Lord Advocate’s guidance on enforcement, criminal proceedings and so on is not always published, for fear of telling criminals what it is that they can and cannot do. That does not refer to Government policy, just to my understanding of what happens.

Mike MacKenzie: Okay. Thank you.

The Convener: Where do I find the boundary between, on the one side, enforcement and ultimately criminal proceedings—on which I entirely understand your answer—and, on the other side, administrative processes that are designed to seek compliance, which, after all, is what much of this and other bills are about? Is there any guidance for us as to how far over someone has to be before it becomes the Lord Advocate’s bailiwick?

Morris Fraser: That is a matter for the Lord Advocate in giving guidance to the Crown Office, which makes its own judgments on how far things can go one way or another. All we can do is set out in the bill what we think is the right shape of things and the right level of penalties. The Lord Advocate’s guidance will help the courts to decide.

Are you asking whether a food business should take a fixed penalty when it knows that the Lord Advocate’s guidance suggests that the court has a lower penalty?

The Convener: I am asking not so much that specific question as whether there is a point in all those processes that is purely administrative—I am trying to coin a legal term—and, therefore, in which the Lord Advocate is not concerned. Is there a process that is simply administered by the local authority, which tells a food business to do something and that, if it does not do it, the matter will go to another level? Is there a legal line?

Lindsay Anderson: It might help to go back to section 48(2)(c), which concerns the application of provisions from the Food Safety Act 1990. Subparagraph (ix) mentions “section 40 (power to issue codes of practice).”

The bill will make consequential amendments to the 1990 act. Section 40 of that act is a power to issue codes of recommended practice, which will sit separately from the Lord Advocate’s guidance. That power might be drawn down in making regulations under section 48 of the bill, but the power exists anyway in section 40 of the act to issue guidance to food authorities, which, in effect, means local authorities in Scotland. That might also be relevant.

Morris Fraser: I should have started with the fact that the Food Standards Agency publishes a code of practice that sets out what food law is and how food businesses must comply with it. It also
sets out the relationship that you are discussing. convener: where things sit on the continuum from administrative through to legal matters. That is renewed regularly and we will use the power that Lindsay Anderson mentioned.

Stewart Stevenson: I will test an analogy and find out whether it helps us. Police Scotland has a number that is in excess of the legal speed limit, but below which it will not prosecute a driver for speeding. However, that number is not published because, of course, it would simply become the speed limit if it were. If, for the sake of argument Police Scotland decided not to prosecute someone who did 80mph in a 60mph zone—clearly, that is not the number—everybody would drive at 80mph.

On not publishing the Lord Advocate's advice in respect of the bill and other matters, is it fair to say that it is similarly not good public policy to publish the flexibilities that are expected in practice from the system and which could be changed at short notice if they proved to be overly flexible?

It is worth saying on speed limits that, in Australia, the flexibility is zero whereas, in Scotland, it is somewhat different, as I know from my previous experience—my experience as transport minister, not as a driver, I should hasten to add.

Lindsay Anderson: Yes. That is exactly the sort of scenario that we have in mind. However, as I said, it is not for the Government to comment on that.

The Convener: Thank you. That takes us to the end of our prepared thoughts. If colleagues have nothing else to ask, we have reached the end of the item. I thank the witnesses very much for their patience and for answering our questions so comprehensively. I will briefly suspend the meeting to give them half a chance to get away.

11:25

*Meeting suspended.*
Background

1. The Committee reported on the delegated powers in the Food (Scotland) Bill on 13 May 2014, in its 34th report of 2014. This followed an oral evidence session with Scottish Government officials on 22 April.

2. The response from the Scottish Government to the report is reproduced at the Annex.

Scottish Government response

Section 34 – Regulation of animal feeding stuffs

3. Section 34 of the Bill confers a power on the Scottish Ministers to, by order, 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 specific provision which may be made using this power is provision which applies, or which is equivalent to, any of the provisions of the Food Safety Act 1990 (“the 1990 Act”), including any power in that Act to make orders or regulations or to give directions.

4. This power, which is subject to the affirmative procedure, also permits Ministers to apply the provisions of the 1990 Act either with or without modifications, and to modify any enactment.

5. During the oral evidence session with Scottish Government officials, the Committee asked why this power has been drawn so widely. In particular, the Committee was concerned that the power allows Ministers to make subordinate legislation which applies offence provisions under the 1990 Act for the purpose of regulating animal feed, but which removes the restrictions which the 1990 Act places on the maximum penalties which may be imposed for offences under that Act.

6. The officials explained that the power is essentially a restatement of an existing power in section 30 of the Food Standards Act 1999 (“the 1999 Act”) and

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1 Food (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Food%20(Scotland)%20Bill/b48s4-introd.pdf
that it was considered more convenient to include the power in the Bill itself as opposed to having it remain separate in the 1999 Act.

7. The Committee did not consider this response to provide satisfactory justification for taking such a widely drawn power. It further noted that the power at section 30 of the 1999 Act, which the Government uses as a justification for the taking of the new power in section 34 of the Bill in such wide terms has, as yet, not been used for the purpose of regulating animal feed.

8. Further to this, the Committee was concerned that the power in section 34 could be used to make subordinate legislation which would allow the modification of offence provisions under the 1990 Act. In particular, the Committee was concerned that the provisions could be used to remove or alter the maximum penalties that could be imposed for the offences.

9. Taking into account the matters outlined above, the Committee was of the view that the Government had not provided sufficient justification for taking the power in section 34. The Committee accordingly drew the power to the attention of the lead committee in its report, highlighting the issues outlined above.

10. In its response to the Committee’s report, the Government reiterates its view that the width of the power is appropriate given the extensive range of circumstances in which it may need to be applied.

11. The Government goes on to explain that the power in section 30 of the 1999 Act has not been used to date as animal feeding stuffs are largely regulated by EU legislation. However, the Government considers it necessary to retain the power at section 30 as it could be used to quickly regulate on urgent matters of human health in circumstances in which the EU is unable to do so. The Government envisages that the new power at section 34 of the Bill could be used in a similar way.

12. However, taking into account the Committee’s concerns, the Government has agreed to give consideration to restricting section 34 so as to cap the maximum penalties that can be imposed for offences applied or created in exercise of the power.

Section 48 – Power to make supplementary etc. provision

13. Section 48(1) of the Bill confers power on the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under Part 3 of the Bill (Part 3 establishes a regime of fixed penalty and compliance notices for “relevant offences” in food law, which are to be specified by the Scottish Ministers in regulations made under section 51 of the Bill). The power in section 48 is restricted to supplementary, incidental or consequential provision necessary for the purposes of Part 3 only. A more general power to make ancillary provision for the purposes of the Bill exists at section 60.

14. Section 48(2)(a)-(c) lists particular types of provision that may be contained in regulations made under section 48(1). Section 48(2)(a) provides that Ministers may make regulations under section 48(1) for the purpose of “facilitating, prohibiting or
restricting” the issuing of a fixed penalty notice or a compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission. Section 48(2)(a) also provides for converse provision to be made, namely provision “facilitating, prohibiting or restricting” the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission. Section 48(4) defines the term “another sanction” for the purposes of section 48(2)(a) and section 48(5) provides that the Scottish Ministers may modify that definition by regulations.

15. Section 48(3) of the Bill provides that regulations made under section 48(1) which contain the provision mentioned in section 48(2)(a) may also make such modifications of sections 37 and 44 of the Bill as the Scottish Ministers consider necessary or expedient in connection with the provision. Sections 37 and 44 of the Bill refer to the effect of, respectively, a fixed penalty notice and a compliance notice on criminal proceedings. Regulations made under section 48(1), including those which are made for the purposes listed in section 48(2), and which contain the provision mentioned in section 48(3), are subject to the negative procedure.

Width of power

16. During the oral evidence session, the officials explained that the purpose of the provision contemplated by section 48(3) of the Bill was to regulate the relationship between the different administrative sanctions created by the Bill and the manner in which criminal liability is discharged where those sanctions are complied with. The provisions are intended to address the possibility that a fixed penalty notice and a compliance notice may be issued simultaneously and to simplify the procedure in that type of case in order that those who receive a fixed penalty notice or a compliance notice are able to understand their position and the steps they are required to take next.

17. The officials also confirmed that the power in section 48(1), when exercised for the purpose in section 48(3), could be used to modify sections 37 and 44 so as to remove the discharge of criminal liability that those sections provide, but they indicated that the Government does not intend to use the power for that purpose.

18. Having considered the officials’ evidence, the Committee remained concerned that, as drafted, the purpose in section 48(3) of the Bill for which the power in section 48(1) could be exercised could permit the modification of sections 37 and 44 in such a way as to remove entirely the discharge of criminal liability that those sections provide when an administrative sanction has been issued and complied with. The Committee further considered that if the Government does not intend to use the power for that purpose, it could be restricted accordingly. The Committee therefore used its report to draw this power to the attention of the lead committee.

19. In its response to the Committee’s report, the Government has agreed to amend section 48(3) in order to draw the power more narrowly and take account of the Committee’s concerns.
Choice of procedure

20. The Committee asked the Government officials about the choice of procedure for the powers in section 48(3) and (5). As drafted, the powers are subject to the negative procedure. The officials explained that the Government considered the negative procedure to be appropriate as the focus of the powers is narrow in that they relate specifically to the detail of the administrative sanctions scheme as set up by the Bill.

21. The Committee noted in its report, however, that both section 48(3) and 48(5) (the latter of which allows for the modification of the definition of the term “another sanction” in section 48(4)) can be used to modify primary legislation. Further to this, as explained above, section 48(3) could be used to modify sections 37 and 44 of the Bill without apparent restriction.

22. The Committee therefore recommended that the Bill should be amended so that the powers in section 48(3) and (5) are subject to the affirmative procedure.

23. In its response to the report, the Government has agreed to lodge amendments at stage 2 which would make regulations made under section 48(3) or 48(5) subject to the affirmative procedure.

Section 50 – Lord Advocate’s Guidance

24. Section 50(1) of the Bill confers power on the Lord Advocate to issue, and from time to time revise, guidance to enforcement authorities as to the exercise by them and their enforcement officers of their functions under Part 3 of the Bill in relation to fixed penalty notices and compliance notices. Section 50(2) of the Bill imposes a duty on enforcement authorities to comply with such guidance as may be issued under section 50(1) and to ensure that their enforcement officers also comply with such guidance or revised guidance in exercise of those functions.

25. During the oral evidence session, the Committee asked whether guidance issued by the Lord Advocate under section 50 would be published.

26. The officials explained that the Government considers the decision on whether to publish such guidance to be a matter for the Lord Advocate, as it relates to matters of enforcement and operation. Whilst considering that guidance produced by public authorities should be published and made easily available to members of the public whenever possible, the Committee accepted that in certain circumstances it may not be appropriate to publish certain aspects of such guidance.

27. The Committee therefore suggested that section 50 of the Bill could be amended in such a way as to require guidance issued by the Lord Advocate under section 50(1) to be published except in circumstances where the Lord Advocate considers that the publication would be prejudicial to the effective exercise by enforcement authorities and their officers of their functions.

28. In its response to the Committee’s report, the Government has agreed to give consideration to this suggestion.
29. The Government also goes on to explain its intention that section 50 enable the Lord Advocate to issue guidance to enforcement authorities in order to ‘align the level of penalties they issue with the level of penalties the courts can issue.’

30. Further to this, the Government provides information on the power contained in section 48(2)(c)(ix) which allows guidance on administrative sanctions to be included in the food law recommended code of practice which will be issued to enforcement authorities. The code will be laid before the Scottish Parliament, as provided for in section 40 of the 1990 Act. The Government’s intention is that these codes should provide ‘practical help and guidance to consumers’.

Conclusion

31. Members are invited to make any comments they wish on the Bill at this stage. If substantial amendments are made to the delegated powers provisions contained in the Bill, the Committee will have a further opportunity to consider the Bill after stage 2.

Recommendation

32. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Correspondence from the Scottish Government, dated 12 June 2014:

1. The Scottish Government has considered carefully the Delegated Powers and Law Reform Committee (“the Committee”) Report on the delegated powers provisions of the Food (Scotland) Bill.

   Section 34 – Regulation of animal feeding stuffs

2. The Scottish Government believes the width of the power in section 34 reflects the need to be prepared for an extremely wide set of circumstances. It would not be possible in such a wide area to be any more prescriptive. We have never used section 30 of the Food Standards Act 1999 to make an order because Europe regulates animal feeding stuffs law in Scotland. However, from experience, the Scottish Government believes it is vital to retain powers in Scotland to act quickly to regulate where there is a threat to human health (e.g. from an undesirable substance found in animal feed) where there is not an EU basis to act, and where the European regulation process may take too long or is hesitant.

   Section 34 of the Bill could be used as an immediate stop-gap to protect human health. However, the Scottish Government notes the Committee’s particular concern about the ability to restrict penalty levels and, as such, are giving consideration to restricting this power by introducing an amendment to cap the maximum penalty level for an offence created by the power.

   Section 48 – Power to make supplementary etc. provision

3. The Scottish Government notes the Committee’s concern and recommendation that consideration is given to amend the Bill in order to restrict the power in section 48(3) so that it does not allow the wholesale removal of the discharge of criminal liability which sections 37 and 44 provide in circumstances where an administrative sanction has been complied with. The Scottish Government will consider how best to amend this provision to be drawn more narrowly to meet the Committee’s concern and to change it from the negative to the affirmative procedure.

4. The Scottish Government notes the Committee’s recommendation at paragraph 36. The Scottish Government will amend the Bill at Stage 2 so that section 48(5) is subject to the affirmative procedure.

   Section 50 – Lord Advocate’s guidance

5. The Scottish Government will consider amending section 50 of the Bill to meet the expectations of the Committee. The intention in section 50 is that the Lord Advocate can issue guidance to enforcement authorities to align the level of penalties they issue with the level of penalties the courts can issue. Separately, the power in section 48(2)(c)(ix) allows guidance on administrative sanctions to be included in the food law recommended code of practice, issued to enforcement authorities and laid before the Scottish Parliament in terms of section 40 of the Food Safety Act 1990. The intention of section 48(2)(c)(ix) is that codes of recommended practice could be issued to provide practical help and guidance to consumers.
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Room T1.01  
Scottish Parliament  
Edinburgh  
EH99 1SP

23rd June 2014

Dear Nigel,

FOOD (SCOTLAND) BILL - 34th REPORT 2014 (Session 4)

I note the Committee’s recommendation in its 34th report to Parliament concerning the publication of Lord Advocate’s guidelines issued in terms of s.50(1) of the Food (Scotland) Bill.

I write to advise the Committee that I have no concerns with that recommendation and I am content for my guidelines to be published. This is subject to the caveat that any such requirement to publish should not interfere with the effective detection, investigation or prosecution of crime or the administration of justice.

My officials within COPFS will work together with Scottish Government officials in the drafting of any proposed Scottish Government amendment to address the Committee’s recommendation.

I hope this information is of assistance to you.

Best wishes,

FRANK MULHOLLAND QC
Present:

Richard Baker          Nigel Don (Convener)
Mike MacKenzie         Margaret McCulloch
Stuart McMillan (Deputy Convener)  John Scott
Stewart Stevenson

Food (Scotland) Bill: The Committee considered the Scottish Government's response to its Stage 1 report.
Food (Scotland) Bill: Stage 1

10:40

The Convener: Agenda item 6 is consideration of the Scottish Government’s response to the committee’s stage 1 report on the bill. Members have seen the briefing paper, the Scottish Government’s response, and a letter from the Lord Advocate, which he penned yesterday, concerning publication of the Lord Advocate’s guidelines. May I have members’ comments, please?

John Scott: We should welcome the letter from the Lord Advocate and his willingness to work with the Government on lodging amendments and publishing guidelines. I think that the Government’s explanation, as outlined in paragraph 11 of its response, is entirely reasonable. The fact that the power has not been used in recent times is a matter to rejoice over. Nonetheless, having lived through BSE and E coli incidents in the food industry, I know that the ability to make regulations at short notice can be required and, indeed, has been required in the past. The Government’s explanation of its desire to retain such a power for such emergencies is therefore entirely reasonable.

The Convener: Thank you, John.

Members have no other comments. Are members content to note the Government’s response and, if necessary, to reconsider the bill after stage 2?

Members indicated agreement.
FOOD (SCOTLAND) BILL: SCOTTISH GOVERNMENT RESPONSE TO STAGE 1 REPORT

DIET AND NUTRITION

Committee Report

1. 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.

2. 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.

3. 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.

4. 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.

5. The Committee also seeks an assurance from the Minister that the Scottish Government will take any steps necessary 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.

Scottish Government Response

6. The Committee is correct to note that much of the detail of Food Standards Scotland’s (FSS) role in regards to diet and nutrition will be firmed up after the body has been established. The diet and nutrition landscape is a complex one and the issues faced by Scotland in tackling its poor diet is multi-faceted. Expertise and capacity to address these issues lies with a number of different stakeholders.

7. In general terms, setting out a nutrition and diet objective for FSS on the face of the Bill gives the body a more transparent and strategic role in this area. On transparency, a nutrition objective will help stakeholders understand the services FSS will provide - help and advice on nutrition in food. On a strategic role, having a clearer remit will give FSS impetus to lead partnerships with other public bodies to tackle specific issues. This will help clear up confusion over roles and responsibilities amongst partners.
8. The establishment of FSS and the enhancement of its food and nutrition role presents the Scottish Government with an opportunity to rethink how efforts of relevant public bodies can be best coordinated and which body should lead for which issue.

9. FSS’s role in relation to diet and nutrition needs to have a robust evidence base at its core so that advice to the public through relevant media platforms and advice to policy makers is scientifically sound. Both functions require a representation of the data to ensure that it is fit for purpose and relevant to the target audience.

BUDGET

Committee Report

10. 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.

11. 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.

Scottish Government Response

12. Negotiations between the Scottish and UK Governments on funding FSS’s budget for 2015/16 are linked to a series of other discussions on future FSS roles and relationships between FSS and Defra, Department of Health and the Food Standards Agency. These negotiations will be complete in early 2015 in time to be signed off by the incoming FSS Board.

13. The budget as set out in the Financial Memorandum for the Bill is based on functions agreed for FSS in its first year. Any additional functions taken on by FSS will require specific funding to be identified and made available where required.

RESEARCH FUNCTIONS

Committee Report

14. 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.

15. 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.
Scottish Government Response

16. FSS will have a statutory responsibility to keep the public adequately informed to allow them to make decisions about food matters. To do this FSS will carry out research and maintain close contact with all other relevant research bodies.

17. FSS will be established with access to the necessary scientific and research skills and resources to meet this objective. There are areas where scientific and research skills already exist but there are areas where expertise needs strengthened, for example, in social and behavioural sciences. Options for addressing these gaps include recruiting appropriate experts or working more closely with external partners, such as the Food Standards Agency (FSA) and the Scottish Government’s Chief Scientific Adviser.

18. UK research funding bodies already work closely together, sharing the outputs of research and coordinating the commissioning of new evidence needs where appropriate. FSS will contribute to these networks, working closely with FSA in particular but also with other research partners across the UK, Europe and beyond. In terms of the bodies which receive research funding, the FSA in Scotland has strong links with UK and international scientific experts leading on food research and these will be further developed when FSS is established. It’s envisaged that the FSS will have a Chief Scientific Advisor/Head of Science role which will help to establish FSS’s position in the UK research funding landscape.

19. The Memorandum of Understanding (MoU) between the FSA and FSS is being drafted in time for the incoming FSS Board to agree and sign (early 2015). The protocol in the MoU on science and research is based on the UK Government’s written agreement in 2013 that FSS will have full access to UK research.

20. The protocol on science and research will set out the status and extent of FSS’s influence in regard to each of the FSA scientific advisory committees. The protocol will also lay out arrangements for FSS and FSA to work together to identify evidence needs and explore opportunities for joint working where appropriate. It will also facilitate the exchange of data and research findings between FSS and FSA in all areas of mutual interest.

21. The Scottish Government will ensure that the agreed MoU and protocols will be published and made available to the Parliament at the earliest opportunity.

ACCESS TO EUROPEAN RESEARCH FUNDING

Committee Report

22. The Committee 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.

23. The Committee welcomes this, it would also be interested in hearing more about these opportunities and how they are expected to operate in practice.
Scottish Government Response

24. Improved access to funding from Europe and elsewhere will be delivered by two developments.

25. First, FSS will now have its own identity and priorities for research based on Scottish issues and needs. In addition to commissioning work through its own research funding programmes, FSS will be able to engage and seek collaborative links with EU frameworks to support work which will address common objectives and achieve best value.

26. By working closely with the scientific community in Scotland, and linking with wider EU research frameworks, FSS will also be able to play a role in co-ordinating research activities which are relevant to its remit and in assisting Scottish institutes and research groups to identify opportunities for EU funding. Examples of funding initiatives where there could be opportunities for FSS to link into include the Biotechnology & Biological Sciences Research Council led Global food Security Programme (http://www.foodsecurity.ac.uk/) and the EU Framework Programme Horizon 2020 (http://ec.europa.eu/programmes/horizon2020).

27. Second, FSS will be taking on a wider role in co-ordinating all food and nutrition research funded by the Scottish Government. This will allow food and nutrition research being undertaken by the principal research bodies in Scotland to be coordinated with FSS’s own research.

28. Taken together, these developments will allow Scottish researchers to access more relevant funding and food and nutrition research in Scotland will be more coordinated.

FIXED PENALTY NOTICES

Committee Report

29. The Committee notes 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.

30. 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.

Scottish Government Response

31. The Scottish Government is working with stakeholders to consider the option of establishing an appeal process for fixed penalty notices. The Bill already refers to details for making representations about fixed penalty notices – section 36(1)(g) – having to be included on the fixed penalty notice itself.

32. With regards to the monies from fixed penalty notices being passed to the Scottish Ministers, the Scottish Government does not believe that this will affect the perception of
FSS as a non-ministerial body. FSS will continue to be independent and autonomous in the running of its operations and decision-making.

September 2014
Note: (DT) signifies a decision taken at Decision Time.

Food (Scotland) Bill: The Minister for Public Health (Michael Matheson) moved S4M-11048—That the Parliament agrees to the general principles of the Food (Scotland) Bill.

After debate, the motion was agreed to (DT).

Food (Scotland) Bill: Financial Resolution: The Minister for Public Health (Michael Matheson) moved S4M-10555—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Food (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
On resuming—

Food (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott): Good afternoon, everyone. The first item of business is a debate on motion S4M-11048, in the name of Michael Matheson, on the Food (Scotland) Bill.

The Minister for Public Health (Michael Matheson): I am pleased to open the debate on the general principles of the Food (Scotland) Bill. I thank those who gave evidence, both written and in person, and the Delegated Powers and Law Reform Committee, the Finance Committee and the Health and Sport Committee for their detailed scrutiny of the bill at stage 1. In particular, I welcome the latter’s support for the bill’s general principles and I have recently responded to its stage 1 report.

The Scottish Government is committed to ensuring that people in Scotland live longer, healthier lives. Making sure that we eat a good, nutritious diet of safe food is vital to achieving that ambition. Food-borne diseases cost Scotland £140 million per year. Most significantly, of the 130,000 consumers who contract food-borne diseases each year, around 2,000 will be hospitalised and around 50 will die.

Bad eating habits are one of the most significant causes of ill health in Scotland and a major factor in obesity. Scotland is positioned near the top of the league tables for obesity in Organisation for Economic Co-operation and Development countries. The public cost of dealing with obesity could rise to £3 billion per year by 2030, so even relatively minor improvements to the safety and standards of food in Scotland will have significant social and economic benefits.

The Food (Scotland) Bill will give Scotland some of the levers that we can use to tackle those issues. First, the bill will create food standards Scotland, which will be Scotland’s independent food safety and standards body. We are working to appoint a board and chair of high calibre, with the range of experience and skills required to guide food standards Scotland. We are also in the process of recruiting its first chief executive. Subject to the bill’s progress, we aim to identify the chair early this month, identify the chief executive by the end of the month and appoint the remainder of the board to a shadow body by the end of November.
As food standards Scotland will be a non-ministerial body, operating free from ministers' influence, the board and chief executive will need sufficient space to prepare and develop their strategic thinking and build key relationships with partners in time for FSS being up and running in April 2015.

Food standards Scotland’s clear objectives, as set out in the bill by ministers and Parliament, will be to develop and help others develop policies on food and animal feedstuffs; advise the Scottish Government, other authorities and the public on food and animal feedstuffs; keep the public and users of animal feedstuffs advised, to help them make informed decisions about food and animal feedstuffs; and monitor the performance of enforcement authorities in enforcing food legislation.

The bill sets out specific duties and associated powers for the new body on acquiring and reviewing information through carrying out observations and inspections, monitoring developments and carrying out, commissioning and co-ordinating research.

The bill will allow the body to set performance standards for enforcement authorities — mainly local authorities — in enforcing food legislation in Scotland.

Once the bill establishes the body, we will constitute it separately by order as a non-ministerial office in the Scottish Administration. As such, food standards Scotland will be fully accountable to the Scottish Parliament and autonomous of the Scottish Government.

Food standards Scotland will take on all the functions that are currently exercised in Scotland by the Scottish division of the United Kingdom-wide Food Standards Agency. For some years now, the remit of that division has been wider than the remit south of the border; in 2010, the UK Government removed responsibility for labelling and nutrition policy from the FSA’s English arm, while in Scotland, we maintained the link between those aspects and food safety. The UK decision was subsequently seen as a factor in hindering the UK Government’s response to the horsemeat scandal in 2013.

The horsemeat scandal demonstrated the importance of having a single body with clear responsibility for all aspects of food safety and standards. Indeed, it was the UK Government’s decision that led us to review the FSA’s work in Scotland. In March 2012, Professor Jim Scudamore, a former UK chief veterinary officer, published his report on the issue. His review concluded that food safety should not be divorced from nutrition and labelling; that advice on those subjects should be independent, evidence based and consumer focused; and that advice on food safety and nutrition should come from a body at arm’s length from the Scottish ministers.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am sure that the minister is very well aware of the long series of contributions made by Harry Burns, the former chief medical officer, about the nurturing of the very youngest people in our society. In looking at nutrition, will FSS pay particular attention to helping to ensure that our youngsters, particularly in deprived areas, get the best possible start in life with the best possible food?

Michael Matheson: An important thing that will be achieved with the creation of FSS is that we will have a body that can co-ordinate how we tackle nutrition issues and change people’s diets to ensure that their diets and lifestyles are healthier. We cannot achieve that at present because that work is undertaken by a range of agencies. FSS will be able to take a much more co-ordinated approach to issues such as the one highlighted by Stewart Stevenson than is possible at the moment. We took forward the key recommendation in Professor Jim Scudamore’s report that we establish a specific food safety body in Scotland, and that has led to the legislation before us today, which creates food standards Scotland.

The bill introduces new food law provisions that are designed to protect and improve public health and other consumer interests by driving up hygiene standards and reducing the incidence of food-borne disease; by providing safeguards against food standards incidents such as the horsemeat food fraud; and by strengthening and simplifying the penalties regime for breaches of food law. Those arrangements will increase consumer and investor confidence and will help make Scotland an even more attractive place for food businesses.

The bill also provides for powers to seize and detain food that does not comply with food information law, and those powers will align food information powers more closely with existing food safety powers. Currently, unsafe food can be seized or detained, and courts must order its destruction. However, there are no such powers for food that is safe but which does not comply with food information requirements. In light of the horsemeat food fraud incidents, the power to seize or detain food that does not meet food information requirements in respect of, for example, labelling will help to eliminate food fraud. Without such a power, a food business might still be able to pass on food that does not comply with food information law.

The bill also creates a statutory offence of failure to report breaches of food information law.
The provision will more closely align food standards requirements with the existing duty to report breaches of food safety legislation. Under the proposed arrangements, it will become an offence for a food business to fail to notify food standards Scotland if it suspects that food that has been placed on the market does not comply with food information law.

The bill provides for the introduction at some point in future, by regulation, of a statutory scheme for the mandatory display by food businesses of hygiene inspection outcomes. The intention is to drive up food hygiene standards and reduce the incidence of food-borne disease. The voluntary food hygiene information scheme is already in place, and almost all local authorities in Scotland have launched it locally.

A similar scheme has been introduced in England and Wales, and a similar scheme is being introduced in Northern Ireland. We will monitor developments in that regard, with a view to creating a statutory scheme in Scotland. For that reason, the food law provisions in the bill give the Scottish ministers the power to introduce a statutory scheme after fuller consultation.

The bill includes provision for the Scottish ministers to regulate animal feeding stuffs and their production, retaining ministers’ existing powers under the Food Standards Act 1999, through a delegated power for ministers to use when existing delegated powers might not be sufficient. The existing powers have not been used in the UK since 1999, but we think that they should be retained so that everything possible is in place to guard against feed incidents.

The bill streamlines Scotland’s food law enforcement regime by providing for administrative sanctions, so that people who commit offences can be dealt with more quickly and at less cost. The administrative sanctions regime, which consists of compliance notices and fixed penalties, will give enforcement officers more flexibility to deal appropriately with food offences.

The option to use administrative penalties will reduce the burden on the courts and will reduce local authorities’ costs in relation to prosecuting through the court system. The approach will give enforcement authorities a wider and more proportionate set of tools from which to choose when they deal with contraventions of food law.

In evidence to the Health and Sport Committee it was suggested that there should be an appeals process for people who are given fixed-penalty notices. We are considering the proposal and we are working closely with stakeholders to develop a transparent and consistent process for resolving disputes.

The arrangements on enforcement and improvement were recommended to the Scottish Government by the independent expert advisory group that reported on the lessons to be learned for Scotland from the 2013 horsemeat food fraud scandal.

The recommendations on seizure of food, food hygiene information and administrative sanctions were made last year by the Food Standards Agency in Scotland, following a public consultation on new food law provisions.

We intend to lodge a small number of Government amendments in light of the stage 1 proceedings to date. As members of the Health and Sport Committee are aware, they include amendment of the definition of “food” to reflect the recently amended definition in the Scotland Act 1998. We also intend to implement the Delegated Powers and Law Reform Committee’s recommendation that we restrict the power to regulate animal feeding stuffs in section 34 by lodging an amendment whose effect will be to cap the maximum penalty level for an offence that is created by use of the power.

The bill will ensure that food safety in Scotland is given the prominence that it deserves by establishing food standards Scotland and equipping it with the necessary functions and powers, so that it can make expedient decisions on issues that specifically affect Scotland and take action to improve the diet of the people of Scotland.

I move,

That the Parliament agrees to the general principles of the Food (Scotland) Bill.

The Deputy Presiding Officer: Many thanks. I call Duncan McNeil to speak on behalf of the Health and Sport Committee. Mr McNeil, you have 10 minutes or thereby.

14:44

Duncan McNeil (Greenock and Inverclyde) (Lab): Thank you, Presiding Officer, for making it clear that I am speaking this afternoon on behalf of the Health and Sport Committee, although the topics of food, animal feed and fish factories are not the normal bread and butter of our committee. That is my first pun—it is not the last, I am afraid. The debate comes at an opportune time, given that it is currently British food fortnight.

More seriously, given the work of our committee and our separate inquiry into health inequalities in Scotland, I am pleased that the new food body will seek to address the key issues of diet and nutrition and their links with obesity and ill health. We look forward to that ambition being achieved because
saying it and doing it are, as we know, different things.

Earlier this year, the Health and Sport Committee conducted an inquiry into the general principles of the Food (Scotland) Bill. In producing our report, we also drew on evidence that was received by the Finance Committee and the Delegated Powers and Law Reform Committee, and I thank those committees for their contributions.

We held oral evidence sessions in May and June and we received a valuable insight into some of the main issues during a visit to Aberdeen, where we met the FSA, representatives of the Rowett institute of nutrition and health, and the eminent microbiologist Professor Hugh Pennington. I record my thanks and the committee’s thanks to all those who gave evidence, in person or in writing, and to everyone who engaged so fully with the committee in Aberdeen. I am also very grateful to the Scottish Parliament information centre and the committee clerks for their invaluable help in supporting the committee through its inquiry.

We received the Government’s response to our report last Thursday. I am grateful to the minister and his team for that response and, indeed, for responding in good time for today’s debate.

As we have heard from the minister, the bill seeks to establish a separate food body for Scotland—food services Scotland. The proposal was first mooted during the so-called machinery of government changes in Whitehall, when the UK Government moved some of the Food Standard Agency’s responsibilities back into Whitehall departments. Following those changes, we had a smörgåsbord of reviews, reports and consultations from the Scottish Government, which began—as we heard from the minister—with the Scudamore review, which reported on the merits of setting up a separate Scottish food agency. As we also heard, Jim Scudamore then delivered a further report on food standards and safety in light of the horsemeat incident in 2013.

Before the bill was introduced, consultations were also undertaken by the Food Standards Agency and the Scottish Government. Finally, Ray Jones, chair of Scotland Food & Drink, chaired the expert food group, which focused on red meat and looked at issues of traceability, labelling and provenance. The committee recognises the work of each of those reviews and we are certainly satisfied that the bill has been subject to sufficient consultation.

The bill covers a number of areas. However, the new food body is very much the meat in the sandwich, so I will focus my remarks on that and on three areas in particular.

First, the committee received a considerable amount of evidence on how food standards Scotland will operate in practice. Our report makes clear that there were a number of differing views on the proposed powers and scope of food standards Scotland. Nourish Scotland, for example, suggested that food standards Scotland should focus on improving the nation’s diet and nutrition. The Scottish Food and Drink Federation thought that the new body should play an active role in growing the food and drink industry in Scotland—food for thought. We took the view that Scotland already has a great reputation for its food and drink and that raising the standards and safety of our produce can only serve to further boost that reputation. The committee is therefore satisfied with the proposed powers and remit of food standards Scotland and we are hopeful that those powers will be deployed in a proportionate and appropriate way.

Secondly, the committee spent some time considering the proposed structure of food standards Scotland and we received a lot of comment about the size and make-up of the new body’s board. The bill stipulates that the board should have

“no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.”

The committee agreed with the many submissions that raised concerns that a board of three would be too small. However, the minister told us that he envisages the FSS board having a similar set-up to equivalent public bodies, with a membership of around eight. I am grateful to the minister for the reassurance that he has offered us on that front. The committee is satisfied that the structure of the board, together with a duty to report to Parliament annually, provides a sufficient level of accountability.

The third area that we looked at in detail is how the new food body will interact with other institutions here in Scotland and around the UK and Europe. We were reliably informed by Dr Jim Wildgoose, chair of the Scottish Food Advisory Committee, that

“Bugs do not observe borders.”—[Official Report, Health and Sport Committee, 27 May 2014; c 5503.] He stressed the need for FSS to fit seamlessly into the network of food bodies in the UK and Europe. The Scottish Food and Drink Federation called for a “consistent regulatory framework across the UK.”

The Scotch Whisky Association called for a memorandum of understanding between FSS and the FSA in the rest of the UK, and the Scottish Retail Consortium issued a plea for a robust and transparent protocol to be put in place to ensure that
“food businesses know what to expect from both FSS and FSA UK”.

The Government’s response last week indicated that a memorandum of understanding is, in fact, in the process of being drafted in time to be agreed by the incoming board of the new body in the new year, which is to be welcomed. I understand that there is to be provision within that agreement for FSS to have full access to UK research, which I very much welcome.

Other evidence highlighted the fact that a large amount of food policy has its origins in Europe, so there will be an onus on FSS to deliver an improved level of influence at a European level. The minister has offered reassurance that FSS will have

“a wider role in co-ordinating all food and nutrition research funded by the Scottish Government.”

We look forward to seeing that. We are also assured that FSS will carry a strong voice in liaising on behalf of Scottish research institutes to secure access to research funding from Europe. Likewise, the Government response tells us that FSS will retain access to UK resources such as the FSA’s advisory committees. I am sure that stakeholders such as Aberdeen’s Rowett institute of nutrition and health will be pleased to hear of those assurances.

The committee found that there is near unanimous support for the bill. There are areas where we expect the Government to take on board evidence received from key stakeholders, and I am sure that the minister will ensure that that happens. That aside, the Health and Sport Committee is content to recommend that the Parliament agree to the general principles of the Food (Scotland) Bill.

The Deputy Presiding Officer: Many thanks, Mr McNeil—a veritable punnet of puns. I now call Dr Richard Simpson, who has 10 minutes, or thereby.

14:55

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Thank you, Presiding Officer. I do not intend to compete with either you or Mr McNeil in terms of puns, but I welcome the opportunity to speak at stage 1 of the Food (Scotland) Bill.

As the minister said, the background to this bill is the 1999 act that established the Food Standards Agency as a UK body, with the Scottish ministers at that time having authority to direct the FSA in relation to its activities in Scotland. The act gave the FSA the power to develop food policy, to audit enforcement—usually carried out by enforcement authorities as part of local authorities’ duties—to carry out research, to develop policy and to give advice on food and feedstuffs.

The Scottish section of the FSA has earned considerable respect among all those for whom it has acted; it had good standing with both the Government and the public. Most recently, its independent work in relation to the food fraud and horsemeat scandal was regarded as being of particular value.

However, in 2010, when the new coalition Government decided to split the FSA as a UK body, removing parts of its responsibility for nutrition and labelling in England, there was a need for us to consider what was going to happen in Scotland. Certainly it is a matter for the Westminster Parliament to determine how it governs its affairs down there, but there was a general view that the split somewhat hindered the response to the horsemeat scandal. Some of my Labour colleagues at Westminster feel that the role of industry in respect of the functions of the previous FSA has increased, which has not always been particularly helpful.

The bill that we are considering has arisen following the review that was undertaken by Professor Jim Scudamore. His clear advice, which the Government and my party fully accept, is that food safety should not be divorced from nutrition and labelling and, moreover, that advice on food safety, nutrition and meat inspection should come from a body that is at arm’s length from the Scottish ministers. That has been fully accepted and endorsed in the bill.

My colleague Claire Baker will deal at greater length with meat inspection—one of the functions of the body that remains of considerable importance. Colleagues will remember the BSE outbreak and the damage that was done to Scottish meat exports following the outbreak. Claire Baker will also deal with concerns that we have about those who are charged with inspection, given the squeeze on their numbers and the difficulties that they are facing.

Lewis Macdonald will look at the role of the Rowett institute of nutrition and health, issues around collaborative research and the memorandum of understanding, which we have heard is being developed.

I want to dwell briefly on two of the most important challenges that face public health in Scotland. Ever since we Scots gave up eating porridge in the morning as a regular part of our diet, we have increasingly adopted an unhealthy diet. Indeed, 140 years ago, workers in my constituency went on strike because they were receiving salmon three times a week. Now, oily fish such as salmon and herring are only just beginning to regain their place as part of our diet.
Our diet is still too high in saturated fats and salt, and it contains excessive amounts of sugar. As our society has grown richer, we have seen excessive portion sizes, not to mention substantial food waste. The results of that, along with smoking and alcohol, have contributed significantly to Scotland being regarded as the sick man of Europe.

Mortality from heart disease has declined, but that has been due mainly to a reduction in smoking. The FSA, along with the food industry, has done a good job in reducing salt levels, but we still have a long way to go to reach a healthy level in that aspect of our diet. [Interruption.] I am sorry, Presiding Officer—I have been having some trouble with my iPad, which has been due an upgrade for some time.

The Deputy Presiding Officer: Do not worry. Take your time.

Dr Simpson: The attempts to reformulate foods with lower levels of salt remain important. Working with the industry on that will be an important part of FSS’s work.

On saturated fats, although excellent progress has been made in reducing the amount of trans fats—members might remember that I proposed a member’s bill to try to eliminate substantially the presence of trans fats, except in natural form—I believe that the new food standards body will need to continue to address that issue rigorously, particularly in respect of takeaways, which I believe it will be reporting on shortly. Takeaways are eaten more by people in deprived communities and they contain substantial amounts of trans fats.

Sugar is the final part of the equation; calories from sugar might be contributing to the problem of obesity. Although the rate of increase in the levels of obesity has now flattened, it presents one of the most serious challenges to Scots living healthier and longer lives, which is the ambition of the Government and us, because 27.8 per cent of Scots are regarded as obese. That is greater than the figure for England, and it compares to southern European countries’ obesity level of around 15 per cent, and Japan’s level of only about 3.5 per cent.

One of the main consequences of the epidemic of people being overweight is the substantial rise in type 2 diabetes, which is now thought to affect 0.25 million people in Scotland. It has resulted in, for example, a 20 per cent increase in amputations in the past couple of years because of the associated vascular diseases. The public cost of dealing with obesity is predicted to rise to £3 billion by 2030.

The important remit of the FSS is to improve protection of the public from risks to health arising in connection with consumption of food, and protection of the other interests of consumers in relation to food. Those are commendable objectives that we support, along with the new remit of improving “the extent to which” consumers “have diets that are conducive to good health.”

The bill will put the current co-operation between FSS, the Scottish Government and NHS Scotland on a statutory basis. I understand that the Government has undertaken to ensure when the bill is passed that many of the suggestions that have been made in consultations for direct involvement by FSS will be considered. Those include more direct involvement in the regulation of animal health, animal by-products, eggs, poultry, meat, organic food labelling and drinking water quality. Those suggestions are all commendable, but I suggest that the Government should proceed cautiously and not overload FSS in its first year or two of operation. It will need to be properly financed, and the Health and Sport Committee has expressed some caution in that regard.

There are substantial challenges around food-borne infection and new challenges will arise that are presently unknown. We must recognise that Scotland has suffered one of the worst outbreaks of E coli, in Wishaw in the 1990s, and although most lessons have been learned, Scotland still has a higher level of the dangerous E coli than the other home nations. The FSA has admitted that campylobacter in poultry is stubbornly difficult to control, so that will continue to need to be addressed. As the minister said, there are 50 deaths a year from food poisoning and 2,000 admissions to hospital, but it is suspected that 130,000 consumers a year are affected by it although the exact figure is not known.

Food hygiene continues to be important, so following the Welsh and Northern Irish examples and building on our own experience will be important.

I also want to mention the use of hormones and antibiotics. Antibiotic use in animals is not a new concern—the Swann report in the 1960s advocated caution—but recent growing interest in our own human microbiome and our symbiotic relationship with billions of bacteria in our gut might reawaken interest in what antibiotics are being used in animals.

A number of other issues and concerns were raised in the committee’s report and they will be looked at during stage 2. The minister mentioned the question of appeals against certain convictions or acts, and the Scottish Grocers Federation also raised that issue. I am glad that consideration is to be given to the appeals system. The Scotch Whisky Association has also raised concerns
about the appeals process, so it will be looked at at stage 2.

The final area that I want to refer to is the promotion of the food and drink industry, which is of substantial importance for Scotland. Our exports are good and growing, but recognition of Scotland as a place of excellent food is fundamental. I was recently in France, where I was able to see Scottish salmon in French markets. They were identified among all the other sources of salmon because of the label rouge; it is the only salmon that has that. That sort of appellation will be vital to us in the future, so I welcome the fact that FSS is going to play an important role in that.

The proposed newly independent corporate body will, I hope, be able to provide the necessary leadership and advice on issues of nutrition to create a fitter and healthier community as the 21st century progresses.

15:05

Nanette Milne (North East Scotland) (Con): In this day and age, when so many of us rely increasingly on processed food and ready-prepared meals, it is crucial that we can trust the safety and nutrition value of the food that we eat. The Food Standards Agency has served us well in this regard until now but, given the changing remit of the FSA south of the border, the need to tackle the serious problems of obesity that are caused by an inappropriate dietary lifestyle in Scotland, and in the wake of the horsemeat fraud, the Scottish Government proposes to set up food standards Scotland as a new stand-alone body as a replacement for the FSA that will have wider powers than that body has.

Although not all consultees were in favour of the proposal, the majority of people who responded to the call for evidence agreed that it is the way forward. Scottish Conservatives, too, are supportive of the general principles of the bill.

With its 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 consumers have diets conducive to good health; and ... to protect the other interests of consumers in relation to food"—

the new FSS will have a broader remit than the existing FSA in Scotland, and it will also have powers in relation to wrongly labelled food and non-compliance with food law.

The policy memorandum states that the new body will bring the FSA’s existing public health protection role together with a new objective on diet and nutrition. The minister said, in oral evidence, that the legislation will allow food standards Scotland "to work in a co-ordinated way with the NHS and other organisations with a role to play in the obesity and dietary challenges that we face in Scotland."—[Official Report, Health and Sport Committee, 24 June 2014; c 5756.]

The proposed powers for the new agency in respect of diet and nutrition were generally welcomed by witnesses, but given that a number of other existing bodies also have a role in this area, they stressed the need for FSS to have a strong co-ordination and leadership role. How that will be achieved will depend largely on negotiations after the new body is in place, and there are concerns that the work of FSS and the relevant NHS bodies must be appropriately co-ordinated in order best to tackle the complexities of diet and nutrition in Scotland.

The Scottish Government sees this as an opportunity to clear up confusion over the roles and responsibilities of different stakeholders, and to base advice to the public on sound scientific evidence. However, there is clearly a great deal of work to be done after the legislation is in place, and ministers should heed the Royal Society of Edinburgh’s caveat that in order to achieve its dietary and nutrition goals FSS must be adequately resourced and well connected to the Scottish Government’s scientific advisers.

There are concerns about the financing of FSS, whose extra powers beyond those of the existing FSA are likely to cost an extra £5 million or so in the first year. It is intended that the increased running costs will be offset through a financial transfer to the Scottish Government from the FSA’s UK-wide budget, but the exact value of that is still under negotiation and, although the minister assured me at committee that negotiations have been straightforward and that he is confident of a satisfactory outcome, they will not actually be complete until after the incoming FSS board is in place, which is predicted to be early next year. Of course, any future extension of the remit of FSS could have financial implications for the body itself and even for local authorities. Therefore, to my mind, there are still significant uncertainties about the funding of the new body, which will be crucial to its success.

A clear theme that emerged from evidence to the committee was the need for FSS to have access to the best science to underpin policy. There is extensive diet and nutrition expertise within the food industry, academia and national bodies such as NHS Health Scotland, which should be accessible to the body, and also within expert committees like the Scottish Food Enforcement Liaison Committee, and there is also food-related research from UK Government sources. Professor Peter Morgan of the Rowett research institute, and Professor Hugh Pennington, on behalf of the RSE, highlighted the need to maintain existing links to the advisory
committees to the UK food agency. Professor Morgan noted 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.”—[Official Report, Health and Sport Committee, 3 June 2014; c 5569.]
The great opportunities for Scotland through Horizon 2020 funding were also stressed by
Professor Morgan.

The memorandum of understanding between the FSA and FSS that is currently being drafted,
with its protocols on science and research setting out the arrangements for the bodies to work
together where appropriate, and to exchange data and research findings in all areas of mutual
interest, will be crucial to the success of the new body, so I look forward to the promised publication
of the agreed document at the earliest opportunity.

Other issues that were raised with the committee include the governance of FSS, in
particular the size of the board that will be in charge of its work; proposed sanctions for food
law offences; the possibility of setting up an appeals process against fixed-penalty notices, to
which the minister referred; measures to tackle food fraud; and a possible negative impact on
Scottish food businesses should we develop a different labelling regime from the rest of the UK.
Time is too short to deal with those issues in
detail, but any unanswered concerns will, no
doubt, be raised as the bill proceeds through
Parliament.

There was general support for a mandatory food
hygiene information scheme to be set up in the
future, and an acceptance that the Government
should monitor the schemes in Northern Ireland
and Wales before finally committing to such a
scheme for Scotland.

There are significant issues still to be resolved
in the complex area of food, nutrition and diet, but
I am satisfied, as are my fellow committee
members, that setting up food standards Scotland
is the right way forward. The detail of the
legislation will be examined further at stages 2 and
3, but I am happy to accept the general principles
of the Food (Scotland) Bill.

The Deputy Presiding Officer: We move to the
open debate. We have a little time in hand, so
there will certainly be time for interventions.

15:11

Aileen McLeod (South Scotland) (SNP): I
welcome the opportunity to speak in the debate
and thank the Health and Sport Committee’s
convener, Duncan McNeil, for his opening
remarks. I also thank all the stakeholders across
local government, the NHS, food and drink
producers, the industry and regulatory bodies as
well as the many others who provided written and
oral evidence to the Health and Sport Committee,
which assisted us greatly in our scrutiny of the bill
at stage 1.

The bill is important, so I am pleased to see that
there is general consensus on its broad principles
and what it is trying to achieve. As others have
said, it will establish a single independent body to
ensure that the former functions of the Food
Standards Agency remain together, thereby
allowing clear responsibility and accountability for
all aspects of food safety and standards. That can
only be beneficial for consumers in Scotland.

Crucially, the bill will help us to tackle the
serious public health issues surrounding obesity.
The bill also shows that we have learned the
lessons from the 2013 horsemeat scandal, in that
many of the measures that were recommended by
the two expert working groups that were tasked
with reviewing what went wrong in our food chain
have been incorporated in the bill.

I welcome the Scottish Government’s response
to the committee’s stage 1 report—in particular,
the clarification that the Government has provided
on the envisaged role of food standards Scotland
in relation to diet and nutrition, the accessing of
European research funding and the research
functions of the new body. I will focus on section 2,
which sets the objectives of food standards
Scotland and includes a new objective on diet:

“to improve the extent to which members of the public
have diets which are conducive to good health”.

As the minister said, obesity presents a
significant and growing public health challenge in
Scotland. Regrettably, we are near the top of the
OECD league table for obesity. Parliament is
aware of the contribution that obesity makes to the
incidence of other potentially serious long-term
conditions, including type 2 diabetes, heart
disease, osteoarthritis and some cancers, so I
welcome the principle that FSS will have a new
focus on diet and nutrition. Obesity cannot be
viewed as a health issue alone, and neither will we
tackle it successfully if we rely only on creating
behavioural change.

The causes of the increase in obesity are
complicated and the efforts to address the trend
will require collaboration across sectors. Many
people tend to associate food standards with food
safety, hygiene and cleanliness but not
necessarily with improving the extent to which the
public have

“diets which are conducive to good health”.

I am therefore pleased that the inclusion of the
objective on diet and nutrition was supported, in
the evidence that the committee received, by the
Soil Association, the James Hutton Institute, the

374
British Medical Association Scotland, the Royal Society of Edinburgh and Quality Meat Scotland.

Linked to the competence of FSS over diet and nutrition is the potential role that it can play in influencing the European Union agenda, working together with various Scottish research institutes and groups, not least in terms of identifying and accessing research opportunities at UK and EU levels.

I also welcome the Scottish Government's response and the memorandum of understanding that is being developed to operate between the FSA and FSS to ensure that the latter has full access to UK research.

FSS’s creation is an opportunity to build more formal and effective working relationships with the appropriate UK and EU agencies. The new body will be able to collaborate, co-operate and share intelligence with other organisations in Scotland, the UK and Europe. Clearly, that will be valuable should we ever see a repeat of international food fraud incidents such as the horsemeat scandal. That will also allow for a similar approach to research.

We have expertise that others need, for example on shellfish, and we have highly regarded research into food and diet, such as that which is being carried out by the James Hutton Institute. We have a lot to offer in that regard, as well as much to gain. As my committee colleague Nanette Milne said, there are substantial potential opportunities for Scotland’s research arising out of the EU’s new horizon 2020 research funding programme. The issue of food security is one of the grand societal challenges that have been identified by the EU to be supported in the context of that programme, with research work focusing on food and healthy diet. The horizon 2020 statement on that theme refers to “social and economic access to safe and nutritious food.”

That reflects very well the diet and nutrition objective in FSS’s proposed remit.

The creation of food standards Scotland affords us a wider opportunity not only to plug Scotland into the developing pan-European research, but to ensure that Scotland is ideally placed to make a significant contribution to one of the major challenges facing our society. That opportunity is as significant as our work on the integration of health and social care for adults, which is helping us to make the case very strongly for Scotland to become an international centre of excellence in research into healthy and active ageing using digital health solutions.

I look forward to the bill proceeding to stage 2 and to the Health and Sport Committee’s further discussion on it. I am happy to support the bill’s general principles.

15:17

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to be taking part in the debate. The bill sets out the operational detail for food standards Scotland. I think that everyone in the chamber supports the general principles, but I will make one point about the board’s membership. Although the committee supports the Government proposals on the board’s membership, it does not support the proposal on sectoral representatives. I ask the minister to reflect on the Mather commission’s report, which the Scottish Government welcomed at the time, which recommends employee directors for public body boards. The establishment of food standards Scotland gives the Government the opportunity to act on the issue. Given the particular responsibilities of food standards Scotland and the key importance of the consumer, it would be important to have employee representation on the board in some form.

Although it was the Health and Sport Committee that scrutinised the Food (Scotland) Bill and it is the Minister for Public Health who is putting the case to us today, food standards Scotland is an organisation whose responsibility will extend to the food inspection regime in Scotland, covering work in abattoirs and meat plants, as well as issues around accurate labelling and food fraud. I will focus on those issues.

A few weeks ago, I spoke at The Scotsman conference on food and drink during food and drink fortnight. At the conference there was a clear emphasis on Scotland’s strong brand, on our international reputation and on provenance and transparency in our food sector. It was recognised that if Scotland’s food and drink sector is to grow, make a significant contribution to our economy and offer quality employment opportunities, those strengths must be promoted and protected.

The establishment of a new food standards body—we all support the necessity of a separate Scottish body for the reasons that others have outlined—gives us an opportunity to be clear about our expectations on the operation of the food sector and to introduce a robust regulatory regime that puts the consumer firmly at its centre.

There are some real challenges in the sector. It is a tough sector and food production is highly competitive. It operates on very narrow profit margins and we can see the impact of that. Recently, four free-range chicken producers’ contracts with Hook 2 Sisters were terminated. That will result in the total number of independent chicken producers in Scotland falling from 28 to 16 and the number of chickens produced in Scotland...
falling by 7 million birds at a time when chicken consumption is increasing.

We all recognise the pressures that are on food producers—rising prices, pressure from the supermarkets and increasing competition from overseas—but we cannot allow them to lead to any weakening of our regulation. The numbers of meat inspectors and meat inspections have fallen in recent years. They exist to protect the consumer, but they also protect Scotland’s brand and reputation.

In a recent Bank of Scotland report on the food and drink sector, 64 per cent of those questioned identified regulation and compliance as a significant challenge for their sector, but any damage to our sector, which would be left vulnerable with light-touch regulation, would take years to recover from. We know that from recent examples. We need to ensure that the sector’s well-earned reputation is protected. Although all effort must be made to have regulation that is proportionate, it must also be robust and effective.

Let us consider some of the realities within the sector. A recent freedom of information request by Unison Scotland showed that, since April 2012, meat inspectors and vets have prevented more than 1 million cases of diseased animal carcases from entering the food chain. That included 659,000 instances of liver fluke parasite and 427,000 instances of pneumonia in red meat carcases. The figures are pretty concerning, but the fact that we have a meat inspection regime means that diseased carcases are being detected before they reach the human food chain.

There is intense lobbying at European Union level for lighter-touch regulation that increasingly looks to pass the responsibility from the public sector to the industry. There are real concerns about the consequences of that for the consumer. Already, 37 out of the 87 poultry plants across the UK have employed their own meat inspectors. For me, that raises issues of accountability and conflict of interest.

The creation of a new body in Scotland gives us an opportunity to ensure that regulation acts in the interests of the consumer. Two of the body’s objectives clearly emphasise protection of the consumer. Although measures must be proportionate and support the industry, it must also be demonstrated that they deserve the public’s trust. Trust must be at the heart of the new body. It needs to be able to hold the public’s confidence. Sections of the industry are failing and we certainly need to work with them to challenge that and to raise standards.

However, they also need to be transparent and accountable. Meat inspectors and vets must be able to carry out thorough, independent inspections, free from food sector influence. Of course there are people in the sector who recognise that and the value of the system, but we need only to speak to some of the people who work on the factory floor to get an understanding of how tough the sector can be, how hard the working conditions are, how pressured the sector is to produce the end product quickly, how difficult it can be to go in and enforce the inspection regime and how essential it is to have a robust regulatory regime with independent scrutiny.

The new body—food standards Scotland—must have a clear position on that and support its staff who work at the sharp end, because another reality is that produce at the lower end of the sector is more vulnerable. The demand for cheap food from the retail sector and the consumer puts pressure on the sector, but we cannot allow the low-income consumer to be left vulnerable to poor practice. The recently highlighted growth in food fraud, which ranges from counterfeiting to mislabelling and substitution, is also a significant challenge for the new body to address.

I will close with some concerns about environmental health officers—in particular, issues of capacity and underfunding.

At the height of the horsemeat scandal last year, the pressure on local authority services became clear. In 2008, more than 16,000 food safety samples were taken throughout Scotland but budgetary pressures meant that, by 2012, that had dropped to just over 10,000 samples. There had also been a 21 per cent drop in the number of specialist food safety officers who were employed by local authorities.

Increasingly, the capacity does not exist to carry out regular checks. If we want a service to be delivered that meets the challenges of the modern world, it needs to be better supported by not just local government, which faces financial pressures, but central Government and the new food standards body.

The bill establishes the legal standing of food standards Scotland. The debate will now move on to the new body’s policy and practice. If we are prepared to put the interests of the consumer first, everyone—including the industry—will benefit from the advantages of safe, high-quality, respected and trusted Scottish produce.

The Deputy Presiding Officer: I remind the chamber that we have time for interventions. Should members wish to develop their ideas and thinking as the debate develops, on this occasion that would be welcome.
15:25

**Christian Allard (North East Scotland) (SNP):** I thank the convener of the Health and Sport Committee, Duncan McNeil, and its members for their work in compiling the stage 1 report on the Food (Scotland) Bill. I am particularly pleased that the committee chose to come to Aberdeen. For the past few months, Aberdeen has been in the media spotlight. I never stopped reminding journalists that there is more than one booming sector in the north-east of Scotland.

Food and drink in Scotland is much more than an economic driver; it is part of the country’s fabric and culture, and part of our past, our present and our future. Of course, the north-east is at the very heart of it. The north-east of Scotland is the country’s natural larder.

I do not yet feel ready to speak about diet and obesity, as I have not followed the First Minister’s advice to moderate my food intake, so I will pass and let other members talk about the subject. The only comment that I will make is that, in the main, the problem that we are struggling to cope with is the quantity of food that some of us are eating. Eat less and eat better-quality food is the advice that I must follow.

Unlike Duncan McNeil, I worked in the food industry for 30 years—for many years, it was my bread and butter. I will concentrate on food safety and the implementation and enforcement of food regulations. As others have done, I make a plea to all members to support our food industry, and I remind Scottish consumers to buy locally and to eat safe and nutritious food—Scottish food.

The consensus that emerged in the stage 1 report is that the present situation has been made untenable by the direction that the Westminster Government has taken. A lot has been said about a particular food scare. I note that, in oral evidence, Uel Morton from Quality Meat Scotland stated:

“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”—to my shame—

“with a background in the Netherlands. It was a complicated international food fraud.”—[Official Report, Health and Sport Committee, 17 June 2014; c 5680.]

**Claire Baker:** Although the member is correct in his description of the horsemeat scandal, does he recognise that substitution is an issue in Scotland? There have been cases of substitution involving, for example, white fish and lamb, particularly in the restaurant sector. Despite the fact that the horsemeat scandal was not linked to Scotland, we still face issues with food fraud and substitution that we need to deal with.

**Christian Allard:** I agree with the member on her point about restaurants. I encourage anyone who buys the catch of the day to ask where the fish comes from. People would be surprised—sometimes what is called the catch of the day comes from the other side of the world, but the catch of the day cannot come from the other side of the world. It is important for consumers to know exactly where their food comes from.

At the same time as we had the horsemeat scandal, in Aberdeen the local authority stopped the export of seafood because of a wrong label. The contents of the seafood boxes were not different from what the label said; the shipment was stopped because the label was not seen to follow all the EU rules and regulations. I worked in the food industry for 30 years and, believe me, labelling is a nightmare, because the rules and regulations change all the time.

We sometimes have to ask ourselves who is directing such things. People in the food and drink industry have to know what the rules are—that is very important. In that case, there was nothing wrong with the product, and the name was clearly on the label, but the ‘i’s were not dotted and the ‘t’s were not crossed to the liking of the local authority, which had no idea of the existing food labelling laws.

Claire Baker mentioned funding, which is an important point, as some local authorities are perhaps not prioritising spending in that area. There must be a better way of enforcing legislation.

The committee’s report points out that "few witnesses questioned the creation of the new food body and instead sought assurances about its working practices."

NFU Scotland was very supportive of the Scottish Government’s intention to bring back powers to Scotland. There is a lot that I like in NFU Scotland’s list of recommendations, such as its suggested changes to sections 2.3 and 15.1 of the bill. Food standards Scotland must be both transparent and objective in the way that it goes about its business, and we all expect better consultation, co-operation and co-ordination and recording of the decisions that are made in moving services from south of the border.

Leadership in co-ordinating relevant laws and regulations must be taken by the new food standards Scotland agency. It is partly a lack of leadership that has brought us to where we are. We must ensure that the bill supports Scottish producers, and we must not forget what makes our food industry in Scotland: first, the producer;
secondly, the retailer; and, most important, the consumer.

I disagree with the view of Mr Morton from Quality Meat Scotland that "the retailer is a soft target". —[Official Report, Health and Sport Committee, 17 June 2014; c 5680.]

In fact, the retailer is the right person to target if we want consumers to have confidence when they purchase food, whether it comes from abroad or from Scotland.

I was very impressed during the committee’s visit to a seafood producer base in Aberdeen. I know Michael Robertson, the managing director, very well. All those in the seafood sector share a concern about the possibility of increasing costs associated with the bill. We need reassurance from the minister today that having a system in Scotland that is different from that in the rest of the UK does not automatically mean higher food costs. Scotland does not operate in a vacuum at home or abroad, and our Scottish producers must be able to compete.

New labelling and regulations in Scotland must be accepted in the rest of the UK and in the EU if they are to be enforced. They need to be clear and transparent. I agree with Michael Robertson that there must be some discussion about inspections, because local authorities’ inspections are not of a high standard. I want to move away from having retailers dictating to Scottish producers, which is what happens just now in the food industry. I ask food standards Scotland to show leadership with regard to major retailers on that point.

Some members of the committee noted that they hoped that food standards Scotland would exercise its powers in a professional and appropriate way that would protect the prospect of sustainable growth generated by the industry. I would like that sentiment to be more than hope—I would like the bill, when it is passed, to be a guarantor of a system that will grow our food and drink industry.

I have been very much encouraged by the support that has been received from food producers in Scotland; they recognise that the Scottish Government is moving in the right direction. Let us have a food standards agency in Scotland that is fit for our fantastic food and drink sector and fit for the 21st century.

The Deputy Presiding Officer: Bravo.

15:33

Bob Doris (Glasgow) (SNP): I, like my committee convener Duncan McNeil, thank everyone who gave evidence to the committee as well as the clerking team and SPIce for all their support—it is only fair that I put that on the record.

I will say a bit about access to research, evidence, science and advice, which other members have also discussed. We have heard much about the need to ensure that we still have access to the relevant UK experts. It is worth noting that sometimes those UK experts happened to be in Scotland—indeed, they are sometimes based not in the UK but elsewhere in Europe.

It became clear to me fairly quickly that food standards Scotland would not have a narrow horizon with regard to research, evidence, science and advice. The scientific and research community is global, and borders are increasingly irrelevant.

In sections 69 to 74 of our stage 1 report, the Health and Sport Committee supported that view, and it was endorsed by the minister, who made it clear that there had been "a very good working relationship with the FSA at a UK level from the outset". —[Official Report, Health and Sport Committee, 24 June 2014; c 5744.]

and that a memorandum of understanding with the FSA is being developed. I would almost have taken that for granted, but it is good to have had that firmed up for the avoidance of doubt. That is good progress.

It is worth stressing that such a memorandum will involve the rest of the UK seeking advice from Scotland-based experts, as I have said before. That is important. The traffic is not one way: there is self-interest for the rest of the UK in having that memorandum of understanding.

Sections 78 to 84 of our stage 1 report outline broad support for that approach, but I think that the report goes a step further. It leads us to consider the huge opportunities to develop research and expertise in Scotland. Section 81 of the report quotes Professor Peter Morgan of the Rowett institute of nutrition and health, who said: "great opportunities for Scotland" are "coming through the horizon 2020 funding."

I understand that billions of pounds of research money are available in that. He also remarked that food standards Scotland "should have a definite role in trying to influence what research is done." —[Official Report, Health and Sport Committee, 3 June 2014; c 5577.]

Therefore, there is a key role for the new organisation. There is a key economic role as well as a food standards role with our higher education institutions in accessing funding across Europe and beyond. I know that the minister agreed with that.

Support to go even further than that came from another source. Tim Smith of Tesco is quoted in section 84 of our report. He said:
“I encourage more boldness and suggest that the new body will want not 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 applies now.”—[Official Report, Health and Sport Committee, 10 June 2014; c 5653.]

One of the key things that I would like to know is how the new body can be proactive about being a specialist in certain food standards issues and in research and development across Europe and the world. There are massive opportunities to direct that.

On a more local level, I want to look at section 32 of the bill, which creates new provisions relating to the contravention of food information laws. In many cases, we are talking about food fraud, to put that into plain English.

The issue may seem trivial to some, but if a person goes down to the local chip shop, pays £5 for a fish supper and thinks that they are getting haddock, they should get that. If they are not given haddock, that is an offence. As we heard earlier, if a person goes for a meal with their family and orders a lamb curry, they will want to ensure that what is in it is what they think is in it. I am not talking about food safety; I am talking about food fraud and misinformation.

**Stewart Stevenson:** The member is right to highlight the issue, which is far from trivial. It is not just a domestic issue. In Nepal, I have seen Kat 69, which certainly did not come out of the Vat 69 factory in South Queensferry. I have seen the trade in second-hand Johnnie Walker bottles in India and Coke bottles being refilled in a back street in Hebron in the west bank. Major brands attract fraud around the world. We can play a role domestically in setting a standard and protecting the value of brands from which we earn a lot of money. The problem is far from being trivial.

**Bob Doris:** I reassure the member that, since I got married around two and half years ago, there have certainly been fewer recyclable Johnnie Walker bottles lying about my house—that is for sure. However, he makes a serious point. Food fraud does not start with the retailer; the retailer is quite often the end point of a complex web of criminal activity around the globe. It is about traceability and accountability. I know that some retailers feel that they are perhaps being overly scrutinised, for offences elsewhere, but they have a duty to report, and if a deal is too good to be true, they should know that it is. Therefore, they cannot shirk their responsibilities, either.

I was quite surprised to find out that if there is mislabelled food or food fraud, the courts cannot step in and confiscate that food. It is easier to confiscate hooky trainers than a dodgy doner kebab. That sounds like a bizarre thing to say, but that is the case. The new law will change that. I would not like the food to be destroyed, of course. If it is safe, let us give it to homeless people and food banks. Let us put it somewhere where it can be used for benefit.

I support the scheme of fixed-penalty notices, which I think will be well received by local authorities, which at present have to prosecute criminal offences. Because of time constraints, I will not read out the full quote, but William Hamilton from Glasgow City Council’s trading standards department said that it would be “a boon” to the council to be able to use fixed-penalty notices rather than complex court proceedings.

Ministers will be able to introduce, through guidance if they choose, a mandatory food hygiene information scheme, to ensure that such information is displayed in all food outlets. I encourage that to be rolled out as soon as possible in a way that does not put a constraint on local businesses. It should be standard that, when people walk into a place where food and drink are available, they can see at a glance what level that place is operating at.

We sometimes target the end point of bad practice in food and drink systems across Scotland, Britain and Europe, so we should remember that, of course, the vast majority of food and drink producers, processors and retailers in Scotland do an outstanding job. However, the powers in the bill are necessary so that we not only maintain that standard but improve it further.

15:41

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I congratulate the Government on introducing the bill. Establishing food standards Scotland as a stand-alone body is clearly the most viable option, based on the recommendations of the Scudamore and other reviews and building on the existing expertise and best practice of the Food Standards Agency. I congratulate the Health and Sport Committee and support its recommendations.

One recommendation that particularly interested me was the request for clearer detail on the proposed research functions and capability of FSS and how those will relate to UK-funded research bodies. That reminded me of the rationale for setting up the FSA as a UK body in the first place. The 1998 consultation document said:

“The Government believes that a single body to control and regulate food safety and standards in the United Kingdom is appropriate because it would be impractical and costly to duplicate the necessary scientific advice in all parts of the UK”.

I was therefore reassured by Duncan McNeil’s reference to the memorandum of understanding...
that is in progress and the guarantee of access to UK research. That is an important development.

Duncan McNeil also referred to the committee’s approval of an eight-person board. The committee welcomed the minister’s reassurance on that, but I want to back up Claire Baker’s point about the Mather commission and the merits of having an employee director. I do not need to give the minister a lesson on that, because of course many, if not most, health bodies already have an employee director. If we needed reminding of it, Claire Baker mentioned the invaluable work that people on the ground do. In particular, she referred to meat inspectors, who prevented more than 1 million instances of diseased animal carcases entering the food chain. I therefore hope that the minister will consider that proposal for an employee director.

It is no secret that many in Scotland have difficulties with weight and health and that much of that relates to the quality of our diet. A preventative approach is clearly essential, and clear and reliable nutrition advice through labelling of food is an important part of that. That is why it should be welcome that labelling will be made a priority when the new body is formed next year.

Having a stand-alone body that addresses the regulation of food standards will allow us to place emphasis on our national health priorities and protect Scottish consumers while avoiding the UK’s rather fragmented approach to food standards as a whole since 2010. It is not entirely clear why the responsibilities were sectioned off to different departments in the way that they were. In fact, the review panel under the guidance of Professor Scudamore, along with many stakeholders, made the point that FSA UK “had functioned well prior to the UK Government’s Machinery of Government changes in 2010”.

It is clear that a joined-up approach that recognises the connections between different areas of monitoring and maintaining food standards and the Government’s overall health priorities will be required if we are to address issues such as obesity and tackle lapses in food quality. As the Scudamore review concludes, Scotland has unique and complex problems in relation to diet, obesity and certain food-borne diseases, which means that food safety and regulation should not be divorced from nutrition and labelling standards.

In that respect, FSS’s extended remit will require substantial extra resources. The financial memorandum states that there will be a direct transfer of existing staff from the FSA to FSS. However, the minister has indicated that the new body’s remit will go beyond that of the FSA’s functions. To that end, I hope that before stage 2 the Government will produce an update on the budgetary negotiations with the UK Government and give further assurances that future expansion of FSS’s role will be appropriately resourced.

As the Scottish Government 2010 report “Preventing overweight and obesity in Scotland” points out, evidence suggests that the provision of health information, although important, is not sufficient and that to make the changes necessary we have to reshape our living environment from one that promotes weight gain to one that supports healthy choices. By broadening the scope of FSS to prioritise an evidence-based approach that allows a greater understanding of what leads to poor diets and ill health, we can go beyond monitoring quality to promoting health and tackling health inequalities on a broader front.

However, it is important that any existing staff receive the appropriate level of upskilling to allow them to deliver any new changes. The concern that was reflected in a small number of the responses to the consultation was that it would perhaps be preferable to allow some time to pass, to allow the new body to bed in, before expanding the remit to include public health issues more generally. That is perhaps a prudent suggestion that may be worth considering as the bill moves forward. Indeed, there is much to be considered in the Scottish Government’s further suggestions on the additional work of FSS; many of them have merit, but perhaps all of them will require careful consideration as to what is feasible.

It has been suggested that the scope of the body could include considerations of environment, provenance, sustainability, food security or tracking and measurement of food poverty. The last suggestion is intriguing and I look forward to hearing more on how the additional work will link in with current responsibilities, and who within the new body will ensure that its role is co-ordinated with the NHS’s existing programmes and priorities. There is still a lack of clarity on that, and as the committee’s stage 1 report suggests, the onus is on the Scottish Government to take “any steps necessary to ensure that the work of FSS and the relevant NHS bodies is appropriately co-ordinated.”

Widening the scope of FSS provides an opportunity for the body to lead on a national response to the problem of food poverty, thereby helping to confront one of the most pressing public health problems that we face. There are various ways in which that may be achieved, but partnership working between local authorities and FSS is key.

Earlier this week the Finance Committee discussed the connection between national outcomes in the performance framework and implementing measures at local authority level.
There was a great deal of discussion as to how budgets could be allocated to combine national ambitions with effective partnership working, to achieve a healthier and more equal Scotland. That policy could be highly effective in challenging some of the major health problems that Scotland faces if it is implemented with the partnership working that local authorities desire.

As a nation, our relationship to food is fundamentally linked to many of our health issues. I hope that gaining an understanding that safety and regulation should not be divorced from nutrition and labelling will translate to a more holistic approach to maintaining standards and promoting health. On that basis I am happy to support the bill at stage 1.

15:48

Colin Keir (Edinburgh Western) (SNP): I thank Duncan McNeil for his convenership of the Health and Sport Committee as my colleagues on the committee and I went through the stage 1 process.

The bill has been one of the most interesting things that we have done. In effect, everyone thought that the Food Standards Agency and food standards Scotland were fairly standard things to have. However, the further we looked at the bill, the more problems were brought in, relating to the producer, at the low end, right the way up to the retailer, and how the people in the chain of supply felt about FSS. At what point should regulation kick in to penalise severely those who have done something wrong? Some believe that overregulation means that people are discriminated against. Some producers are looking for lighter-touch regulation, because they believe that local authorities already have enough power to do work within their companies.

The fact that there is no one view on this matter is what makes it so diverse. As the committee found on a number of occasions, everyone wants food standards Scotland, but there are differing views about what it should do. I had certainly never thought about issues such as the regulation of animal foodstuffs, which has been mentioned by various members, and we can take that all the way through to the vision that Christian Allard, with his years in the food industry, set out with regard to regulation. I think that it will be very difficult to secure absolute agreement from everyone.

In a very interesting trip that the committee made to Aberdeen earlier in the year, we not only talked to the Food Standards Agency and other organisations such as the Rowett institute of nutrition and health but ended up visiting Joseph Robertson (Aberdeen) Limited, a food processor in the area. As someone who, as members can imagine, has been no stranger to a fish supper over the years—perhaps I should stop eating them—I started to ask questions. Where does this fish come from? How is it identified and tracked? How do we ensure that it is quality food?

As far as food safety is concerned, we just do not realise what is going on. For example, I was astonished to find that, each year, food safety issues cost the economy something like £140 million and lead to the hospitalisation of 2,000 people. I could not quite get that into my head at the time. We simply do not realise the overall effect on the economy, never mind the food industry. Although, as many members have pointed out this afternoon, the food industry has a phenomenal reputation, we have still had to endure the Wishaw E coli outbreak and, of course, last year’s horsemeat scandal.

I am really interested in finding out how this legislation will be enforced. The retailers who made comments to us seemed to feel mildly discriminated against. However, as Bob Doris has said, the opposite view was taken by officers from Glasgow City Council, who said that fixed penalties—[Interruption.] Excuse me, Presiding Officer—I am suffering from a bit of a throat this week. The officers told us that the fixed penalties and compliance notices will be a fantastic boon to them. Their problem, however, is the cost of taking cases of food fraud and the like to court, only for the perpetrator to come out with a fine that barely dents their finances. We need to toughen up the system. If we do not, our reputation as one of the world’s great providers of quality food and the reputation of the associated industries will diminish, and our salmon will no longer be seen in France, for example, as being of the highest standard.

The question, then, is how we do all that, given the prevalence of European legislation. How do we take account of the fact that the horsemeat scandal, for instance, emanated from the continent? We need partnership working, and that applies as much to research. After all, bugs do not respect borders. We cannot act independently; we need partnership working, and that applies as much to research. After all, bugs do not respect borders. We cannot act independently; given the worldwide nature of the food processing business, we, too, need to look worldwide.

I do not want to go through everything that has been said this afternoon. All I will say is that I agree with virtually all of it and that I think that the bill’s principles are correct. The question is how we do all this without hurting people who are not at fault, how we track the perpetrators of fraud and how we ensure that issues such as the E coli outbreak in Wishaw and the 2013 horsemeat scandal are appropriately dealt with.

I support the bill’s principles.
The Deputy Presiding Officer (Elaine Smith): We still have a bit of time in hand. I can give the remaining speakers in the debate seven minutes each.

15:55

Jayne Baxter (Mid Scotland and Fife) (Lab): Thank you, Presiding Officer.

I thank the members of the Health and Sport Committee for their detailed consideration of the proposals in the Food (Scotland) Bill and for their report on the bill.

As members have often said, we are rightly proud of the quality of Scottish produce and of the many Scottish food and drink brands that are recognised across the globe. It is not just high-end brands that have a global reputation; members should remember how Irn-Bru and Tunnock’s teacakes took centre stage at the Commonwealth games opening ceremony—they are national icons.

Despite our international reputation for high-quality food and drink products and for products that are regularly found in the shopping trolleys of families throughout the UK, only 18 months ago reports of the horsemeat fraud filled the media and provoked widespread concern and uncertainty about the origin and quality of the food that is on sale across Scotland, whether it is intended for domestic consumption or for children in schools, patients in hospitals or residents in care homes.

The revelations focused public attention on how our food is produced and processed as it makes its way along the chain from source to store. The timely Scudamore report had been published some months earlier and contained proposals for the establishment of a Scottish food standards body. It was noted in the report that food safety in Scotland seems out of step with the position in the UK, only 18 months ago reports of the horsemeat fraud filled the media and provoked widespread concern and uncertainty about the origin and quality of the food that is on sale across Scotland, whether it is intended for domestic consumption or for children in schools, patients in hospitals or residents in care homes.

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The inspection and regulation of the food industry across the board, whether we are talking about supply and production or hospitality and catering services, are much needed. Therefore, I was worried to read about the concern that Unison expressed, in evidence to the committee, about cuts in recent years in the number of environmental health officers. Given the history of food safety in Scotland, it is vital that the food inspection workforce remains adequately resourced and supported. Further detail on such issues and other aspects of FSS’s work would be welcome as the bill progresses. I look forward to the issues being explored at stage 2.

A key objective of the new body will be: “to improve the extent to which members of the public have diets which are conducive to good health”.

As is the case with aspects of food standards Scotland’s administration and governance, the detail of how FSS will address Scotland’s dietary challenges needs to be explored further. I note that the Scottish Government has confirmed that the detail will be firmed up when the organisation is properly established.

It is vital that food standards Scotland’s powers to improve diet and nutrition are used and function well alongside the powers of, for example, the NHS. I look forward to learning more about how FSS will interact with existing bodies and stakeholders, including local government and the third sector, in improving the wellbeing of Scotland’s people.

Throughout Scotland there are examples of community-based food-growing projects, schools that work with parents to improve knowledge of nutrition and cooking, and projects that bulk-buy food and make it available to communities where the choice in local shops might be limited. I firmly believe that such initiatives have a big role to play in changing behaviour and raising awareness.

I hope that that will be recognised as we move forward, because we remain a nation that has worryingly high levels of obesity among men, women and children. Scottish health survey data indicates that in 2012 as many as one in six children were at risk of obesity. We are what we eat, but although that is perhaps irrefutable it is not enough in itself to influence behaviours and attitudes to food. I say that as a grandma who has been known to treat the family to a fast-food feast. Members should consider my use of the word “treat”, which says something about our attitudes to food. I confess that my grandchildren would probably choose the fast-food option over Grandma’s home cooking any day. The health implications of the food that we eat are huge and directly impact on day-to-day quality of life as well as long-term wellbeing.

At the time of the horsemeat fraud last year there was renewed focus on how people can access good-quality, affordable, fresh food. Many people simply have neither the money in their pocket nor the time in their day to pop along to their local organic market, even if such a thing exists in their area, and many people do not have the skills or equipment to produce a nutritious home-cooked meal. None of those are circumstances over which people might have much control, so realistic discussions are needed about how people access food in their communities and what choices are available.

We need to consider the quality of food when the consumer may be vulnerable and yet have
little choice available. Members will recall that there was widespread concern about the content of meals in schools, hospitals and care homes as well as about the meat that was being sold in supermarkets up and down the country.

That horsemeat fraud episode flagged up a clear breach of trust, which is why the bill’s provisions on food labelling are so important. We must be able to trace food back through the chain to the production stage—to the slaughterhouses and suppliers at the beginning of the process. Many of the problems last year were traced to international suppliers. There was a good response to that scandal, but I am keen to see clear measures on how we can prevent such incidents from ever occurring again.

Although there were some reservations from those who gave evidence, on the whole there has been clear support for the establishment of a separate food standards body and I am happy to lend my support to that. However, as others have noted, we must ensure that cross-border regulations work well and that Scottish producers are not faced with additional labelling burdens or different requirements if they are selling to markets in the rest of the UK.

16:01

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is a great privilege to represent the people of the north-east of Scotland, and of course it allows me to indulge my palate and pamper my digestion.

As I look across my constituency, I can eat smoked salmon from Portsoy that has been smoked using redundant whisky barrels from the local whisky industry with a variety of flavours. Is that not wonderful? I can go to my supermarket—I can go to any supermarket in these islands—and buy a ready meal that has been produced in Fraserburgh to high standards. I can eat haddocks that have come from Peterhead, and I can eat excellent beef, lamb and other meats—and increasingly the greengrocer has been supplanted by the butcher across my constituency.

Perhaps what I particularly enjoy is to go to Whitehills and buy, for a pound, the Cullen skink Scotch pie, which, popped in the microwave, under the grill or in the oven, is the most delicious Scotch pie people will ever have in their lives. If, perchance, the shop there is shut, I can go to the chip shop where Billy Gatt serves excellent fish and chips. I know that it is excellent because he also has a fishing boat that provides the fish. In the north-east of Scotland, we can do extremely well.

Bob Doris: I know that we have some time in hand, Presiding Officer, so I hope that you do not mind me making this intervention: does the member ever bring some of that produce to the Scottish Parliament?

Stewart Stevenson: I will take orders later. Downies of Whitehills will be delighted. I will say to members that they can go online and Downies will send orders to them. I genuinely encourage members to do that. The pie is superb.

For tonight’s tea, I will have a boiled egg from a chicken that is kept in an Edinburgh garden. A friend gave me the egg two nights ago.

Not all outcomes of consuming our excellent Scottish produce are entirely predictable. Once, as a very young lad, I was so attracted to the Victoria plums growing in our garden that the doctor had to be called because I had turned a rather delicate shade of purple—the plums were found to be the cause.

Richard Simpson talked about the demise of porridge. It has revived. I was brought up in Cupar in Fife, and Scott’s Porage Oats were produced on the doorstep in Cupar. Scott’s now produces excellent microwave porridge—it takes two minutes in the microwave and it has a little bit of soya in it to stop it boiling over. It is well worth trying. There are other suppliers; I do not focus just on that one—I hope that I have not cawed the feet from under my colleague who represents North East Fife—but porridge is still there and it is excellent. I have it every single day of my life, often with fruit, particularly Scottish berries.

We have talked about how difficult it is to cook. I was in the boy scouts—I will not be alone in that regard—and I started my cooking career there without a single implement of any kind: I threw an onion into a fire. I waited until it was really charred, then fished it out, peeled off all the burnt bits and was left with a semi-cooked onion that I could chew on. That was really very good for you, if not very good for your love life, but there we are. I can see looks of horror from members around the chamber. We moved on to wrapping potatoes in tin foil and throwing them in the fire; we could make baked potatoes without any implements.

Seriously, though, colleagues, let us show our youngsters that they can make a start in the business of cooking with the simplest of resources by just using what is to hand. What I described sounds funny, but it got the idea into me that I could cook. I hope that the FSS will do some work and suppliers at the beginning of the process.

To the production stage, to the slaughterhouses and suppliers at the beginning of the process. Many of the problems last year were traced to international suppliers. There was a good response to that scandal, but I am keen to see clear measures on how we can prevent such incidents from ever occurring again.

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Seriously, though, colleagues, let us show our youngsters that they can make a start in the business of cooking with the simplest of resources by just using what is to hand. What I described sounds funny, but it got the idea into me that I could cook. I hope that the FSS will do some work in that area, and I say to Jayne Baxter that people do not necessarily require any equipment in order to cook.

Let us have a wee think about some of the things that happen in our communities, particularly in rural areas. There is a lot of home-made produce—for example, jams and scones—found at coffee mornings, and home-made soup and...
sweets are a particular feature of life in the northeast. When we set up a regulatory regime, it is very important that we do not end up in a position whereby the sale of home-made food products becomes difficult. The vote in the recent referendum and in all elections in my area takes place in the Scottish Women’s Rural Institute hall at Hilltown, in the middle of nowhere, but the WRI has wonderful strawberry teas and so on there. Let us be careful that we do not do anything that might compromise that kind of voluntary activity.

There have been quite a lot of references to the quality of the Scottish food product. Unintended side-effects sometimes come from certain actions, and I refer particularly to the Immature Spirits (Restriction) Act 1915. That act was brought forward at the behest of Lloyd George to restrict the supply of spirits. They were kept in bonds for three years so that those in military towns and factories would have less spirits available and that sobriety would rule and productivity would rise.

That is neither here nor there, though, because the reality is that the 1915 act eliminated cheap rotgut whisky from the offering and laid the foundations for the export industry that is an important part of our economy to this day. Indeed, some brands of whisky still have the information on their label that they are “bottled ... under British Government supervision.”

That all stems from the 1915 act. Therefore, although it drove up the cost of whisky and created a certain set of problems, it ended up creating an industry with a worldwide reputation. As my intervention on Bob Doris illustrated, that industry is much copied, so we need to protect it very hard indeed. Claire Baker in particular raised that issue.

I suggest that the new FSS—food standards Scotland—has a role to play that I am not sure that I have seen clearly articulated in the work that has been done on the subject so far: it is how the FSS will respond to innovation in the food sector. We will not stand still in that regard, because if we do not move forward and continue to innovate, others will outcompete us.

I therefore think that the FSS must have more than simply a duty to regulate; it must also have an element of a duty to help and assist. In other words, as with the Scottish Environment Protection Agency now, it cannot just knock on someone’s door and tell them that they have a problem; it must work with people in the industry to help them develop a solution to the problem and take it away and share it with others in order to help them. That is one little point that the minister and others who are involved in the work on the FSS might care to think about.

I must say that I envy the minister because I have a suspicion that he will find himself visiting food producers in the course of his work, as I did when I was a minister. Perhaps he has done so already. When I was a minister, I got taken to a community garden in Monimail, which is in my colleague’s North East Fife constituency, where I was presented with a basket of fresh organic vegetables that had been harvested that day. The taste of that when I took it home was such that my wife said, “Where did you get this? Can you get some more?”

I regret that, as is usual, MSPs are not allowed to be appointed to the board of the new body, because I foresee the position of board member being greatly sought as they will be so close to the wonderful food that we produce in Scotland.

Like others, I am happy to see the bill brought to Parliament. I look forward to the debate here on in, and I will support the bill every inch and every bite of the way.

16:09

Roderick Campbell (North East Fife) (SNP): It is always a difficult job to follow Mr Stevenson. It is particularly difficult today, but he has expanded my knowledge by mentioning a piece of legislation of which I hitherto had no knowledge at all—the Immature Spirits (Restriction) Act 1915—which I shall remember for some time.

As someone who is not a member of the committee, I thank it for its sterling work on the bill. As has already been said, Scotland has a worldwide reputation for being the home of good food. Our food suppliers proudly trade in Scotland’s name in produce as diverse as meat and potatoes, desserts and other forms of confectionary. Like Stewart Stevenson, I represent a part of Scotland in which the food industry is vital. I assure Richard Simpson that the porridge oats industry is alive and kicking in North East Fife. The food industry is vital to the local economy and, indeed, to the Scottish national economy.

It is therefore imperative that the standard and safety of the produce is second to none. Scotland’s reputation in international food markets has suffered in the past due to events such as the BSE crisis, foot-and-mouth disease and the recent horsemeat scandal. It should of course be remembered that, in the products sampled by the Food Standards Agency on a UK-wide basis, no traces of horsemeat were found in any produce manufactured in Scotland. All 47 products found to contain horsemeat were from other parts of the United Kingdom. Nevertheless, we cannot be complacent when it comes to food standards in Scotland and we must learn from past mistakes. I therefore applaud the Scottish Government’s...
decision to accept the recommendations from the reporting groups led by Professor Jim Scudamore and Ray Jones, which were referred to earlier.

I agree with the conclusion reached by the Health and Sport Committee in its stage 1 report that the changes made in the UK have made it necessary for there to be a new food body in Scotland. The machinery of government changes made by the UK Government in 2010 that affected the FSA were criticised by Professor Scudamore in his earlier work. As far as I am aware, there is continuing disagreement down south between the FSA, which is continuing to demand that control be given back to it over authenticity and labelling policy, and other agencies of the UK Government.

The policy here is already a devolved matter, but, as Professor Scudamore warned, the consequences of the machinery of government changes were detrimental. I am sure that the Scottish approach that we have adopted is the correct one. Notwithstanding that, I hope that a suitable way forward is found in England following the publication of the Elliott review or, to give it its full title, the “Elliott Review into the Integrity and Assurance of Food Supply Networks—Final Report: A National Food Crime Prevention Framework”. One of the things that I am concerned about is that there should be no negative knock-on impact in Scotland as a result of continuing wrangling between DEFRA and the FSA.

I noted with interest that the majority of the respondents to the Scottish Government’s consultation on a new food body in Scotland were in favour of extending the remit of the new body at some stage and that those included all local authorities that responded. There appears to be a broad agreement that any extension of the remit should be done on the basis that it provides “improved strategic leadership and better co-ordination of multi-agency service delivery.”

That is an admirable aim.

Issues relating to food contamination, safety and standards have been well rehearsed in the debate. Many of the respondents to the Scottish Government’s consultation on creating the new food body recommended that the new food authority should have scope over aspects of food “from farm to fork”. Localising that work as far as possible would be very helpful. To that end, I share the sentiment expressed in Fife Council’s response, which stated that it believes: “the existing partnership between local authorities and FSA works well and this successful partnership approach in Scotland is the building block for a new body.”

I agree with that aim.

I welcome the enforcement provisions set out in the bill, particularly the power to seize and detain food that does not comply with food information law, as is currently the position in relation to unsafe food. It is quite clear that we all take it for granted that the food that we eat is safe. We assume that the food, in its packaging and on our plates, has come from reputable, reliable sources and will cause us no harm. However, as the minister said in his opening speech, for 50 people a year in Scotland food-borne disease proves fatal and 2,000 people each year need hospital treatment for it. Richard Simpson referred to the E coli outbreak in Wishaw, and we obviously do not want to go down that route again.

It is not only safety that the new body will be charged with overseeing. It will be charged with improving diet and nutrition and the extent to which members of the public have diets that are conducive to good health.

As many members will recall, we have previously discussed the Fife diet, and I make no apology for drawing members’ attention to it once again. Since October 2007, the Fife diet campaign has challenged people in Fife to eat locally sourced produce. The initiative has continued to grow and has encouraged people from further afield to try a locally sourced diet. One benefit is knowing exactly where the food we are eating has come from, tying in with the “from farm to fork” ethos that I have mentioned. That means that people know that the food that they are eating, which will generally be seasonal, will be of good quality and, most important of all, safe to consume.

The long-term effect of the diet will, I hope, be significant. I am aware that some stakeholders believe that the new body that is being created could go further in supporting the growth of the food and drink industry, but in my view the agency will have achieved a lot if it helps to improve Scotland’s diet, with the undoubted benefits to the health service and to the individuals concerned. Section 2(1)(c) mentions the objective: “to protect the other interests of consumers in relation to food.”

That is quite a wide-ranging objective and it gives every opportunity for the new agency to expand its role in the time to come.

This is an important bill and, when it is established, I wish the new agency well.

16:16

Lewis Macdonald (North East Scotland) (Lab): I have a number of perspectives on the debate: I was co-convener of the cross-party group on food in the last parliamentary session, I was minister with responsibility for the Food
Standards Agency in Scotland in the session before that, and I campaigned successfully for FSA Scotland to be based in Aberdeen back in 1999. From all those perspectives I think that the existing agency has been a success. It has been engaged with Parliament and other partners, it has been responsive to Government and public policy, and it has been an exemplar that makes the case for locating central Government agencies in cities and regions of Scotland outwith the central belt.

The Food Standards Agency was set up by the incoming Labour Government of 1997 at much the same time as it legislated for the Scottish Parliament. It is no coincidence that the inspiration to set up the FSA came from two leading academic experts in Aberdeen, the microbiologist Professor Hugh Pennington, who gave evidence to the committee’s inquiry this time round, and Professor Philip James, the then director of the Rowett Research Institute. Hugh Pennington led the inquiry into the E coli outbreak in Wishaw in 1996, and his report recommended the creation of a new food standards agency. Philip James had a report on how to do that on ministers’ desks within days of the 1997 election, and that report was then implemented to establish the FSA in the following couple of years.

Stewart Stevenson: I have an observation about the fallout from the E coli incident. It required butchers to raise their standards and separate uncooked meat from cooked meat. Curiously, it seems to have had the result across Scotland that, although there are fewer butchers, by investing and innovating, butchers are now much safer and are competing successfully with supermarkets. Sometimes, if a good central agency does its job well, it helps industry in a way that cannot always be foreseen, and that is an example.

Lewis Macdonald: I am grateful to Mr Stevenson for making that point; he is absolutely right. Earlier we heard criticism of enforcement in the fish processing industry and the same applies. Effective enforcement of the right regulations is good for the industry as well as for the consumer. Mr Stevenson is right to make that point.

The timetable for the establishment of the FSA meant that it was set up in Scotland as one of the first actions of the new devolved Government in 1999. The intention to locate FSA Scotland in Aberdeen was announced by the Scottish Executive in October 1999. The present headquarters at St Magnus house were opened in April 2000.

Professor James and Professor Pennington were only the best known of a substantial scientific research community in Aberdeen, which is what made the city the obvious choice of location for the agency, and which continues to support the work of the FSA in Scotland to this day.

It is striking to see how the institutional landscape of that research community has changed in the period of devolution, but it is even more striking to see how the scientific excellence that supports it remains of the highest order. For example, the Rowett institute is now part of the University of Aberdeen, but it continues to be a world leader in the science of nutrition and health. That was important in 1999 and it is even more important today, given that the bill proposes to strengthen the remit of Food Standards Scotland in relation to dietary health. The Marine Laboratory in Aberdeen is now part of Marine Scotland. It, too, continues to provide best-in-class expertise in a range of areas, such as safe consumption of shellfish. The former Macaulay Land Use Research Institute is now part of the James Hutton Institute, and the former Scottish Agricultural College is now part of Scotland’s Rural College. Again, both those bodies remain important partners for the FSA today, and for FSS in future.

That critical mass of scientific expertise is not gathered in and around Aberdeen by accident. As we have heard, the north-east has an exceptional concentration of primary food producers and food processing industries. That is ultimately what sustains Aberdeen as a centre of knowledge and of regulation.

Geography has also helped FSA Scotland to make a success of its Aberdeen base beyond the immediate city region. Ease of access to ministers and other stakeholders in Edinburgh and London has been important and will continue to be so. Whatever the institutional framework of the policy frameworks of the respective Governments, close partnerships and Scottish access to research excellence and food advisory bodies across the UK will continue to be vital to the effectiveness of FSS.

Another benefit that has been alluded to in part is the fact that food standards practitioners from other parts of Britain have come to Aberdeen and to Scotland to learn from the work that is done here. Not only is that good for those other regulators, as Bob Doris said, but it is also a source of informal influence beyond Scotland, which is very much in Scotland’s interest. I hope that it is something that ministers will also seek to maintain as the memorandum of understanding is put in place.

Quick and frequent transport links between Aberdeen and the northern isles have also been important to the success of the agency. FSA Scotland has had high levels of engagement with food producers and processors in Shetland and Orkney, to the benefit of the agency and those island communities. As a central Government
body that is located outwith the central belt, FSA Scotland has had, from the beginning, an outward-looking approach to engaging stakeholders across the Highlands and Islands and throughout Scotland. There is no culture of staying warm in an office close to the centres of power instead of getting out and engaging with the real world. FSA staff have always seen the whole of Scotland as their home patch, and I am confident that that culture will continue in a new agency based in Aberdeen.

Many of the strengths that FSS will inherit from FSA Scotland can be built on in the period ahead. For instance, the Rowett institute provides the scientific basis for the food and health innovation service, with funding from Scottish Enterprise. That brings together partners from across the UK. For example, Marks and Spencer’s “fuller longer” range of foods, which is available in stores throughout the UK, was developed with the active support of and advice from the Rowett institute. That is just one example of the excellent work that is done by the FSA’s partners in Aberdeen and which will continue to be available to the new FSS.

FSS will also want to maintain its strong partnerships with the local authorities in Aberdeen and Aberdeenshire, as well as with the food sector. I commend local councils for enforcing food safety regulations in the interests of consumers, and I support what Claire Baker and Nanette Milne had to say about the importance of properly resourcing that regulatory activity at all levels.

I hope that the minister will today reaffirm the Government’s commitment to meeting that resourcing challenge, its support for continuing partnerships in Scotland and beyond Scotland and its commitment to continue to deliver Scotland’s food standards from a new headquarters in Aberdeen. With those commitments, I believe that the bill will go forward with support from across the chamber.

The Deputy Presiding Officer: Before I call Gil Paterson, who is our final speaker in the open debate, I remind Parliament that members who have participated in debates are expected to be in the chamber for closing speeches.

16:24

Gil Paterson (Clydebank and Milngavie) (SNP): I am pleased to speak in the debate. Some of the points that I intend to raise have already been outlined by other members, so please bear with me. Some of the items are worth restating.

I praise those who are involved in the food and drink industry in Scotland for the positive effects that they bring to Scotland and our economy. Around the globe, their products are known, respected, trusted and enjoyed, which brings great advantage to the industry and the country’s economy. I believe that Scotland’s presence on the world stage in 2014, through the Commonwealth games, the Ryder cup, homecoming and even the referendum, will bring greater interest in our products.

We must give the industry the protection and security that it needs to put clear structures in place to ensure that standards remain as high as possible. I am pleased that the bill sets out the establishment of a single body—food standards Scotland—that has a clear responsibility for all aspects of food safety and standards, and I welcome the fact that, to gain trust and confidence not only in the food industry but among consumers, the new body will be independent, evidence based, transparent and accountable to the Parliament.

Over the past few years, there have been too many instances of trust between Governments, the food industry and ordinary people breaking down. All of us in the chamber will remember the mad cow disease epidemic during the 1990s, when British beef, including our own Scotch beef, was banned from a number of countries around the world. The horsemeat scandal was a more recent incident in which trust in our food produce was lost, with a detrimental impact on our economy. I am relieved that long-term trust was not damaged and that we came out of that much stronger.

I am fairly sure that having a single agency in charge of food safety and standards would have prevented those incidents from happening. The changes that have been carried out since then must continue to develop and adapt to new environmental conditions to ensure that we can combat any future issues. Through the measures in the bill, food standards Scotland will be given the appropriate enforcement powers to follow that through and maintain the trust of producers and consumers alike. There is no point in having a weak organisation to deal with such a vital component of day-to-day life. The people deserve nothing less.

The creation of appropriate non-criminal enforcement sanctions will go some way in that regard, as will the measures that allow officers to seize and destroy foods that do not meet food standards or labelling rules. Consumers will be comforted by the knowledge that the produce that they have purchased contains exactly what is outlined on the label and nothing else. That is a very important point to emphasis when building trust.

As I am a member of the Health and Sport Committee, my attention is drawn particularly to the measure relating to people in Scotland having
a nutritious diet. That is paramount in ensuring that our people live healthily and longer. Knowing what is contained in produce will help families to purchase goods that are of nutritional value, which will have a positive impact on the diets of the general population.

We have discussed at great length, not only in the Health and Sport Committee but in the chamber, the importance of tackling obesity and the health problems that are associated with it. I am pleased that the Scottish Government is taking the matter seriously. Scotland is not alone in experiencing the obesity crisis and we must learn from other countries. There must also be a Scottish dimension to any solution to this ever-increasing problem not only because of the impact that it is having on the health of our people but because of the impact that it will have on our health service in the long run.

My good friend Christian Allard said that he may not be particularly equipped to address matters of obesity. My guidance is that someone with a few pounds around their middle might be the very person to engage people who suffer from not being able to control what they eat. Food is like all addictions, so someone who has experienced that problem and has been carrying extra weight is, in my book, the very best person to do that.

Stewart Stevenson: With an increase in the consumption of microwavable meals and the different way in which microwaves cook food—from the middle outwards—I wonder whether some health issues arise from the fact that the outside of a microwaved meal may not be heated enough if not cooked properly, with some of the bacterial load not eliminated by the cooking process. Are there a wide range of issues related to the changes in our cooking habits that we need to look at in order to protect our health? We should look not simply at overconsumption but at how we cook, prepare and eat foods.

Gil Paterson: The member makes a good point because, in this modern life, people not only move so fast but may not take enough time to prepare their food. I have also learned that some families have not been engaged with and taught how to cook a meal. That is a serious issue for us all.

I will finish my little chat to my good friend. I suffer from an addiction to sweet things and Irn-Bru—I just cannot give them up. I am the wrong person to talk to someone else about weight because I am okay that way, but to try and control the sweets that I eat and the Irn-Bru that I drink is a hard job for me.

We have discussed that very issue at great length not only in the Health and Sport Committee but in the chamber. I hope that we are able to learn from those discussions and that we can make improvements to tackle the issue.

It has been estimated that the total cost of obesity to Scottish society in 2007-08 was in excess of £450 million and the public cost is expected to increase dramatically to £3 billion by 2030. Those are scary figures for the health service. The problem is of a truly serious nature and all must be done at Government and personal levels to tackle it.

An area of particular concern with unhealthy diets is the impact on those on low incomes.

The Deputy Presiding Officer: I ask the member to begin to draw to a close, please.

Gil Paterson: Surely. Thank you for being so patient with me, Presiding Officer.

I commend the bill to the chamber. I hope that it passes unanimously tonight.

16:32

Jackson Carlaw (West Scotland) (Con): After three frenetic weeks bashing round Scotland debating the great issue of our constitutional future, back we come to Holyrood, keen to involve ourselves in the business of Scotland, and what more thrilling prospect could there have been for the first piece of primary legislation to discuss than the Food (Scotland) Bill? It was the minister’s mission to make the debate as thrilling and exciting an opportunity for discussion as he could—a responsibility that he studiously sought to avoid, I thought, as the words “worthy”, “consensual” and “non-controversial” fought one another into an early grave. I make no criticism of him for that. Indeed, the Scottish Conservatives support the bill’s principles because its content and the various aspects to which members have referred throughout the debate are important.

A number of points arose that attracted my interest, and to which I will refer. The minister almost involved himself at some length in the tongue twister of the horsemeat labelling food fraud scandal, on which I waited for him to trip up from time to time. However, it was the fraud relating to horsemeat that was the problem. We are quite precious in this country about a number of issues. For example, in other parts of the world, people eat horses freely. In fact, this week, I saw in the papers that we are all being encouraged to eat Dartmoor ponies as the only way to make the species sustainable.

The minister said that labelling would prevent fraud. I am not sure how that would necessarily come about. The testing of products to ensure that what we are getting is what the labels say is in them will always be key; that is what is particularly important. I am grateful to Duncan McNeil, who set
out the work of the Health and Sport Committee in that respect, which demonstrated that he felt that the consultation had been wide.

Stewart Stevenson: Will Jackson Carlaw take a brief intervention?

Jackson Carlaw: I ask Stewart Stevenson to let me wait until I get further on, because his interventions have lasted about half an hour, on each occasion.

Your predecessor in the chair today, Presiding Officer, referred to Mr McNeil’s “punnet of puns”. We had “meat in the sandwich” and “food for thought” and, at one point, Mr McNeil got quite confused between his FSSs, FSAs, SFSs and, potentially, SFAs—I think that we almost got round to those. However, he made important points about board accountability and the composition of the board, which the minister already recognises.

I will focus on an area on which Richard Simpson touched: diet, which is undoubtedly one of the most important issues. When the Parliament first met in 1999, dementia and obesity were rarely, if ever, discussed. They are now two colossal pillars of the health challenges that the NHS has ahead of it and have, in essence, emerged during the lifetime of the Parliament. With 250,000 people having type 2 diabetes and an estimated cost of £3 billion a year by 2030, obesity is one of the great challenges.

I will concentrate on diet because Dr Simpson and Mr Stevenson touched on porridge. Porridge is one of the foodstuffs that has been corrupted. Instant porridge, which many people buy—on the supermarket shelves, we see dozens and dozens of varieties—is absolutely thick with sugar substitute. If we look, we find, compared to the natural product, something like 26g to 45g of sugar in each portion that is served. We need to spend a lot more time analysing and drawing attention to that concentration of sugar. Our focus has been on a low-fat diet without recognising that instant porridge and low-fat yoghurts, for example, are absolutely rich in sugar substitute. I know that everybody who has time should make their own porridge, but I had to look very hard to find an instant porridge that does not have a lot of sugar in it. I recommend that porridge be stuffed up with blueberries and raspberries; everybody will be very much better off as a result.

Jayne Baxter and Aileen McLeod also referred to the importance of diet. It is our responsibility to inform; we must not allow the diet that individuals consume to become our responsibility. Everybody must remember that they themselves have responsibility for their diet. If we simply allow it to become a transferable responsibility of the Government, we will do the public a disservice.

Christian Allard made a fine speech. It came from his 30 years of experience in the food industry. He made particular points about food labelling and, as a businessman from the food industry, made an important point in saying that the good intentions of politicians do not always take into account the practical realities of having to deal with all the food labelling responsibilities that are then placed on retailers. We should be mindful of that.

He referred to his visit—I think that it was a private one—to Joseph Robertson (Aberdeen) Ltd. I have seen the photograph in the report. Aileen McLeod, Duncan McNeil, Richard Simpson and Richard Lyle, who is not in the chamber, all look very fetching in their Wellington boots, plastic hats and coats. I can see why Richard Lyle is not here, having seen his photograph in that report.

Bob Doris quoted the Scottish National Party’s new favourite retailer, Tesco, which was interesting to hear. Malcolm Chisholm drew attention to important matters on future research.

Stewart Stevenson also made an important point; he talked about soup and sweet, which I hope is not the Aberdeen way of saying, “You’ll have had your main course.” He also talked about ensuring that regulation does not become an unintended food hazard. That is an important consideration as well. We do not want that to come about.

We must twin diet and the food agenda that we are addressing today with exercise, which is a related—but indirectly so—aspect of ensuring that people are healthy in the future.

I also pay tribute to Colin Keir, Roderick Campbell, Claire Baker, Lewis Macdonald and Gil Paterson for their contributions to the debate.

There are issues that we would like to be addressed at stage 2. We are slightly concerned about the ability to give notice about or seize food that may contravene food information law, and we want to be sure that there will be a right of appeal. Whether labelling has complied with regulation could be quite subjective, and there could be an element of interference and waste. We also want to ensure that the fixed penalties do not become something that people absorb as a cost deliberately to frustrate the legislation.

However, we are happy to support the bill at stage 1.

16:40

Rhoda Grant (Highlands and Islands) (Lab): I join other members of the committee in thanking witnesses, those who facilitated the committee’s visit to Aberdeen, those who submitted evidence
and the clerks and committee staff who co-ordinated all that work.

We are supportive of the general principles of the bill and recognise the need for it. We need to have a robust regulatory regime that protects our consumers. As well as protecting consumers, high standards promote our producers and, indeed, our products, as Claire Baker made clear.

We should not be surprised that members have taken the opportunity to talk about their favourite brands, which include some of our iconic brands, such as Scottish salmon and Johnnie Walker whisky. Jayne Baxter mentioned Irn-Bru and Tunnock’s teacakes, and Stewart Stevenson spoke about enjoying a cullen skink Scotch pie, which was a new one on me. That tells us more about the Scottish diet than anything else, but according to the old adage that a little of what you fancy does you good, any pleasure that someone who eats that in moderation gets might offset the detriment, if they are very careful.

That said, it has been a serious debate, in which we have considered the public health role of food standards Scotland. Many members have talked about the Scottish diet and health and obesity in our nation. Mention has been made of the need to address the issue, and the fact that the new body might have a health promotion role has been welcomed. It would have to exercise that role alongside other players in the area, such as the health service and local government. As Jayne Baxter said, we need to ensure that that activity is co-ordinated and that there is no duplication of effort, but given the enormity of the problem that we face, it is important that FSS has such a role.

Richard Simpson talked at some length about the health issues that we face with obesity, diet and portion size. He also talked about his proposed limit on trans fat member’s bill. What a difference that would have made to our diet. We know that cheap food tends to be high in fat and sugar because that improves the taste, but it can also be hugely harmful to health. I think it was Jackson Carlaw who pointed out that sometimes food that is described as healthy because it is low fat is extremely high in sugar. We need to be very careful that that does not have a health consequence. People might think that they are making the right food choices when in fact they are doing more harm than they would have hoped.

Malcolm Chisholm mentioned food poverty, which is an extremely important issue. The existence of food poverty emphasises the need for local authorities to work with FSS and health boards to ensure that people who live in poverty can access good, healthy food, because cheap food tends to be the most unhealthy food. On that topic, Jayne Baxter talked about community food initiatives. The committee’s visit to Aberdeen included a visit to Community Food Initiatives North East. We saw some of the work that it is doing to provide healthy food and to promote healthy food choices; in addition, it operates a food bank.

It is good that the committee went to Aberdeen and the north-east for all the reasons that Lewis Macdonald identified. The area is a centre of excellence for food production, safety and research. Our visit was extremely useful. We met some of the organisations that Lewis Macdonald spoke about at some length in his speech and they made a great contribution to the committee’s deliberations on the bill.

An issue that has not come up as much as it might have done is the funding of the new agency. Nanette Milne mentioned that negotiations are going on with the UK Food Standards Agency regarding the proposed new body in Scotland. It is to be hoped that matters will be resolved and that FSS will get a satisfactory financial settlement. That would be welcomed by everyone in the chamber.

If the new agency is provided with the finance that is currently enjoyed, it will be able to continue with the current role. However, if it is to take on new roles in areas such as public health, more funding must be put in place. The Scottish Government has acknowledged that it would need to provide more funding, but there are no real assurances in that regard in the bill. We need to get those assurances to ensure that any extension of responsibilities is fully funded so that, as Malcolm Chisholm noted, the agency can carry out any extra functions.

Other members, such as Claire Baker, mentioned funding for the local authority role in consumer protection and food safety. Responsibility for those areas falls on local government, but local authority budgets are being tightened. It is not enough for us just to look at the funding for food standards Scotland—we also need to consider the funding for the other organisations that have a lead role in protecting consumers and promoting public health and safety. That includes meat inspectors, who do a good job, as members have mentioned, but who are very thinly spread. If we are going to take food standards seriously, we must ensure that funding goes to those organisations as well as to food standards Scotland, and that the bodies all work together to bring about good outcomes for consumers.

We have heard a lot of talk about the need for robust labelling. As we saw with the horsemeat scandal, it is very easy to put a different, cheaper product into food in order to provide profits for those who produce that food. Roderick Campbell mentioned that none of the affected food was...
traced back to Scotland, perhaps because we already enjoy a good regulatory and labelling regime that prevents such things from happening. However, we cannot afford to be complacent.

On the committee’s trip to Aberdeen, we visited Joseph Robertson (Aberdeen) Ltd and saw how its food labelling worked, and the efforts that the company made to ensure food security. Any products that could cause an allergic reaction were used towards the end of the week when all the other food had already been produced. There was a huge amount of effort, precision and programming going on to ensure that the labelling was correct, that the food was secure and that the description on the tins matched what was inside. It was a very useful visit.

However, we understand that producers are concerned about food labelling and the need for a compatible regime throughout the UK, so it is good that there is a memorandum of understanding on those issues. That will bring the protection that we want, and the safeguards that the industry wants, to ensure that we can be proud of our products.

There was some discussion about fixed-penalty notices. Having fixed penalties means that lesser infringements can be dealt with quickly and more easily, and that the process is streamlined, which may free up inspectors to go on to the more difficult business. However, I welcome the fact that we are considering an appeals process, because it is very important that people have the right of appeal if a mistake is made, and such a process would put checks and balances in the system. We look forward to seeing what that process will look like as the bill progresses through the Parliament.

There has been discussion about the size of the board, which was an issue that raised some concerns during the committee’s deliberations. As Duncan McNeil said, we have received reassurances from the Scottish Government that the board will be of a size that will allow it to do its job. We must be careful that the board focuses on consumer protection rather than being industry led; there are a lot of concerns in that regard.

That does not mean, as Claire Baker pointed out, that the board cannot have an employee director, which would make a huge difference. The Government welcomed the recommendations of the Mather commission in that respect, and it would be a welcome step forward if the new body was one of the first to implement them. It is very important to have employees involved.

The Deputy Presiding Officer: I ask the member to draw to a close, please.

Rhoda Grant: Sorry, Presiding Officer—I thought that I had a lot more time, but, as often happens, it has run away.

Partnership working will be at the very forefront of how food standards Scotland operates, and we emphasise that, while agreeing to support the bill and its general principles.

16:49

Michael Matheson: I thank everyone for their contributions to the debate. A range of very good points has been made. I welcome the broad cross-party support for the establishment of food standards Scotland and for the bill.

Duncan McNeil set out in a very fair way the broad areas that the legislation will provide for, and he rightly highlighted the various views that exist on the creation of food standards Scotland. I recognise that not everyone in the sector believes that its creation is the right thing to do for their particular purpose, although the vast majority believe that it is the right thing to do. However, I am sure that all members recognise that we have arrived at this particular point not because of a failing on the part of the FSA but because of changes that have taken place elsewhere and because the expert group—not just Professor Jim Scudamore, but also the other representatives on his expert group—came back with the recommendation on how we need to respond to the matter. We took that on board and introduced the bill.

We have therefore arrived where we are with very good reason, and it is incumbent on us to ensure that we take the bill forward in an appropriate way. We will ensure that we get the provision on food safety in Scotland that we require.

Duncan McNeil made a number of very important points about where FSS needs to sit with the rest of the regulatory bodies and functions that already exist. Its partnerships with the FSA in the rest of the UK and other representative organisations in the rest of Europe and beyond are absolutely critical. Alongside that, there are our local authorities, health boards, producers and retailers and the roles that they all have in food safety and production in Scotland. FSS has an important role to play, and we will need to ensure that it fulfils it effectively and in an appropriate way.

I hope that members are reassured by the memorandum of understanding on a range of issues that we are taking forward with the UK Government. I believe that it will be a very productive way for us to continue what has been, from the process that we have gone through to establish food standards Scotland, very cordial and responsive engagement with each other in taking the whole area of policy forward.
Richard Simpson and a number of other members raised the very important issue of dietary improvement and how FSS can assist in coordinating the whole approach to tackling dietary issues and improving nutrition. We made provision in the bill to give FSS a very clear strategic role that no other body in the country currently has in order to help to drive that agenda forward.

Richard Simpson made a very good point about the need to tackle issues related to salt, sugar and fat in our diet. The FSA has taken forward a range of work over a number of years in which it has made progress. For example, it would be fair to say that many of our big supermarket retailers, including Asda and Tesco, have adjusted and reformulated their own products to reduce things such as salt, fat and sugar in their products.

We have made less progress with branded products. Indeed, I think that we are getting to the point at which we must ensure that retailers recognise that they are part of the solution in dealing with our nutritional challenges and dietary problems in Scotland, and in tackling obesity. The issue is a societal one, and our retailers and food producers have to play their part in helping to overcome it. FSS has an important role in helping us to ensure that that happens effectively in Scotland.

Richard Simpson and several other members raised the issue of the potentially wider remit of FSS. When we decided to take forward the bill, I was clear that I wanted to protect our reputational integrity in Scotland for good food products, and I wanted to ensure that we protected the first-class work that is currently taken forward by the FSA in Scotland to ensure that there was no loss of public confidence as we moved to a new public body.

That is why we have taken a cautious approach. We have done so to ensure that we get the things that the FSA does just now right in the new body so that there is no question about its role and people having confidence in it. We have created a footprint in the bill that allows us to expand and develop the body as we move forward.

If we do that, we will rightly have to look at the resource implications, to which members have referred. Nanette Milne referred to obesity and nutrition and she touched on funding. It is important to recognise that we already fund the Scottish proportion of the FSA’s activity. We fund it at Scottish level and we pay a central amount to the UK body for some of the centralised roles that it undertakes. Therefore, the budget for the FSA in Scotland is already part of the Scottish Government’s health budget, and it will go to FSS.

The issue on which we are still in negotiation is moving some of those centralised functions that we already pay for into the Scottish organisation. I am confident that we will reach an agreement on that. I assure members that FSS will have the budgets that are required for it to undertake the functions that the FSA presently undertakes. If we choose to change those functions, the Government of the day, of whatever party, will have to consider the resource implications.

Aileen McLeod highlighted the importance of research in the food and animal health sector. As a number of members rightly pointed out, it is important that FSS can participate in research programmes at UK level. It is also important that we have access to expert advice, as we intend and have agreed with the FSA, but it is equally important that we provide access to the expert advice that comes from Scotland. As Lewis Macdonald highlighted, Scotland already provides expert advice on nutrition and dietary issues and, in particular, on shellfish and E coli, and our intention is for that to continue. We also intend that we will be able to participate in research programmes at European level, where there is a range of work to which we can contribute.

Claire Baker raised the issue of an employee director. That is a good and fair point to which we are sympathetic given our track record on health bodies, which have an employee director appointed to the board by ministers. The reason why we cannot make a decision on that now is that we do not have a chief executive, a chair and a board in place, but I reassure the member that, given our track record with present health bodies, I would like that approach to be reflected in FSS, because an employee director can have a valuable role in a national organisation.

Claire Baker also raised a valid point about EROs, our environmental health officers. I should say EHOs, not EROs—that is what happens when you get caught up in referendums. The administrative fixed-penalty regime will help to relieve some of the burden on our EHOs. When they want to take forward an issue, that often involves a report to the procurator fiscal, submitting further reports and then a wait for the matter to go to court. It can sometimes take more than a year or two before a case even gets to court. The fixed-penalty scheme will allow us to release some of that burden, which is why some of our EHOs have welcomed the measure. It will allow them to be much more responsive and to move on to other issues.

We also have to consider the testing that our EHOs undertake. We can use different models for that. We could have testing that is controlled more centrally by FSS, working with local authorities and funding them for the purpose of undertaking the testing. However, we need to ensure that we have good data collection at national level. There
are a variety of options that we can consider pursuing to help to address some of the issues.

A number of members talked about an appeals mechanism for the fixed-penalty scheme. We have to be careful not to get into a situation in which there is an expectation that every fixed-penalty notice can be appealed, as that could draw the whole system to a halt because of repeated appeals.

At present, if someone is stopped by the police and offered a fixed-penalty notice for a driving offence, they have the right to refuse that. If they refuse it, a report goes to the procurator fiscal and eventually the matter will go to court, where the person can then argue their case.

There is an element in this process that, if someone is issued with a fixed penalty notice and they disagree with the EHO, they can refuse it. The matter would then go to the procurator fiscal and the fixed penalty notice could be challenged in court. We need transparency and a consistent approach from local authority to local authority to how the measures are applied. However, I strike a note of caution to those who call for an overall process of appeal.

I have not been able to go through all members’ very valuable points, but we will consider them as we move forward with the bill. I want to finish with this point: our staff in the FSA in Aberdeen do a fantastic job for us. I am very proud of the job that they have done over a number of years. This has been a difficult time for them, with the uncertainty of moving to a new body. I am sure that all members will want Parliament to send out a clear message that we value their work and that, as we move towards establishing food standards Scotland, we will make sure that they will be able to continue to undertake that valuable work.

**Food (Scotland) Bill: Financial Resolution**

17:01

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-10555, in the name of John Swinney, on the financial resolution to the Food (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Food (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[Michael Matheson.]

The Presiding Officer: The question on the motion will be put at decision time.

**Decision Time**

17:01

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today’s business. The first question is, that motion S4M-11048, in the name of Michael Matheson, on the Food (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Food (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-10555, in the name of John Swinney, on the financial resolution to the Food (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Food (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

Meeting closed at 17:01.
Food (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 58 Schedule
Sections 59 to 63 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 3

Aileen McLeod

49 In section 3, page 2, line 7, leave out <significantly>

Aileen McLeod
Supported by: Michael Matheson

50 In section 3, page 2, line 12, after <of> insert <, and promote best practice by,>

Section 4

Aileen McLeod

51 In section 4, page 2, line 27, at end insert—
   <( ) treats the interests of consumers as its primary consideration,>

Aileen McLeod

52 In section 4, page 2, line 35, at end insert—
   <( ) consulting consumers and representatives of consumers,>

Aileen McLeod

53 In section 4, page 2, line 37, at end insert—
   <( ) unless subsection (2A) applies, holding all meetings of Food Standards Scotland,
   and all meetings of any committee established by it, in public,>

Aileen McLeod

54* In section 4, page 2, line 39, at end insert—
   <(2A) Food Standards Scotland or any committee established by it may decide to hold all or
   part of any meeting in private where—
   (a) the matter under discussion relates to personnel issues, or
   (b) it considers that other exceptional circumstances apply.>
(2B) Where a decision is taken under subsection (2A) to hold all or part of a meeting in private, the grounds for that decision must be made publicly available.

Section 6

Aileen McLeod
55 In section 6, page 3, line 30, leave out <3> and insert <5>

Aileen McLeod
56 In section 6, page 3, line 31, at end insert—
   <( ) At least 2 of the members appointed under subsection (1)(b) must be persons who appear to the Scottish Ministers to have particular experience or knowledge of consumer affairs.>

Dr Richard Simpson
36 In section 6, page 3, leave out line 37

Dr Richard Simpson
37 In section 6, page 3, leave out line 38

Aileen McLeod
57 In section 6, page 4, line 2, after <Scotland> insert—
   <( ) based on merit through an open appointment procedure, and
       ( )>

Aileen McLeod
58 In section 6, page 4, line 3, at end insert—
   <( ) In appointing members of Food Standards Scotland, the Scottish Ministers must have regard to the balance of expertise, skills and experience required by members to ensure that Food Standards Scotland operates in a way which treats the interests of consumers as its primary consideration.>

Dr Richard Simpson
59 In section 6, page 4, line 5, at end insert—
   <( ) The Scottish Ministers must make the names of all applicants for membership of Food Standards Scotland publicly available.>

Aileen McLeod
60 In section 6, page 4, line 6, leave out <such period> and insert <a period not exceeding 4 years specified in the appointment>
Aileen McLeod

61 In section 6, page 4, line 9, after <re-appointed> insert <once>

Section 7

Dr Richard Simpson

38 In section 7, page 4, leave out line 28

Dr Richard Simpson

39 In section 7, page 4, leave out line 29

Dr Richard Simpson

40 In section 7, page 4, line 34, at end insert—

<( ) has, without good reason, been absent from at least one third of the meetings held in any 12 month period,>

Section 11

Michael Matheson

1 In section 11, page 5, line 26, leave out subsection (2)

Section 12

Aileen McLeod

62 In section 12, page 5, line 31, at end insert—

<( ) A committee established by Food Standards Scotland must include as a member at least one person who appears to have particular experience or knowledge of consumer affairs.>

After section 12

Michael Matheson

2 After section 12, insert—

<Validity of things done

The validity of anything done by Food Standards Scotland or its committees is not affected by—

(a) a vacancy in membership,

(b) a defect in the appointment of a member,

(c) a person’s membership having ended under section 7.>
Section 13

Michael Matheson
3 In section 13, page 6, line 11, at end insert <, or
   (c) (subject to subsection (3)) a member of its staff.>

Michael Matheson
4 In section 13, page 6, line 12, leave out subsection (2)

Michael Matheson
5 In section 13, page 6, line 16, leave out <(2)> and insert <(1)(c)>

Michael Matheson
6 In section 13, page 6, line 19, leave out <subsection (1) or (2)> and insert <this section>

Section 14

Dr Richard Simpson
41 In section 14, page 6, line 25, after <publish> insert <online>

Dr Richard Simpson
42* In section 14, page 6, line 37, leave out from <, and> to end of line 38

Dr Richard Simpson
43 In section 14, page 7, line 3, leave out <a> and insert <an electronic>

Dr Richard Simpson
44 In section 14, page 7, line 4, leave out <a> and insert <an electronic>

Dr Richard Simpson
45 In section 14, page 7, line 5, leave out <may> and insert <must>

Dr Richard Simpson
46 In section 14, page 7, line 5, leave out <a> and insert <an electronic>

Section 15

Dr Richard Simpson
47 In section 15, page 7, line 12, at beginning insert <unless otherwise approved by the Scottish Ministers,>
Section 16

Michael Matheson

7 In section 16, page 7, line 38, at end insert—

<( ) In the Public Records (Scotland) Act 2011, in the schedule (authorities to which Part 1 applies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”>

Michael Matheson

8 In section 16, page 7, line 38, at end insert—

<( ) In the Regulatory Reform (Scotland) Act 2014, in schedule 1 (regulators for the purposes of Part 1), before the entry relating to Healthcare Improvement Scotland insert—

“Food Standards Scotland”>

Michael Matheson

9 In section 16, page 7, line 38, at end insert—

<( ) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13A insert—

“13B Food Standards Scotland”>

Section 20

Aileen McLeod

63 In section 20, page 9, line 26, at end insert—

<( ) requiring any person carrying on a business which is the subject of the observations to provide testing data, analysis and results generated or used by the business, and information on the source of such data, analysis and results,>

Section 29

Michael Matheson

10 In section 29, page 14, line 8, at end insert—

<( ) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).>

Section 31

Michael Matheson

11 In section 31, page 15, line 3, leave out <under> and insert <conferred by>
Section 34

Michael Matheson
12 In section 34, page 19, line 10, after <equivalent> insert <or reasonably similar>

Michael Matheson
13 In section 34, page 19, line 12, at end insert—

<(  ) But an order under subsection (1) may not make provision creating an offence which is—

(a) punishable with imprisonment for a period of more than 2 years, or
(b) punishable on summary conviction with—

(i) imprisonment for a period of more than 12 months, or
(ii) a fine of more than £20,000.>

Section 48

Michael Matheson
14 In section 48, page 24, line 18, leave out <this section> and insert <subsection (1)>

Michael Matheson
15 In section 48, page 25, line 2, leave out <this section> and insert <subsection (1)>

Michael Matheson
16 In section 48, page 25, line 2, leave out second <under> and insert <referred to in>

Michael Matheson
17 In section 48, page 25, line 4, at end insert—

<(  ) But regulations under subsection (1) containing provision referred to in subsection (2)(a) may not modify section 37 or 44 in such a way that a person may be convicted of a relevant offence arising out of an act or omission if the person, having been issued with both a fixed penalty notice and a compliance notice—

(a) makes payment in accordance with the fixed penalty notice, and
(b) complies with the requirements of the compliance notice or though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice.>

Section 50

Michael Matheson
18 In section 50, page 25, line 25, leave out <, and from time to time revise.>
Michael Matheson

19  In section 50, page 25, line 27, at end insert—

<(1A) The Lord Advocate must publish any such guidance (in such manner as the Lord Advocate considers appropriate).

(1B) Subsection (1A) does not apply to the extent that the Lord Advocate considers that publication would, or would be likely to, prejudice—

(a) the effective exercise of the functions of enforcement authorities, or their authorised officers, under this Part,
(b) the prevention or detection of crime,
(c) the apprehension or prosecution of offenders, or
(d) the administration of justice.>

Michael Matheson

20  In section 50, page 25, line 29, leave out <or revised guidance>

Michael Matheson

21  In section 50, page 25, line 29, at end insert—

<( ) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).>

Section 52

Michael Matheson

22  Leave out section 52 and insert—

<Meanings of “food” and “animal feeding stuffs”

(1) In this Act—

“food” has the same meaning as in Regulation (EC) No. 178/2002 (as at 7 December 2004),

“animal feeding stuffs” means feeding stuffs for any description of animal.

(2) The reference in subsection (1) to “feeding stuffs” includes any nutritional supplement or other similar substance which is not administered through oral feeding.>

Section 54

Aileen McLeod

64  In section 54, page 26, line 22, at end insert—

<( ) wider social and ethical considerations relevant to food.>
Section 57

Dr Richard Simpson

48* In section 57, page 27, line 15, at end insert <(including an electronic communication).>

Michael Matheson

23 In section 57, page 28, line 12, at end insert—

Schedule

Michael Matheson

24 In the schedule, page 31, line 3, at end insert—
<Agriculture Act 1947
  In section 80 of the Agriculture Act 1947, after paragraph (e) insert—
  “(f) to Food Standards Scotland for purposes connected with the carrying out of any of its functions.”.>

Michael Matheson

25 In the schedule, page 31, line 3, at end insert—
<Agricultural Statistics Act 1979
  In section 3(2) of the Agricultural Statistics Act 1979, after paragraph (g) insert—
  “(ga) to Food Standards Scotland for purposes connected with the carrying out of any of its functions.”.>

Michael Matheson

26 In the schedule, page 31, leave out lines 14 to 22

Michael Matheson

27 In the schedule, page 31, line 22, at end insert—
<( ) In section 6, after subsection (4) insert—
  “(4A) In the application of subsections (3) and (4) to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

( ) In section 13, after subsection (7) insert—
  “(8) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.>
Michael Matheson

28 In the schedule, page 31, line 37, at end insert—

< ( ) In section 40, after subsection (5) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

( ) In section 41—

(a) the existing provision becomes subsection (1),
(b) after that subsection insert—

“(2) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

( ) In section 41, after subsection (1) insert—

“(1A) In the application of subsection (1) to Scotland, the reference to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

( ) In section 42, after subsection (1) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

Michael Matheson

29 In the schedule, page 32, line 2, at end insert—

<Environmental Protection Act 1990

(1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 108, after subsection (10) insert—

“(11) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(3) In section 111, after subsection (11) insert—

“(12) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(4) In section 126, after subsection (8) insert—

“(9) In the application of this section to Scotland, the reference in subsection (8) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

Michael Matheson

30 In the schedule, page 32, line 2, at end insert—

<Radioactive Substances Act 1993

(1) The Radioactive Substances Act 1993 is amended as follows.

(2) In section 16, after subsection (4A) insert—
“(4B) In the application of this section to Scotland, the references in subsection (4A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(3) In section 17, after subsection (2A) insert—

“(2B) In the application of this section to Scotland, the references in subsection (2A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(4) In section 25, after subsection (3A) insert—

“(3B) In the application of this section to Scotland, the references in subsection (3A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

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Michael Matheson

31 In the schedule, page 32, line 2, at end insert—

<Environment Act 1995

In section 42 of the Environment Act 1995, after subsection (11) insert—

“(12) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.>

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Michael Matheson

32 In the schedule, page 32, line 17, at end insert—

<Regulatory Reform (Scotland) Act 2014

In schedule 1 to the Regulatory Reform (Scotland) Act 2014, the entry for the Food Standards Agency is repealed.>

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Section 59

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Michael Matheson

33 In section 59, page 29, line 13, at end insert—

<( ) regulations under section 48(1) which modify section 37 or 44,>

Michael Matheson

34 In section 59, page 29, line 13, at end insert—

<( ) regulations under section 48(5),>

Michael Matheson

35 In section 59, page 29, leave out line 14
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Food Standards Scotland: functions relating to, and representation of, consumer interests**
49, 51, 52, 56, 58, 62, 64

**Promotion of best practice in enforcement of food legislation**
50

**Meetings of Food Standards Scotland to be public**
53, 54

**Members of Food Standards Scotland: number, disqualification, method and period of appointment etc.**
55, 36, 37, 57, 59, 60, 61, 38, 39, 40

**Validity of proceedings of Food Standards Scotland**
1, 2

**Delegation of functions to staff of Food Standards Scotland**
3, 4, 5, 6

**Electronic publication and laying of annual reports etc., and other electronic communications**
41, 42, 43, 44, 45, 46, 48

**Power of Food Standards Scotland to charge for facilities and services**
47

**Application of legislation relating to public bodies to Food Standards Scotland**
7, 8, 9
Power to require provision of testing data etc.
63

Revision and publication of guidance
10, 18, 19, 20, 21

Establishment of Food Standards Scotland: consequential changes
11, 24, 25, 27, 28, 29, 30, 31, 32

Power to regulate animal feeding stuffs
12, 13

Administrative sanctions: power to make supplementary etc. provision
14, 15, 16, 17, 33, 34

Meaning of “food” and “animal feeding stuffs”
22, 23, 26, 35
Present:

Bob Doris (Deputy Convener)  Rhoda Grant
Colin Keir                  Richard Lyle
Aileen McLeod              Duncan McNeil (Convener)
Nanette Milne              Gil Paterson
Dr Richard Simpson

Food (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 50, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35.

The following amendments were disagreed to (by division)—

51 (For 3, Against 5, Abstentions 1)
52 (For 3, Against 5, Abstentions 1)
53 (For 4, Against 5, Abstentions 0)
54 (For 4, Against 5, Abstentions 0)

Amendment 49 was moved and, following a division (For 6, Against 2, Abstentions 1), withdrawn.

The following amendments were moved and, no member having objected, withdrawn: 55, 41, 47 and 63.

The following amendments were not moved: 56, 36, 37, 57, 58, 59, 60, 61, 38, 39, 40, 62, 42, 43, 44, 45, 46, 64 and 48.

The following provisions were agreed to without amendment: sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51, 53, 54, 55, 56, 58, 60, 61, 62 and 63, and the long title.

The following provisions were agreed to as amended: sections 3, 11, 13, 16, 29, 31, 34, 48, 50, 52 and 57, the schedule and section 59.

The Committee completed Stage 2 consideration of the Bill.
On resuming—

**Food (Scotland) Bill: Stage 2**

The Convener: Agenda item 7 is stage 2 consideration of the Food (Scotland) Bill. Members should have a copy of the groupings and the marshalled list. I welcome the Minister for Public Health, Michael Matheson, and his officials.

Sections 1 and 2 agreed to.

**Section 3—General functions**

The Convener: Amendment 49, in the name of Aileen McLeod, is grouped with amendments 51, 52, 56, 58, 62 and 64.

Aileen McLeod (South Scotland) (SNP): The majority of the amendments that I have lodged for the committee’s consideration at stage 2 are based on concerns that were raised with me by a number of groups, not least those with a particular interest in consumer protection and consumer interests. They are keen for the role of food standards Scotland in relation to consumers to be strengthened. Some of the concerns are worth exploring further with the minister and, on others, I am keen to seek some reassurance from him.

The groups concerned broadly support the bill’s provisions and see it as affording an opportunity for a new food Scotland body to build on the strengths of the Food Standards Agency Scotland. Many of the amendments in the group primarily seek to ensure that the new body delivers for consumers by protecting the public from risks to health and improving the public’s diet; they also seek to ensure that consumers’ interests are protected and are central to everything that the new body does in relation to food.

Amendment 49 would amend section 3, “General functions”, by removing the word “significantly” from subsection (1)(c). The thinking behind the amendment is that, by requiring the new body to act only when matters significantly affect consumers’

“capacity to make informed decisions about food matters”,

the threshold to inform consumers is perhaps being set too low. Amendment 49 would widen the range of food matters about which FSS will keep the public informed and advised.

Amendment 51 would insert a new provision in section 4(1), which concerns governance and accountability. It would require FSS to operate in a way that

“treats the interests of consumers as its primary consideration”.

Amendment 52 would amend the definition of good decision-making practice in section 4(2) by providing that it includes

“consulting consumers and representatives of consumers”.

Amendments 56 and 58 would amend section 6 in relation to the membership of FSS and the appointment of its members by ministers. The concern behind amendment 56 is to ensure that there is an open process that secures a balance of expertise on the board between those who have industry experience and those who have, as the amendment states,

“experience or knowledge of consumer affairs”.

Amendment 58 relates to amendment 56 but goes a little further, because it would require that, when ministers appoint members of FSS, they

“have regard to the balance of expertise, skills and experience required by members to ensure that Food Standards Scotland operates in a way which treats the interests of consumers as its primary consideration.”

The last amendment in the group is amendment 64, which would amend the meaning of

“other interests of consumers in relation to food”

in section 54 by widening the definition to include

“wider social and ethical considerations relevant to food.”

The concern is that the definition in section 54 is perhaps too narrow and focuses largely on labelling issues and food descriptions. However, perhaps what is required is just some assurance that FSS will have sufficient scope to represent the public on all food issues that matter to them and that that is made a bit clearer.

I welcome comments from the minister on the amendments in group 1.

I move amendment 49.

The Convener: No other members wish to speak. I call the minister.

The Minister for Public Health (Michael Matheson): I will respond to each of Aileen McLeod’s amendments. We understand the intention of the proposal in amendment 49 to remove the word “significantly”. It is important that food standards Scotland acts on a wide range of interests that are important to consumers, and that is what its intended objective is. However, the practical effect of the seemingly small change that amendment 49 proposes would be that FSS could have to turn its attention to a wide range of concerns, significant or not. That could risk FSS losing focus on the most important matters that it must consider.

The word “significantly” is important in section 3 because it makes it clear that, although FSS will be concerned with all matters of interest to consumers, it cannot lose focus on matters that
have the most impact on consumers. For that reason, I invite the committee not to support amendment 49.

I appreciate the intention behind amendment 51, as it will be important that the message is clear from FSS that it must be consumer-focused. However, I argue that the amendment is unnecessary, because it is clear from section 2, which sets out the objectives of food standards Scotland, that the consumers’ interests have to be FSS’s primary concern. Setting that out in different language in section 4 would be unnecessary and could be confusing. Food standards Scotland’s objectives are set out clearly in the bill. Therefore, I invite the committee not to support amendment 51.

Amendment 52 would require food standards Scotland to consult consumers and their representatives. Consultation will be a key issue for the new body. Under European legislation, we have to consult publicly on all food law. The bill goes further—it requires food standards Scotland to consult all those affected by its decisions. It will be a consumer-focused body, which means that consumers and their representatives will be consulted, so it is not necessary to state that again in the bill. Furthermore, the wording of amendment 52 is problematic, as it does not require consultation before any decision or action, so it might not fully deliver its intention. The existing provisions require consultation before any action. Therefore, I ask the committee not to support amendment 52.

10:30

On amendment 56, I send the strongest signal possible that it is hard to imagine any circumstance in which anyone without experience or knowledge of consumers could be suitable for appointment to the food standards Scotland board. Given that the body’s objectives are entirely focused on the public and the consumer, that experience or knowledge will be a requirement for any member who is appointed to the board. I realise that the amendment does not intend to limit the influence of the consumer focus but, by introducing the notion that only two members must have such experience or skill, it might dilute the need for all members to have such experience. Therefore, I hope that the committee will agree that the amendment is unnecessary. I invite it not to support that change.

Amendment 58 covers the same ground as amendment 56. The desire to make such experience or skill a requirement by amending the bill is understandable. However, as I said, ministers do not intend to appoint members without experience of consumers or consumer affairs. The skills required of members must be linked to food standards Scotland’s objectives, which are all about a consumer focus. As with amendment 57, amendment 58 is unnecessary. I invite the committee not to support it.

The position on amendment 62 is similar. Any committees established by food standards Scotland would be bound by its consumer interest focus. Under the bill, it should not be possible for committees to operate outwith the scope of protecting the interests of the public and consumers. Therefore, the amendment is unnecessary and I invite the committee not to support it.

Amendment 64 would introduce a specific meaning for the phrase “other interests of consumers”. I recognise that social and ethical considerations will naturally form part of consumers’ interests. However, those interests would be covered by existing provisions. The amendment might lead consumers to question why only those interests were listed as examples, which could lead to misunderstanding about food standards Scotland’s wider consumer objectives. Therefore, the amendment would not be as helpful as is intended. I invite the committee not to support it.

The Convener: I ask Aileen McLeod to wind up and to press or withdraw her amendment.

Dr Simpson: Oh! Are we not having a debate?

The Convener: You can speak if you make a bid.

Dr Simpson: I will do that.

The Convener: The clerk has reminded me that I offered members the opportunity to participate in the debate before I called the minister to respond. Therefore, we cannot have a debate. I am sorry about that.

I call Aileen McLeod.

Aileen McLeod: I listened carefully to what the minister said on the amendments and the representation of consumer interests. I am reassured by what he said, so I will not press amendment 49.

The Convener: The amendment is withdrawn.

Dr Simpson: I wish to move the amendment. I understand that, if a member seeks leave to withdraw an amendment, another member may move it if they wish to do so.

The Convener: We need to get committee members’ agreement to withdraw the amendment, rather than have it moved again. [Interruption.] I am being told that, in this case, the amendment has been moved and withdrawn and no other member can move it.
Dr Simpson: Convener, I put on record my dissatisfaction with the way in which the procedure is being handled. I did not hear the request for speakers; I would have come in immediately if I had. I feel that I have been denied the opportunity of making a number of important points about the amendment that the committee should take into consideration.

I also express my dissatisfaction with the fact that the member who moved the amendment can withdraw it without the committee having the opportunity to say whether it agrees to it being withdrawn. That is not my understanding of procedure.

The Convener: That is the difference with what I said and the advice that I was given. You can object to the amendment being withdrawn, but you cannot move it.

Dr Simpson: In that case, I object to it being withdrawn.

The Convener: I will take the criticism that I went to the minister too quickly, but I had no bids from any member to participate in the debate.

Dr Simpson: My dispute arises because you did not ask the minister to wind up. You asked him to speak, and I understood that he was making his introductory remarks about the amendment rather than being at the winding-up stage.

The Convener: I am sorry for that misunderstanding.

Dr Simpson: I want to object to amendment 49 being withdrawn, if that is permitted.

The Convener: Does the committee agree to the withdrawal of amendment 49?

Dr Simpson: No.

The Convener: The committee does not agree.

Dr Simpson: Is there a vote on that?

The Convener: There will be a division.

For
Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Paterson, Gill (Clydebank and Milngavie) (SNP)

Against
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions
McNeil, Duncan (Greenock and Inverclyde) (Lab)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 49, by agreement, withdrawn.

The Convener: Amendment 50, in the name of Aileen McLeod, is in a group of its own. Aileen McLeod will speak to and move the amendment, and then of course I will ask whether any other members wish to participate in the debate, before I go to the minister.

Aileen McLeod: Amendment 50 is to section 3, page 2, line 12. Section 3 provides that the new FSS body will have the function of monitoring the performance of enforcement authorities in enforcing food legislation. Amendment 50 would add the words “and promote best practice by”, the purpose of which is to expand FSS’s function in relation to the enforcement authorities so that, in addition to monitoring their performance, the new body must also promote best practice by enforcement authorities. The bill does not require FSS to promote best practice between local authorities and other agencies, although it will be in a key position to do so. That would help to put the relationship between FSS and the local authorities on to a more proactive basis that, it is generally felt, will lead to better outcomes on food safety and enforcement issues.

I move amendment 50.

Dr Simpson: I support the amendment. It is critical that the new food standards body should be in a position to promote best practice. It is essential for the new body to look at the variation between local authorities, select those that are not doing well and report to us on what is happening for whatever reason. It should also be able to pick up and promote best practice in local authorities, which are the main enforcement bodies. I welcome the amendment.

The Convener: Does any other member wish to speak?

Nanette Milne (North East Scotland) (Con): Amendment 50 is important, because it is clear that best practice has to be sought across the country. We know that there are variations—not everything is the same in every authority. I am happy to support the amendment.

Michael Matheson: The creation of food standards Scotland provides an opportunity to look at the links between enforcement nationally and locally. We should not rush into that, and it is already part of our vision for how we provide even better protection for the public and consumers. However, we must first ensure that we bed in FSS.

Amendment 50 will help to provide a strategic link between enforcement authorities and FSS, which is why I support it. I invite the committee to support the amendment for the reasons that Aileen McLeod outlined.
Aileen McLeod: I will press amendment 50. I thank the minister for supporting it.

Amendment 50 agreed to.

Section 3, as amended, agreed to.

Section 4—Governance and accountability

The Convener: I ask Aileen McLeod to move or not move amendment 51.

Aileen McLeod: Not moved.

Dr Simpson: I object.

The Convener: Richard Simpson can move the amendment, because it has not been moved previously.

Amendment 51 moved—[Dr Richard Simpson].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions
Milne, Nanette (North East Scotland) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 52 disagreed to.

The Convener: Amendment 53, in the name of Aileen McLeod, is grouped with amendment 54.

10:45

Aileen McLeod: Amendments 53 and 54 relate to a need to strengthen the provisions on governance and accountability in section 4 to deal with concerns that were raised around ensuring that there are sufficient protections for how the new body will ensure that there is openness and transparency. [Interruption.]

The Convener: Following that announcement, I should say that the committee, the minister and members of the public will, of course, observe the period of silence for remembrance in the committee room. I invite Aileen McLeod to continue.

Aileen McLeod: Thank you, convener.

The ultimate aim of amendments 53 and 54 is for the new body—FSS—to hold its meetings in public, except when the matter that is under discussion relates to personnel matters or it is considered that other exceptional circumstances apply. When meetings are held in private, the reason for doing so must be made publicly available.

Amendment 53 would insert into section 4(2) the words

“unless subsection (2A) applies, holding all meetings of Food Standards Scotland, and all meetings of any committee established by it, in public”.

Amendment 54 seeks to insert two new subsections—subsections 2A and 2B—into section 4. Those proposed new subsections set out the circumstances under which food standards Scotland or any of its committees may decide to hold meetings or parts of meetings in private.

I move amendment 53.

Dr Simpson: I speak in support of the amendments. Most public bodies in Scotland now hold their meetings in public, which is a welcome development, but there has been a tendency to hold sections of meetings in private and those sections have tended to extend beyond the issues that are listed. The proposals give a fairly broad remit to FSS, or a committee that has been established by FSS, to hold meetings in private where it is thought that there are circumstances that should apply, but reasons for that will need to be given. That means that the public can have...
confidence that matters are not being discussed in private that should more appropriately be discussed in public. The approach will allow public scrutiny and, indeed, scrutiny by MSPs of the process as it goes forward.

I therefore very much welcome Aileen McLeod’s having moved amendment 53.

Rhoda Grant (Highlands and Islands) (Lab): I, too, speak in support of amendments 53 and 54. It is very important that the new board is transparent so that people know what is going on and can have confidence in it. It is in the public interest that there is transparency as decisions are made. I therefore welcome and support the amendments.

Nanette Milne: We live in an era in which it is becoming more important to have transparency in all public bodies. The amendments simply indicate that the new agency would follow that pattern.

Michael Matheson: We consider that amendments 53 and 54 are unnecessary. Nothing in the bill prevents food standards Scotland from holding meetings in public and nothing prevents it from publishing papers. The bill as drafted provides for sufficient accountability and transparency, and food standards Scotland has a duty to keep the public informed and to publish reports.

The amendments’ actual effects are not wholly clear, because they do not place direct duties on food standards Scotland to hold meetings in public. Instead, the amendments are placed in the context of wider duties of food standards Scotland to operate as far as is reasonably practicable in particular circumstances. We believe that those matters can be dealt with administratively and that, as food standards Scotland is an advisory body that is required in its general functions to keep the public informed and advised, the approach that has been set out in amendments 53 and 54 is disproportionate. I therefore invite the committee not to support the amendments.

Aileen McLeod: In light of the minister’s comments, the matters of openness and transparency can be dealt with administratively. Obviously, they are important issues if we are to give reassurance to the public and consumers. I am happy to seek to withdraw amendment 53 and not move amendment 54, although I reserve the right to revisit the issue. I will speak to the groups that are concerned to get feedback from them before stage 3.

The Convener: As no one objects, this time, to the amendment being withdrawn, I will—

Dr Simpson: I thought that I was not allowed to, because it has been moved.

The Convener: The advice is that the question can be put. You cannot move the amendment again. If you object to its being withdrawn, the question can be put.

Dr Simpson: I object.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 53 disagreed to.

The Convener: Amendment 54, in the name of Aileen McLeod, was debated with amendment 53. I call Aileen McLeod to move or not move the amendment.

Aileen McLeod: Not moved.

Amendment 54 moved—[Dr Richard Simpson].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 54 disagreed to.

Section 4 agreed to.

Section 5 agreed to.
The Convener: This might be a good point to suspend the meeting to wait for the two minutes' silence, which will be in about three minutes, rather than be caught in the middle of something. Do members agree to do that?

Members indicated agreement.

10:52

Meeting suspended.

11:02

On resuming—

Section 6—Number and appointment of members

The Convener: Amendment 55, in the name of Aileen McLeod, is grouped with amendments 36, 37, 59 to 61 and 38 to 40.

Aileen McLeod: If I may, I will speak to amendments 55, 57, 60 and 61.

Amendment 55 seeks to take on board the concerns that a number of groups raised with me regarding the minimum size of the FSS board of three members and a chair. The concerns were that that could be insufficient to ensure an appropriate balance of expertise among the members, and the preference was for increasing the minimum to five members and a chair.

I am conscious that, at stage 1, the minister told the committee that the new body will have a minimum of four board members including the chair and a maximum of eight members. I am also aware that the committee in its stage 1 report indicated that it was not convinced that the number of members of the board needs to be increased. The key point is to get reassurance from the minister that there will be an appropriate balance of expertise between industry and consumer representatives.

Amendment 57, which relates to amendments 56 and 58, again seeks greater transparency and openness in the procedure by which ministers will make appointments to FSS, which should be based on merit and should ensure a balance of expertise.

Amendments 60 and 61 concern the membership of the board. They seek to explore what might be possible in relation to limiting appointments to a four-year period that is renewable only once, so that there can be fresh thinking from different people with experience of new food technology. The intention is to ensure that FSS remains at the forefront of new developments in food science and technology.

I move amendment 55.

Dr Simpson: I will speak to amendments 36 to 39. I want to explore with the minister the reasons for

“a councillor”

and

“an employee of any local authority”

being excluded from the board. I fully understand paragraphs (a), (b), (c) and (d) in section 6(2), which exclude people who are usually excluded, and I understand that councillors and employees of local authorities are usually excluded. However, because of the nature of this board and its relationship with the local authorities that will act as the enforcement authorities, I believe that it should be possible, although not a requirement, for councillors and local authority employees who have great expertise in enforcement to be members of the board. That is critical to the provisions that we have already agreed to, which require the promotion of best practice and monitoring of the performance of the enforcement authorities.

I would like to explore with the minister whether, in this instance, it would be more appropriate to remove the exclusion of councillors and local authority employees. Doing so would not require the minister to appoint such people, but the bill precludes the minister from having the discretion to do that if he or she wishes.

I turn to the other amendments in the group. I believe that amendment 55 is entirely appropriate. Let us suppose that only three members are appointed, although that is unlikely. If one of them becomes the chair, one is a consumer member and one is from industry, we would have a significant problem. The board will be independent so, as was alluded to in the committee’s report, it is critical that it has a minimum of five members. That would be a more appropriate number.

On the term of service, eight years is a reasonable time. After that, we should refresh the board with new members. There may require to be further consideration of whether that should apply to the chairman, or to a chairman who is appointed in a successive period. Again, I will be interested to hear the minister’s view, but there may be more detailed work to be done on that. I am thinking of a situation in which, for example, someone is appointed as chairman six years in. We would not want them to drop off after another two years.
I turn to amendment 40. I have been thinking about the rule in section 7 on page 4 whereby, if someone does not attend for six months, they may be required to come off the board. It is possible that a member could be having treatment over six months and we would not necessarily want them to come off the board, so I am not sure about that, although I have not lodged an amendment to suggest that the provision be removed.

I believe that, if a member does not attend at least a third of the meetings that are held in any 12-month period, they should automatically be removed. Section 7(2) deals with a situation in which the minister wishes to end someone’s membership. I note again that the board will be independent and it may be that the board, as opposed to the minister, will want to remove someone who does not attend regularly for no good reason, so it might not be appropriate to leave that to the minister. For the moment, however, I have lodged amendment 40 to insert the provision in section 7(2)(b).

Richard Lyle: I found what Richard Simpson said about councillors interesting. I remind him that there are more than 1,200 councillors in Scotland. At a previous meeting I pushed the cabinet secretary with regard to councillors’ membership of a particular board, but on this occasion I cannot agree with Richard Simpson’s amendments and I will not support them.

Michael Matheson: As members are aware, the Health and Sport Committee has already considered the number of members and has accepted that the number that is set out in the bill is the minimum only. I have given the committee my assurance that the intention is to run food standards Scotland with a full complement of eight members—seven members of the board and the chair—at most times. The number in the bill—three members plus the chair—has to be low enough to allow a level of flexibility during reappointment rounds or in case of emergencies. The same number is set for other bodies of similar size, as discussed at stage 1.

Richard Simpson referred to the possibility of the consumer person not being available for a particular board meeting. As I have advised the committee, those who are appointed to the board of food standards Scotland will all be required to have a consumer focus, given the body’s responsibility to consumers. Therefore, we do not believe that we should reconsider the numbers at this stage.

On amendments 36 and 37, removing councillors or any employees of councils from the list of persons who cannot be appointed to food standards Scotland could be problematic and impracticable. Under the ethical standards code of conduct for board members, councillors or council employees, if they were also members of food standards Scotland, would have to declare an interest and take no part in discussions or decision making about matters concerning local authorities. That would diminish their ability to be fully active members and would affect quite significantly the body’s ability to perform its duties. Almost half of the work that will be undertaken by food standards Scotland will be around enforcement matters, the vast majority of which are undertaken by local authorities. I therefore invite the committee to agree that it would be impracticable to change that provision in the bill, and therefore not to support the amendments.

Amendment 57 is unnecessary, as ministers are already under the duty to make appointments based on merit through open appointment procedures in respect of appointments to public bodies. The amendment duplicates existing practice from the Public Appointments and Public Bodies etc (Scotland) Act 2003. The Parliament has appointed the Commission for Ethical Standards in Public Life in Scotland to oversee compliance with that duty. I therefore ask the committee not to support amendment 57.

With regard to amendment 59, applications for public appointments are made in confidence. The main effect of ministers publishing the details of all applicants would be likely to be a reduction in the number of people who would be willing to apply. I am sure that a reduction in applications is not something that the committee would wish to see. Scottish ministers already have good account of the breadth of society from which applications come when considering further and future recruitment rounds. The requirement to publish applications is therefore not necessary, so I ask the committee not to support the amendment.

Amendments 60 and 61, on the period of appointment and on reappointment limits for members of food standards Scotland, touch on another aspect of public appointments that is already covered. The Commission for Ethical Standards in Public Life in Scotland oversees ministers’ compliance with the commissioner’s code on appointments, which recommends an eight-year limit for appointments. The amendments are therefore unnecessary and are contrary to the existing code, so I invite the committee not to support them.

Amendments 38 and 39 are impracticable for the same reasons that I gave for amendments 36 and 37. If a member becomes a councillor of any local authority, or a council employee, it would be impracticable for the person to continue as a member of food standards Scotland. Under the code of conduct for members, that person would have to take no part in a significant portion of food standards Scotland’s business. Expertise from
local authorities can be provided to the FSS board through the secondment of staff to the body as and when required, but there would be a potential conflict of interest if they were a formal member of the board. I therefore ask the committee not to support amendments 38 and 39.

11:15

We believe that amendment 40 is unnecessary, because the bill already provides sufficient grounds for the removal of a person by reason of absence, and there is a level of flexibility that allows that to be extended where, for example, in the situation to which Richard Simpson referred, a member might be undergoing treatment. There would be flexibility to allow the period of absence to be extended. I therefore ask the committee not to support amendment 40.

Aileen McLeod: Having listened to the minister’s comments, I feel more reassured. The issues that I raised through my amendments 55, 57, 60 and 61 have clearly been considered. I accept the minister’s reassurance that members of FSS will have a consumer focus and I will not press my amendments.

Amendment 55, by agreement, withdrawn.

Amendments 56, 36, 37 and 57 to 61 not moved.

Section 6 agreed to.

Section 7—Early ending of membership

Amendments 38 to 40 not moved.

Section 7 agreed to.

Sections 8 to 10 agreed to.

Section 11—Proceedings

The Convener: Amendment 1, in the name of the minister, is grouped with amendment 2.

Michael Matheson: Amendment 2 is the main amendment in the group. It will make a minor change that is a common provision that is used when establishing public bodies. It will clarify that anything that is done by food standards Scotland or any of its committees will not be invalid because of a defect in membership, including having had a membership ended because section 7 applies. That will ensure that decisions and actions that are taken by food standards Scotland and its committees are not open to challenge on the basis of a defect in membership.

I move amendment 1.

Dr Simpson: I still have concerns, because of the amendment on membership that we did not vote on. If food standards Scotland had only three members, and a membership had been ended under section 7 and another member could not attend, perhaps through illness, the body would be down to one member. Obviously, we cannot go back to the amendment to which I referred, but I will raise the issue again. I think that we could end up in a situation in which only one or two people take action, on our behalf, as an independent food standards body, and I just do not think that that is wholly acceptable.

I will not oppose amendment 1, but I give notice of the fact that I intend to raise the matter for Parliament to decide on at stage 3, subject to the Presiding Officer’s agreement.

The Convener: You are entitled to do that.

Bob Doris (Glasgow) (SNP): I listened carefully to what the minister said about the composition of food standards Scotland. He referred to practice in other public bodies, with which the approach in the bill seems to be consistent. On amendment 1, would the Government’s position achieve consistency with other public bodies? I just want to ensure that a consistent approach is being taken.

Michael Matheson: The board will operate with seven members and a chair, which is eight members. The minimum size that it would go down to would be three members and a chair, or four members in all. The position is exactly the same for the boards of a number of other organisations of similar size and composition, including the Scottish Housing Regulator and the Office of the Scottish Charity Regulator. I am not aware of any problems or concerns that they have had about the size of their boards.

As I have set out, we intend the board of FSS to have seven members and a chair. The minimum number of members that it would ever have would be three members and a chair, which I believe provides the level of certainty that is required in relation to decision making for a public body of this nature.

Amendment 1 agreed to.

Section 11, as amended, agreed to.

Section 12—Committees

Amendment 62 not moved.

Section 12 agreed to.

After section 12

Amendment 2 moved—[Michael Matheson]—and agreed to.

Section 13—Delegation of functions
The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4, 5 and 6.

Michael Matheson: Amendment 4, which goes with amendment 3, is the main amendment in the group. Together, they seek to remove the ability of food standards Scotland to delegate any of its functions to any other person. When the bill was drafted, it was thought that there might be circumstances in which FSS would need to delegate functions, especially in its first few months. Good progress has been made in preparing for the new body to take on its functions fully in April 2015, and we are now assured that any support that is needed thereafter could be contracted rather than delegated. Contracting is preferable to giving the body a wide-ranging ability to delegate functions.

Amendments 5 and 6 are minor consequential amendments that will ensure that the provisions in section 13 cross-reference to one another.

I move amendment 3.

Dr Simpson: I will speak in support of this group of amendments. My original notes talk about the deletion of the provision in question. I understand that delegation might have been necessary for the transitional arrangements, but it seemed to me to be inappropriate to have that provision in the primary legislation. I therefore welcome the fact that the minister is seeking to delete that element from the bill.

Amendment 3 agreed to.

Amendments 4 to 6 moved—[Michael Matheson].

The Convener: Does any member object to a single question being put on amendments 4 to 6?

Members: No.

The Convener: Thankfully, no member has objected.

Amendments 4 to 6 agreed to.

Section 13, as amended, agreed to.

Section 14—Annual and other reports

The Convener: Amendment 41, in the name of Dr Richard Simpson, is grouped with amendments 42 to 46 and 48.

Dr Simpson: The main purpose of most of the amendments in the group is to allow consideration of the question whether, as a whole, but in respect of this bill in particular, reports should be produced only online. I have received comments about that being an unintended consequence of the amendments: I point out that it is, in fact, the intended consequence. The provision could be modified by saying that an agency such as food standards Scotland should produce an executive summary but, to be frank, I think that the days of publication of expensive 36, 45 and 50-page annual reports are over, so I have lodged this group of probing amendments to find out whether the Government is moving in the same direction.

Amendment 45, which relates to section 14 and would amend line 5 of page 7, seeks to require food standards Scotland to provide an electronic copy of its report to the Scottish Parliament. That should be an absolute requirement instead of something that it “may” do. I see no reason for its not being required to submit a report—after all, Parliament has to scrutinise those things—but that report should be provided to Parliament, with a link to the Parliament’s information site.

I move amendment 41.

Bob Doris: I was not going to speak on this group of amendments and I have to say that I had not paid very close attention to them—for which I apologise to Dr Simpson—but when I was listening to his comments, I looked at my notes and decided to tell the committee a slightly tangential story about online publications. I know of a community council that shall remain nameless but which has not—let us say—entered the information technology age, and provisions have to be made for it to get hard copies of various publications. I will listen to what the minister has to say and, obviously, to Dr Simpson’s summing up, but I am concerned that a requirement that such reports be published exclusively online will raise access issues for some groups in society.

Michael Matheson: Many of the amendments in the group are intended to ensure that food standards Scotland provides reports either in electronic form or online. That is good practice; I would expect a public body such as food standards Scotland to be doing that as a matter of course. However, amendments 41 and 42 would mean that food standards Scotland would publish its reports only online—Richard Simpson has stated that that is the intention behind the group—and I believe that such a move could have adverse consequences. For a start, such an approach to reporting could, as Bob Doris has pointed out, easily deny access to a significant number of consumers and interested parties. I do not believe that anyone would want that, so I ask the committee not to support amendments 41 and 42.

11:30

I am more than happy to explore the matter further with Richard Simpson and to work with him to see whether he seeks could be achieved more manageably at stage 3. It is important that
people who do not have access to online or electronic versions are able otherwise to access food standards Scotland's reports.

Amendments 43 and 44 would have an unfortunate and unintended effect, as amendments 41 and 42 would. Amendment 43 could lead to criticism that the Parliament was micromanaging the relationship between food standards Scotland and Scottish ministers by prescribing how reports should be sent to ministers. On amendment 44, how documents are to be laid in Parliament is well regulated by the Parliament's standing orders. Therefore, I ask the committee not to support amendments 43 and 44. I suggest that Richard Simpson may want to consider pursuing the matter through the Parliament's standing orders.

Amendment 45 would require food standards Scotland to lay before Parliament all reports that it prepares, including those that are—quite properly—not intended for publication. That is unworkable in practice; it may even be unlawful to lay certain internal reports. The new body will be under duties on transparency and on providing the public with information and advice, which will ensure its transparency more effectively than any overarching requirement on it to lay in Parliament all reports that it prepares. Therefore, I ask the committee not to support amendment 45.

Amendment 46 would have an unfortunate unintended effect, as would amendments 41 to 44. The amendment would restrict to electronic publication the methods by which reports could be published. It is commonly used as one type of publication, but we cannot make it the only method. I ask the committee not to support amendment 46.

Amendment 48 is unnecessary. The word "document" needs no definition in the bill to include "an electronic communication". The word "document" is legally defined in the Interpretation and Legislative Reform (Scotland) Act 2010 as "anything in which information is recorded in any form". That definition applies to all acts, so I invite the committee not to support amendment 48.

Dr Simpson: The purpose of the group of amendments was partly to make it clear on the public record that we need to take a far more directive approach in moving towards more online information. I welcome the minister’s offer to have further discussions about how that might reasonably be achieved, while accepting Bob Doris’s valid point that some people are not information-technology literate—or are perhaps not keen to become so, although I do not want to cast aspersions on his council. The fact that people can access the information online through libraries may not be sufficient. I accept those valid points, but I hope that we may have the opportunity to pursue the issue and to ensure that we make this an exemplar bill in terms of shifting more information online.

If it helps you, convener, it is my intention to seek to withdraw all the amendments in the group.

The Convener: We need to go through the amendments in order, as an amendment must first be moved before it can be withdrawn.

I had better ask whether anyone objects to amendment 41 being withdrawn. [Laughter.] Does anyone object?

Amendment 41, by agreement, withdrawn.

The Convener: Thank you.

Amendments 42 to 46 not moved.

Section 14 agreed to.

Section 15—General powers

The Convener: Amendment 47, in the name of Richard Simpson, is in a group on its own.

Dr Simpson: Amendment 47 is an attempt to be helpful to the minister in the sense that it might be that the minister would have the power to say that any charges that would be made for facilities at the request of any person under section 15(2)(b) would not be levied in certain circumstances that the minister himself or herself would define.

I move amendment 47.

Michael Matheson: Amendment 47 would, if Scottish ministers were to give their approval, allow food standards Scotland to make, for facilities or services that it provides at the request of any person, a charge that exceeds the reasonable costs of providing the facility or service concerned. It is not clear why that would be considered to be appropriate, given that food standards Scotland's purpose will not be to profit from providing assistance. I therefore do not think that that is something that we should implement, so I ask the committee not to support amendment 47.

Amendment 47, by agreement, withdrawn.

Section 15 agreed to.

Section 16—Application of legislation relating to public bodies

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8 and 9.

Michael Matheson: Amendment 47 would, if Scottish ministers were to give their approval, allow food standards Scotland to make, for facilities or services that it provides at the request of any person, a charge that exceeds the reasonable costs of providing the facility or service concerned. It is not clear why that would be considered to be appropriate, given that food standards Scotland’s purpose will not be to profit from providing assistance. I therefore do not think that that is something that we should implement, so I ask the committee not to support amendment 47.

Amendment 47, by agreement, withdrawn.

Section 15 agreed to.
Amendment 7 will give FSS obligations under the Public Records (Scotland) Act 2011 to produce, implement and review its records management plan.

Amendment 8 will include FSS as a regulator for the purpose of part 1 of the Regulatory Reform (Scotland) Act 2014. That will enable Scottish ministers to make provision to improve regulatory consistency further, to require regulatory functions to be exercised in a way that contributes to sustainable economic growth, and to encourage regulators to adopt practices that are consistent with regulatory principles.

Amendment 9 will include FSS in the Procurement Reform (Scotland) Act 2014, which places general duties on contracting authorities' procurement activities, and provides specific measures that are aimed at promoting good, transparent and consistent practice in procurement.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Michael Matheson]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 19 agreed to.

Section 20—Powers for persons carrying out observations

The Convener: Amendment 63, in the name of Aileen McLeod, is in a group on its own.

Aileen McLeod: Amendment 63 seeks to strengthen the powers in section 20 so that FSS would be able to require food business operators that conduct food testing to disclose the results of that testing. Currently, there is no provision to give FSS the access that it needs to industry testing data and analysis. By requiring food company tests to be shared with FSS, the amendment is intended to ensure that early action can be taken whenever and wherever food fraud or food adulteration is detected, to protect consumers and other businesses that rely on the same supply chain.

This is another amendment that I thought might be worth exploring further with the minister, as it could have a positive impact. I will certainly listen carefully to what the minister has to say on it.

I move amendment 63.

Dr Simpson: The amendment is important. When the committee visited the unit in Aberdeen, we heard that testing is done by three groups—the food standards people, the health and safety people, and individual factories that are seeking to maintain quality control. It should be possible for FSS to say that it is comfortable with the testing that is being done by a company using an external tester, but for that to happen it is essential that FSS should have access to such data, as well as information on how it was arrived at and the nature of the testing laboratory and its methodology.

As Aileen McLeod says, the purpose of the amendment is partly to give FSS some control over something that a firm might be promoting as its quality control but which may or may not be adequate. The purpose is also to simplify the system so that the agency can just accept a company's testing and will not need to do further testing. In fact, I hope that the Health and Safety Executive would also take that approach. By streamlining some activities, we can reduce the burden on industry and promote the Government's desire to strengthen our economy.

Michael Matheson: I welcome the intention behind amendment 63, which is to address one of the recommendations of Professor Jim Scudamore's expert advisory group following the horsemeat food fraud incident.

The Government supports the intention behind the amendment, but we would like to go further. The Government believes that the amendment as it stands is not sufficient to achieve the desired effect and to enable officers to act quickly in circumstances of food fraud or adulteration. The powers of observation that the amendment seeks to alter cannot in themselves be used to investigate whether a crime has been committed. We are considering what can be done using existing legislation and the best timing for introducing a scheme to deliver the intentions behind the amendment.

If that cannot be achieved using existing legislation, we will consider whether a further amendment should be lodged at stage 3 to achieve the desired outcome of ensuring that FSS can compel access to the results of testing that is undertaken by private operators and companies. I am more than happy to work with Aileen McLeod on that at stage 3 if that is the appropriate way in which to proceed and if we cannot accommodate the measures within existing legislation.

Aileen McLeod: I welcome the minister's comments that the Government supports the intention of the amendment and seeks to go further by considering what can be done using existing legislation and the best timing for that. I am fully reassured that something will be done in the area to deal with the concerns that have been raised, and I look forward to seeing what the minister does, whether that involves other legislation or bringing back the issue at stage 3.

I am content not to press amendment 63 at this stage.
Amendment 63, by agreement, withdrawn.

Section 20 agreed to.

Sections 21 to 28 agreed to.

Section 29—Power to issue guidance on control of food-borne diseases

The Convener: Amendment 10, in the name of the minister, is grouped with amendments 18 to 21.

11:45

Michael Matheson: Amendment 10 is a minor drafting change to bring clarity to the provisions that will give Food Standards Scotland the power to issue revised guidance as well as guidance.

Amendment 19 follows a recommendation by the Delegated Powers and Law Reform Committee both to have the Lord Advocate publish guidance to enforcement authorities and to allow specified exemptions from publishing guidance for the Lord Advocate where it could be prejudicial to the administration of justice.

Amendments 18, 20 and 21 revise section 50 of the bill to put the Lord Advocate’s powers to revise guidance and publish revised guidance into the same style as similar powers in amendment 10. That will achieve consistency across the bill.

I move amendment 10.

Amendment 10 agreed to.

Section 29, as amended, agreed to.

Section 30 agreed to.

Section 31—Certain functions of Food Standards Agency ceasing to be exercisable

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 24, 25 and 27 to 32.

Michael Matheson: Amendment 11 makes a minor change in terminology.

Amendments 24, 25 and 27 to 32 each make changes to a range of legislation and change references to “the Food Standards Agency” into references to “Food Standards Scotland”. All those changes are consequential to the creation of food standards Scotland and the removal of certain functions that are exercised in respect of Scotland from the Food Standards Agency.

I move amendment 11.

Amendment 11 agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33 agreed to.

Section 34—Regulation of animal feeding stuffs

The Convener: Amendment 12, in the name of the minister, is grouped with amendment 13.

Michael Matheson: Amendment 12 is a minor technical change to section 34, on the regulation of animal feeding stuffs. It allows orders that regulate animal feeding stuffs to be made that are reasonably similar but not necessarily exactly equivalent to provisions in the Food Safety Act 1990. That will keep the powers in section 34 in line with the powers in section 30 of the Food Standards Act 1999, which the provisions replace.

Amendment 13 inserts a cap on the maximum penalty that could be applied by regulations that are made under section 34 of the bill, which relates to animal feeding stuffs. The amendment responds to another of the helpful recommendations that were made by the Delegated Powers and Law Reform Committee to restrict the width of powers appropriately.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Michael Matheson]—and agreed to.

Section 34, as amended, agreed to.

Sections 35 to 47 agreed to.

Section 48—Power to make supplementary etc provision

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 15, 16, 17, 33 and 34.

Michael Matheson: Amendments 14 and 15 will make minor changes to make it clear that any regulations in subsections (2) and (3) of section 48 would be made specifically under the powers set out in section 48(1) and not under any other power in section 48. That change will provide certainty.

Amendment 16 will make a minor change of language to remove the duplication of the word “under” in section 48(3) and replace it with the words “referred to in”, which will not change the effect of section 48(3).

Amendment 17 will provide additional detail regarding the exercise of the power to make supplementary provision for fixed penalty notices and compliance notices. The Scottish Government is grateful to the Delegated Powers and Law Reform Committee for supporting the delegated powers in section 48. The committee recommended that the Scottish Government

“gives consideration to amending the Bill so as to restrict the exercising of the power in these circumstances so that it does not permit the wholesale removal of the discharge of
Amendment 17 will provide that protection.

Amendments 33 and 34 will make further changes that the Delegated Powers and Law Reform Committee recommended. The changes are that regulations made under a specific subsection of section 48 would be introduced through the negative procedure.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15 to 17 moved—[Michael Matheson]—and agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Section 50—Lord Advocate’s guidance

Amendments 18 to 21 moved—[Michael Matheson]—and agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

Section 52—Meanings of “food” and “animal feeding stuffs”

The Convener: Amendment 22, in the name of the minister, is grouped with amendments 23, 26 and 35.

Michael Matheson: On amendment 22, the committee will recall that in July the Scotland Act 1998 (Modification of Schedule 5) Order 2014 was passed.

The order amended schedule 5 to the Scotland Act 1998 in relation to reserved matters with regard to food and animal feeding stuffs and, in doing so, better aligned the Scottish Parliament’s legislative competence with the Scottish ministers’ executive competence. Amendments 23, 26 and 35 make related changes to other sections to ensure that the new definitions can take full effect throughout the bill.

I move amendment 22.

Dr Simpson: Can someone explain to me whether the definition of food in regulation EC 178/2002, as of 7 December 2004, includes any other substances that might be consumed by human beings? In other words, does it include drink or other liquid elements besides other things that might be classified in the public’s mind as food? I could not find an answer to that.

Michael Matheson: The definition does include drink.

Dr Simpson: Thank you.

Amendment 22 agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

Section 54—Meaning of “other interests of consumers in relation to food”

Amendment 64 not moved.

Section 54 agreed to.

Sections 55 and 56 agreed to.

Section 57—General interpretation

Amendment 48 not moved.

Amendment 23 moved—[Michael Matheson]—and agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

Schedule—Modification of enactments

Amendments 24 to 32 moved—[Michael Matheson]—and agreed to.

Schedule, as amended, agreed to.

Section 59—Subordinate legislation

Amendments 33 to 35 moved—[Michael Matheson]—and agreed to.

Section 59, as amended, agreed to.

Sections 60 to 63 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Food (Scotland) Bill. I thank the minister and his team for attending, and everyone for their participation and patience.

I suspend the meeting so that we can set up for a panel of witnesses.

11:59

Meeting suspended.
CONTENTS

Section

PART 1

FOOD STANDARDS SCOTLAND

Food Standards Scotland

1 Establishment
2 Objectives
3 General functions
4 Governance and accountability
5 Statement on performance of functions

Membership

6 Number and appointment of members
7 Early ending of membership
8 Remuneration and expenses of members

Staff

9 Chief executive
10 Other staff

Operational matters

11 Proceedings
12 Committees
12A Validity of things done
13 Authority to exercise functions
14 Annual and other reports
15 General powers

Legislation relating to public bodies

16 Application of legislation relating to public bodies

Step-in powers

17 Serious failure

Acquisition of information

18 Duty to acquire, compile and keep under review relevant information
19 Observations with a view to obtaining information
20 Powers for persons carrying out observations
21 Offences in relation to section 20
Enforcement action

22 Setting performance standards
23 Reporting own enforcement activities
24 Reporting on enforcement action by others
25 Power to request information in relation to enforcement action
26 Offences in relation to section 25
27 Powers for persons monitoring enforcement action
28 Offences in relation to section 27

Issuing guidance on food-borne diseases

29 Power to issue guidance on control of food-borne diseases

Information sharing

30 Publication and disclosure of advice and information

Consequential provision

31 Certain functions of Food Standards Agency ceasing to be exercisable

PART 2

FOOD AND FEEDING STUFFS

Food information

32 Food information

Food hygiene information scheme

33 Food hygiene information scheme

Feeding stuffs

34 Regulation of animal feeding stuffs

PART 3

ADMINISTRATIVE SANCTIONS

Fixed penalty notices

35 Fixed penalty notices
36 Content and form of a fixed penalty notice
37 Effect of a fixed penalty notice on criminal proceedings
38 Restrictions on issuing of a fixed penalty notice
39 Withdrawal of a fixed penalty notice
40 Income from fixed penalties to be paid to the Scottish Ministers

Compliance notices

41 Compliance notices
42 Content and form of a compliance notice
43 Failure to comply with a compliance notice
44 Effect of a compliance notice on criminal proceedings
45 Restrictions on issuing of a compliance notice
46 Withdrawal of a compliance notice
47 Appeal against a compliance notice
Food (Scotland) Bill

General
48 Power to make supplementary etc. provision
49 Regulations
50 Lord Advocate’s guidance
51 Interpretation of Part

PART 4
INTERPRETATION
52 Meanings of “food” and “animal feeding stuffs”
53 Meaning of “food matter”
54 Meaning of “other interests of consumers in relation to food”
55 Meaning of “animal feeding stuffs matter”
56 Meaning of “food legislation”
57 General interpretation

PART 5
FINAL PROVISIONS
58 Modification of enactments
59 Subordinate legislation
60 Ancillary provision
61 Crown application
62 Commencement
63 Short title

Schedule—Modification of enactments
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Food (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

PART 1

FOOD STANDARDS SCOTLAND

Food Standards Scotland

1 Establishment

There is established a body corporate called Food Standards Scotland or, in Gaelic, Inbhe-Bidhe Alba.

2 Objectives

(1) The objectives of Food Standards Scotland are—

(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.

(2) The risks referred to in subsection (1)(a) include risks caused by the way in which food is produced or supplied.

(3) Food Standards Scotland must so far as reasonably practicable perform its functions in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

3 General functions

(1) The general functions of Food Standards Scotland are—
(a) to develop (and assist the Scottish Ministers and public bodies and office-holders to develop) policies in relation to food matters and animal feeding stuffs matters,
(b) to advise, inform and assist the Scottish Ministers and public bodies and office-holders and other persons in relation to food matters and animal feeding stuffs matters,
(c) to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters,
(d) to keep users of animal feeding stuffs adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about animal feeding stuffs matters, and
(e) to monitor the performance of, and promote best practice by, enforcement authorities in enforcing food legislation.

(2) Food Standards Scotland must so far as reasonably practicable comply with a request by the Scottish Ministers that—
(a) in pursuance of subsection (1)(a), it develops a policy, or assists the Scottish Ministers or a public body or office-holder to develop a policy, in relation to a particular matter,
(b) in pursuance of subsection (1)(b), it gives advice, information or assistance to the Scottish Ministers, a public body or office-holder or another person, in relation to a particular matter,
(c) in pursuance of subsection (1)(c), it informs or advises the public in relation to a particular matter,
(d) in pursuance of subsection (1)(d), it informs or advises users of animal feeding stuffs in relation to a particular matter.

4 Governance and accountability

(1) Food Standards Scotland must so far as reasonably practicable operate in a way which—
(a) is proportionate, transparent and accountable,
(b) constitutes good decision-making practice,
(c) develops and maintains effective links with the persons mentioned in subsection (3), and
(d) is consistent with any other principle of good governance which appears to it to constitute best practice.

(2) “Good decision-making practice” means—
(a) consulting people who may be affected by decisions before taking them,
(b) having good information on which to take decisions and taking decisions based on that information,
(c) recording decisions and the reasons for them, and
(d) making decisions and the reasons for them publicly available.

(3) The persons referred to in subsection (1)(c) are—
(a) the Scottish Ministers,
(b) public bodies and office-holders with functions in relation to food matters or animal feeding stuffs matters.

5 **Statement on performance of functions**

(1) Food Standards Scotland must prepare for approval by the Scottish Ministers a statement setting out how it intends to perform its functions.

(2) The statement must include information on how Food Standards Scotland intends—
   (a) to meet its objectives, and
   (b) to operate in accordance with section 4.

(3) The statement must be submitted to the Scottish Ministers by such time as they may direct.

(4) The Scottish Ministers may approve the statement with such modifications as they consider appropriate.

(5) Before approving the statement with modifications the Scottish Ministers must consult Food Standards Scotland.

(6) As soon as practicable after the statement is approved under subsection (4), Food Standards Scotland must—
   (a) lay a copy of it before the Scottish Parliament, and
   (b) publish it (in such manner as Food Standards Scotland considers appropriate).

(7) Food Standards Scotland—
   (a) must review the statement from time to time, and
   (b) may in consequence prepare and submit to the Scottish Ministers a revised statement.

(8) Subsections (2) and (4) to (7) apply to a revised statement as they apply to the original statement.

25 **Membership**

6 **Number and appointment of members**

(1) Food Standards Scotland is to consist of—
   (a) a person appointed by the Scottish Ministers to chair Food Standards Scotland, and
   (b) no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.

(2) A person may not be appointed as a member if the person is—
   (a) a member of the Scottish Parliament,
   (b) a member of the House of Commons,
   (c) a member of the European Parliament,
   (d) an office-holder in the Scottish Administration,
   (e) a councillor of any local authority,
   (f) an employee of any local authority.
(3) The Scottish Ministers must make appointments of members of Food Standards Scotland in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(4) In subsection (3), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998.

(5) Membership is (subject to sections 7 and 17) for such period and on such terms and conditions as the Scottish Ministers may determine.

(6) A member may resign by informing the Scottish Ministers in writing to that effect.

(7) A person may be re-appointed on, or after, ceasing to be a member.

(8) The Scottish Ministers may assign to one of the members appointed under subsection (1)(b)—

(a) the function of deputising for the person appointed under subsection (1)(a),

(b) the function of chairing Food Standards Scotland during any period when there is no person appointed under subsection (1)(a).

(9) A member to whom such a function is assigned—

(a) is assigned the function for such period as the Scottish Ministers may specify in the assignment,

(b) may resign the assignment by informing the Scottish Ministers in writing to that effect,

(c) is assigned and ceases to be assigned the function in accordance with such terms and conditions as the Scottish Ministers may determine.

7 Early ending of membership

(1) A person’s membership of Food Standards Scotland ends if the person becomes—

(a) a member of the Scottish Parliament,

(b) a member of the House of Commons,

(c) a member of the European Parliament,

(d) an office-holder in the Scottish Administration,

(e) a councillor of any local authority,

(f) an employee of any local authority.

(2) The Scottish Ministers may end a person’s membership of Food Standards Scotland if—

(a) the person becomes an undischarged bankrupt, or

(b) the Scottish Ministers are satisfied that the person—

(i) has, without the permission of Food Standards Scotland, been absent from its meetings for a period longer than 6 consecutive months,

(ii) is unable to perform the functions of a member, or

(iii) is unsuitable to continue as a member.

8 Remuneration and expenses of members

(1) A member of Food Standards Scotland is entitled to—
(a) such remuneration as the Scottish Ministers may determine,
(b) such sums as the Scottish Ministers may determine to reimburse or compensate
the member in relation to expenses properly incurred in the exercise of the
member’s functions.

(2) It is for Food Standards Scotland to pay any remuneration and other sums to which its
members are entitled by virtue of subsection (1).

Staff

9 Chief executive

(1) Food Standards Scotland is to have, as a member of staff, a chief executive.

(2) The first chief executive is to be appointed by the Scottish Ministers on such terms and
conditions as they determine.

(3) Before appointing the first chief executive, the Scottish Ministers must consult Food
Standards Scotland.

(4) Food Standards Scotland may, with the approval of the Scottish Ministers, appoint
subsequent chief executives on such terms and conditions as it, with the approval of the
Scottish Ministers, determines.

10 Other staff

(1) Food Standards Scotland may appoint staff other than the chief executive.

(2) Members of staff are to be appointed on such terms and conditions as Food Standard
Scotland, with the approval of the Scottish Ministers, determines.

(3) The number of staff is not to exceed any maximum that the Scottish Ministers may
determine.

Operational matters

11 Proceedings

It is for Food Standards Scotland to regulate its procedure (including any quorum).

12 Committees

(1) Food Standards Scotland may establish committees.

(2) A committee established by Food Standards Scotland may include as a member a person
who is not a member of Food Standards Scotland.

(3) Such a person is entitled to—

(a) such remuneration as Food Standards Scotland may determine,
(b) such sums as Food Standards Scotland may determine to reimburse or compensate
the person in relation to expenses properly incurred in the exercise of the person’s
functions.

(4) It is for Food Standards Scotland to pay any remuneration and other sums to which such
a person is entitled by virtue of subsection (3).
(5) It is for Food Standards Scotland to regulate the procedure (including any quorum) of any committee established by it.

12A Validity of things done

The validity of anything done by Food Standards Scotland or its committees is not affected by—

(a) a vacancy in membership,
(b) a defect in the appointment of a member,
(c) a person’s membership having ended under section 7.

13 Authority to exercise functions

(1) Food Standards Scotland may authorise the exercise of any of its functions by—

(a) one (or some) of its members,
(b) a committee established by it, or
(c) (subject to subsection (3)) a member of its staff.

(3) Subsection (1)(c) does not apply in relation to—

(a) the function of giving authorisations under section 20(1),
(b) the function of giving authorisations under section 27(1).

(4) Authorisation for the purposes of this section may be general or limited to the exercise of the function in specific circumstances.

(5) This section does not affect the responsibility of Food Standards Scotland for the exercise of its functions.

14 Annual and other reports

(1) As soon as practicable after the end of each financial year, Food Standards Scotland must prepare and publish an annual report on the exercise of its functions during that financial year.

(2) An annual report must contain Food Standards Scotland’s assessment of its performance of its functions in relation to—

(a) the statement of performance of functions under section 5 applying during the financial year to which the annual report relates, or
(b) if more than one statement of performance of functions applied during the financial year, each such statement for the period during the financial year when the statement applied.

(3) Subject to subsections (1) and (2), it is for Food Standards Scotland to determine the content of an annual report.

(4) It is for Food Standards Scotland to determine—

(a) the form of an annual report, and
(b) the manner of publication.

(5) As soon as practicable after publishing an annual report, Food Standards Scotland must—
Food Standards Scotland may lay a copy of any other report prepared by it before the Scottish Parliament.

General powers

15 Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

(2) Food Standards Scotland may not however—

(a) determine the location of its office without the approval of the Scottish Ministers,
(b) make charges for facilities or services provided by it at the request of any person which exceed the reasonable cost of providing the facilities or services concerned.

Legislation relating to public bodies

16 Application of legislation relating to public bodies

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Crofting Commission insert—

“Food Standards Scotland”.

(2) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities) after paragraph 22 insert—

“22A Food Standards Scotland.”.

(3) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities) after paragraph 7A insert—

“7B Food Standards Scotland.”.

(4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) after the entry relating to the Crofting Commission insert—

“Food Standards Scotland”.

(5) In the Public Services Reform (Scotland) Act 2010—

(a) in schedule 8 (information on exercise of public functions: listed public bodies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”,

(b) in schedule 19 (persons subject to the user focus duty), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”,

(c) in schedule 20 (persons subject to the duty of co-operation), after the entry relating to the Accounts Commission for Scotland insert—

“Food Standards Scotland”.
(6) In the Public Records (Scotland) Act 2011, in the schedule (authorities to which Part 1 applies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”.

(7) In the Regulatory Reform (Scotland) Act 2014, in schedule 1 (regulators for the purposes of Part 1), before the entry relating to Healthcare Improvement Scotland insert—

“Food Standards Scotland”.

(8) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13A insert—

“13B Food Standards Scotland”.

Step-in powers

17 Serious failure

(1) This section applies where the Scottish Ministers consider that there has been a serious failure by Food Standards Scotland to exercise any of its functions.

(2) The Scottish Ministers may give Food Standards Scotland such directions as they consider appropriate to remedy the failure.

(3) But before doing so, the Scottish Ministers must consult Food Standards Scotland.

(4) A direction under this section—

(a) must be in writing,

(b) must include a statement summarising the reasons for giving it.

(5) The Scottish Ministers must publish any direction under this section (in such manner as they consider appropriate).

(6) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers may give effect to it (and for that purpose, may exercise any function of Food Standards Scotland in place of it).

(7) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers—

(a) may end the membership of all its members, and

(b) may, until new members are appointed, exercise any function of Food Standards Scotland in place of it (or appoint any other person to do so).

Acquisition of information

18 Duty to acquire, compile and keep under review relevant information

(1) For the purpose of enabling it to perform its other functions effectively and to operate in accordance with section 4, Food Standards Scotland is to acquire, compile and keep under review information about food matters and animal feeding stuffs matters.

(2) The function in subsection (1) includes in particular—
Food (Scotland) Bill
Part 1—Food Standards Scotland

19 Observations with a view to obtaining information

(1) For the purpose of exercising its function under section 18, Food Standards Scotland may carry out observations (or arrange for observations to be carried out on its behalf by any other person) with a view to obtaining information about—

(a) any aspect of the production or supply of food or food sources, or the consumption of food, or

(b) any aspect of the production, supply or use of animal feeding stuffs.

(2) The information which may be sought through such observations includes in particular information about—

(a) food premises, food businesses or commercial operations being carried out in relation to food, food sources or contact materials,

(b) agricultural premises, agricultural businesses or agricultural activities,

(c) premises, businesses or operations involved in fish farming,

(d) premises, businesses or operations involved in the production, supply or use of animal feeding stuffs.

(3) In this section—

“agricultural activity” has the same meaning as in the Agriculture Act 1947,

“agricultural business” has the same meaning as in section 1 of the Farm Land and Rural Development Act 1988,

“agricultural premises” means any premises used for the purposes of an agricultural business.

20 Powers for persons carrying out observations

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out observations under section 19 in relation to a particular matter.

(2) The powers are—

(a) entering premises (other than a dwelling house) at a reasonable time,

(b) taking samples of any articles or substances on the premises,

(c) taking samples from any food source on the premises,

(d) inspecting and copying any information in a recorded form on the premises which relates to a business which is the subject of the observations (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),

(e) requiring any person carrying on a business which is the subject of the observations to provide such facilities or information and such other assistance as the authorised person reasonably requests.
The reference in subsection (2)(d) to information which relates to a business includes a reference to information which—

(a) relates to the health of a person who has, may have or may come into contact with food or food sources in the course of that person’s work for the business, and

(b) was acquired or compiled for the purpose of assessing, or is kept for the purpose of recording, matters affecting the person’s suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if the person comes into contact with any food or food source).

An authorisation under subsection (1)—

(a) must be in writing,

(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

The powers specified in subsection (2) may be exercised only if it appears to the authorised person to be necessary to do so for the purpose of carrying out the observations concerned.

An authorised person must if so required—

(a) produce evidence of the person’s identity and authorisation before exercising a power in pursuance of the authorisation,

(b) provide a document identifying any sample taken, or information copied, under those powers.

In this section, “authorised person” means a person authorised under subsection (1).

Offences in relation to section 20

Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 20(2)(a).

This subsection applies if—

(a) the information relates to a trade secret, and

(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 20(2)(a), (b), (c) or (d),

(b) fails without reasonable excuse to comply with any requirement imposed under section 20(2)(e), or

(c) in purported compliance with a requirement imposed under section 20(2)(e)—

(i) provides information which the person knows to be false or misleading in a material way, or

(ii) recklessly provides information which is false or misleading in a material way.
(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 20(1).

Enforcement action

22 Setting performance standards

(1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.

(2) Different standards may be determined in relation to—

(a) different enforcement authorities (or types of enforcement authorities),

(b) different food legislation (or types of food legislation).

(3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

23 Reporting own enforcement activities

(1) Food Standards Scotland must include in each annual report it prepares a report on—

(a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and

(b) its performance in relation to any standards determined under section 22(1) applying to those activities.

(2) In this section, “annual report” means a report prepared under section 14(1).

24 Reporting on enforcement action by others

(1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.

(2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—

(a) is necessary to enable the enforcement authority to meet any standards determined under section 22(1) which apply, or

(b) otherwise, would help to improve the performance of the authority.

(3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—

(a) to arrange for the publication (in such manner as may be specified) of—

(i) the report, or

(ii) specified information relating to the report, or

(b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.

(4) In subsection (3), “specified” means specified in the direction.
25 **Power to request information in relation to enforcement action**

(1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—

(a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or

(b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person’s control (and where such information is in electronic form, to make it available in a legible form).

(2) A requirement under subsection (1) may be imposed on—

(a) the enforcement authority, or any member, officer or employee of the authority, or

(b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

26 **Offences in relation to section 25**

(1) A person commits an offence if the person—

(a) fails without reasonable excuse to comply with any requirement imposed under section 25(1), or

(b) in purported compliance with a requirement imposed under section 25(1)—

(i) provides information which the person knows to be false or misleading in a material way, or

(ii) recklessly provides information which is false or misleading in a material way.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

27 **Powers for persons monitoring enforcement action**

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.

(2) The powers are—

(a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,

(b) taking samples of any articles or substances on the premises,

(c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
(d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.

(3) The premises in relation to which the power in subsection (2)(a) may be exercised are—

(a) any premises occupied by the enforcement authority (but see subsection (4)),

(b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,

(c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.

(5) An authorisation under subsection (1)—

(a) must be in writing,

(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

(6) An authorised person must if so required—

(a) produce the authorisation before exercising a power mentioned in subsection (2),

(b) provide a document identifying any sample taken, or information copied, under any of those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

28 Offences in relation to section 27

(1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 27(2)(a).

(2) This subsection applies if—

(a) the information relates to a trade secret, and

(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 27(2)(a), (b) or (c),

(b) fails without reasonable excuse to comply with any requirement imposed under section 27(2)(d), or

(c) in purported compliance with a requirement imposed under section 27(2)(d)—

(i) provides information which the person knows to be false or misleading in a material way, or

(ii) recklessly provides information which is false or misleading in a material way.
(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 27(1).

Issuing guidance on food-borne diseases

29 Power to issue guidance on control of food-borne diseases

(1) Food Standards Scotland may issue to the persons mentioned in subsection (3) guidance about the exercise, generally, of their functions in relation to matters connected with the management of outbreaks (or suspected outbreaks) of food-borne diseases.

(2) “Food-borne diseases” means diseases of humans which are capable of being caused by the consumption of infected or otherwise contaminated food.

(3) The persons referred to in subsection (1) are—

(a) the Scottish Ministers,

(b) public bodies and office-holders.

(4) Different guidance may be issued to different persons or for different purposes.

(5) Food Standards Scotland must publish any such guidance (in such manner as it considers appropriate).

(6) A person to whom any such guidance is issued must have regard to the guidance in exercising any function to which it relates.

(7) The power to issue guidance under subsection (1) is without prejudice to the other powers of Food Standards Scotland.

(8) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

Information sharing

30 Publication and disclosure of advice and information

(1) Food Standards Scotland may—

(a) publish (in such manner as it considers appropriate), or

(b) disclose to the Scottish Ministers or a public body or office-holder, any material to which this section applies.

(2) This section applies to—

(a) any advice given by Food Standards Scotland under section 3,

(b) any information obtained by Food Standards Scotland through—

(i) monitoring under section 3, or

(ii) observations under section 19, or

(c) any other information in the possession of Food Standards Scotland (whatever the source).

(3) Subsection (1) does not authorise publication or disclosure of material which—

(a) is prohibited by an enactment, or
Food (Scotland) Bill

Part 2—Food and feeding stuffs

(b) would constitute or be punishable as a contempt of court.

(4) But, otherwise, the powers in subsection (1) are exercisable free from any prohibition on publication or disclosure (as the case may be) which would apply.

(5) Before deciding to exercise a power in subsection (1) in relation to any particular material, Food Standards Scotland must consider whether the public interest in the publication or disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.

(6) Where the material relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing food legislation, subsection (5) applies only so far as the material relates to a person other than—

(a) an enforcement authority, or

(b) a member, officer or employee of an enforcement authority acting in that person’s capacity as such.

Consequential provision

31 Certain functions of Food Standards Agency ceasing to be exercisable

(1) The relevant functions of the Agency conferred by the 1999 Act cease to be exercisable.

(2) In subsection (1), “relevant functions of the Agency” has the same meaning as in section 35 of the 1999 Act.

PART 2

FOOD AND FEEDING STUFFS

Food information

After section 15 of the 1990 Act insert—

“Food information

15A Meaning of “food information” etc.

In this Act—

(a) “food information” has the same meaning as it has in Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers;

(b) “food information law” means any enactment relating to food information as the Scottish Ministers may by regulations specify.

15B Contravention of food information law: seizure of food etc.

(1) This section applies where it appears to an authorised officer of a food authority, on an inspection carried out under section 9 above or otherwise, that food information law is being, or has been, contravened in relation to any food intended for human consumption which is placed on the market within the meaning of Regulation (EC) No. 178/2002.

(2) The authorised officer may—
(a) give notice that, until the notice is withdrawn—

(i) the food, or any specified portion of it, is not to be used for human consumption; and

(ii) the food, or any specified portion of it, and any related food information, or any specified part of it, is not to be removed (or is not to be removed except to some place specified in the notice); or

(b) seize the food and remove it in order to have it dealt with by the sheriff.

(3) Notice under subsection (2)(a) above is to be given to—

(a) the person in charge of the food; and

(b) the owner of the food (where not the person in charge of the food).

(4) But notice need not be given in pursuance of subsection (3)(b) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.

(5) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) above commits an offence.

(6) An authorised officer who gives a notice under subsection (2)(a) above must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not food information law has been contravened in relation to the food in respect of which the notice was given.

(7) After making a determination under subsection (6) above, the authorised officer must—

(a) if satisfied that food information law has not been contravened, forthwith withdraw the notice; or

(b) if not so satisfied, seize the food and remove it in order to have it dealt with by the sheriff.

(8) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above may also—

(a) copy, make extracts of or take away any food information relating to the food that has been seized;

(b) where any such food information is in electronic form, require the information to be produced in a legible form in which it may be copied or taken away.

(9) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above must inform the person in charge of the food and the owner of the food (where not the person in charge of the food) of the officer’s intention to have it dealt with by the sheriff.

(10) But the owner of the food need not be informed in pursuance of subsection (9) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.

(11) Any person who might be liable to a prosecution for contravening food information law in relation to any food seized and removed under (2)(b) or (7)(b) above is, if the person attends before the sheriff by whom the food falls to be dealt with, entitled to be heard and to call witnesses.
(12) If it appears to the sheriff that food information law has been contravened in relation to any food seized and removed under subsection (2)(b) or (7)(b) above, the sheriff may make such order as the sheriff considers appropriate in respect of the food and any food information relating to it.

(13) An order made under subsection (12) above may, in particular, order—

(a) that the food be destroyed or otherwise disposed of so as to prevent it from being used for human consumption;

(b) that any food information relating to the food be modified, destroyed or otherwise disposed of;

(c) that any food which is fit for human consumption (and any related food information, modified as the sheriff considers appropriate) be—

(i) returned to the person who was in charge of the food; or

(ii) distributed to such other person as the sheriff may determine.

(14) An order made under subsection (12) above—

(a) must, where the owner of the food is known, require the owner to meet any expenses reasonably incurred in connection with any destruction, modification, disposal, return or distribution of any food or food information which is carried out in pursuance of the order; and

(b) may require the owner of the food to meet any expenses reasonably incurred by the food authority in connection with any action taken by the authorised officer, or otherwise by or on behalf of the authority, in respect of any food or food information to which the order relates.

(15) Subsection (16) below applies if—

(a) a notice under subsection (2)(a) above is withdrawn; or

(b) the sheriff refuses to make an order under subsection (12) above in respect of any food seized and removed under subsection (2)(b) or (7)(b) above (or any food information which relates to it).

(16) Where this subsection applies, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(17) Any disputed question as to the right to or the amount of any compensation payable under subsection (16) above is to be submitted to arbitration for resolution.

(18) Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitration carried out in pursuance of subsection (17) above, that Act applies as if it were in force in relation to that arbitration.

15C Duty to report non-compliance with food information law

(1) A food business operator must as soon as reasonably practicable inform Food Standards Scotland if the food business operator—

(a) is, or has been, in charge of any food which is intended for human consumption and has been placed on the market within the meaning of Regulation (EC) No. 178/2002; and
(b) considers or has reason to believe that food information law is being contravened in relation to the food.

(2) Any person who fails to comply with subsection (1) above shall be guilty of an offence.

(3) For the purposes of subsection (1)(a) above, a food business operator is to be treated as being, or having been, in charge of any food which it has—

(a) received;
(b) imported;
(c) produced;
(d) processed;
(e) manufactured;
(f) distributed; or
(g) otherwise placed on the market within the meaning of Regulation (EC) No. 178/2002.

(4) For the purposes of this Act, “food business operator” is to be construed in accordance with Article 3 of Regulation (EC) No 178/2002.

15D Power to obtain information

(1) This section applies where a food business operator has informed Food Standards Scotland under section 15C(1) above.

(2) The food business operator must as soon as reasonably practicable provide any further information which is reasonably required by Food Standards Scotland which relates to—

(a) the food (and any food information relating to it);
(b) the circumstances which led the food business operator to inform Food Standards Scotland under section 15C(1) above.

(3) Any person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.”.

Food hygiene information scheme

33 Food hygiene information scheme

(1) In section 16(1) of the 1990 Act, after paragraph (d) insert—

“(da) provision for a food hygiene information scheme;”.

(2) In Schedule 1 to the 1990 Act, after paragraph 7 insert—

“8 (1) Provision for the following in connection with a food hygiene information scheme, namely—

(a) for a food authority—

(i) to assess hygienic conditions and practices in food premises;
(ii) to determine food hygiene ratings for food premises (by reference to criteria specified in or determined in accordance with the regulations);

(iii) to give reasons for, and opportunities to comment on, food hygiene ratings;

(iv) to issue certificates which show food hygiene ratings;

(v) to inform Food Standards Scotland about food hygiene ratings;

(b) for notifying the public of food hygiene ratings (for example, by requiring the display of certificates, or other information, in or on food premises, requiring persons involved in a food business to provide information about food hygiene ratings when asked to do so or requiring food authorities or Food Standards Scotland to publish food hygiene ratings);

(c) for the review or appeal of food hygiene ratings;

(d) for the promotion of the scheme.

(2) Provision for a food hygiene rating to be based on an assessment of hygienic conditions and practices carried out before the regulations come into force.”.

34 Regulation of animal feeding stuffs

20 (1) The Scottish Ministers may, for the purpose of regulating—

(a) any animal feeding stuff, or

(b) anything done, or which might be done, to, or in relation to, or with a view to the production of, any animal feeding stuff,

by order make the provision mentioned in subsection (2).

25 (2) That is provision which—

(a) applies (with or without modifications), or

(b) is equivalent or reasonably similar to,

any of the provisions of the 1990 Act (including any power to make orders or regulations or to give directions).

(2A) But an order under subsection (1) may not make provision creating an offence which is—

(a) punishable with imprisonment for a period of more than 2 years, or

(b) punishable on summary conviction with—

(i) imprisonment for a period of more than 12 months, or

(ii) a fine of more than £20,000.

30 (3) An order under subsection (1) may modify any enactment.

(4) Before making an order under subsection (1), the Scottish Ministers must—

(a) have regard to any relevant advice given to them by Food Standards Scotland, and
(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(5) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (4)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

PART 3

ADMINISTRATIVE SANCTIONS

Fixed penalty notices

35

(1) An authorised officer of the appropriate enforcement authority may issue to a person a fixed penalty notice in relation to a relevant offence.

(2) In this Part, “fixed penalty notice” means a notice offering the person to whom it is issued the opportunity to discharge liability to conviction for the relevant offence in relation to which the notice is issued by paying to the appropriate enforcement authority a specified sum of money.

(3) The sum of money is to be treated as paid only if it is paid by such method of payment as the appropriate enforcement authority determines to be acceptable.

(4) An authorised officer may issue a fixed penalty notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

(5) A sum specified for the purposes of subsection (2) must not exceed level 4 on the standard scale.

(6) In this section, “standard scale” has the meaning given in section 225(1) of the Criminal Procedure (Scotland) Act 1995.

36

Content and form of a fixed penalty notice

(1) A fixed penalty notice must include the following information—

(a) a statement of the grounds for issuing the notice, including a statement of—

(i) the relevant offence that is alleged to have been committed, and

(ii) the act or omission giving rise to the offence,

(b) the amount of the sum that is to be paid to the appropriate enforcement authority,

(c) the date of issue of the notice,

(d) an explanation of how payment is to be made to the appropriate enforcement authority,

(e) the period of time within which payment is to be made,

(f) information about any early payment discounts,

(g) information about the person to whom, and as to how and by when, any representations about the notice may be made,
(h) an explanation of the effect of making payment in accordance with the notice and of the consequences of failure to make payment in accordance with the notice.

(2) The reference in subsection (1)(e) to the period of time within which payment is to be made is a reference to such period, beginning with the date on which the notice was issued, as may be specified.

(3) The Scottish Ministers may by regulations make further provision about the form and content of fixed penalty notices including, in particular—
(a) provision about the form and content of any of the information required to be included under subsection (1),
(b) provision about other information that is to be included in addition to that required under subsection (1).

37 Effect of a fixed penalty notice on criminal proceedings
(1) Where a fixed penalty notice is issued to a person in relation to a relevant offence—
(a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the payment period, and
(b) if the person makes payment in accordance with the notice, the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—
(a) constituting the relevant offence, and
(b) by reason of which the fixed penalty notice is issued.

38 Restrictions on issuing of a fixed penalty notice
(1) A fixed penalty notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
(a) a fixed penalty notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
(b) criminal proceedings—
(i) have been brought against the person for the same relevant offence arising out of the same act or omission, or
(ii) cannot, because of the expiry of relevant time limits for prosecution, any longer competently be brought against the person for the same relevant offence arising out of the same act or omission.

(2) A fixed penalty notice issued in contravention of subsection (1) is of no effect (and, accordingly, the appropriate enforcement authority must repay any amount paid in respect of the notice).

39 Withdrawal of a fixed penalty notice
(1) An authorised officer of the appropriate enforcement authority may withdraw a fixed penalty notice issued by an authorised officer of the authority.
(2) A fixed penalty notice—
   (a) may be withdrawn at any time before payment is made in accordance with the notice, and
   (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the fixed penalty notice was issued.

(3) Where a fixed penalty notice is withdrawn, it is to be treated as if it had never been issued.

40 Income from fixed penalties to be paid to the Scottish Ministers

(1) Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers.

(2) Payments by an enforcement authority under subsection (1) are to be made at such times and by such methods as the Scottish Ministers may determine.

Compliance notices

41 Compliance notices

(1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.

(2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.

(3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

42 Content and form of a compliance notice

(1) A compliance notice must include the following information—
   (a) a statement of the grounds for issuing the notice, including a statement of—
      (i) the relevant offence that is alleged to have been committed, and
      (ii) the act or omission giving rising to the offence,
   (b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,
   (c) the date of issue of the notice,
   (d) the period of time within which the required steps are to be taken,
   (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
   (f) information about the right of appeal, including the period of time within which an appeal may be made,
   (g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.
(2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.

(3) That period must not be less than the specified period.

(4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—

(a) provision about the form and content of any of the information required to be included under subsection (1),

(b) provision about other information that is to be included in addition to that required under subsection (1).

43 Failure to comply with a compliance notice

(1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.

(2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—

(a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and

(b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

44 Effect of a compliance notice on criminal proceedings

(1) Where a compliance notice is issued to a person in relation to a relevant offence—

(a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and

(b) if the person—

(i) complies with the requirements of the notice, or

(ii) though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice,

the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—

(a) constituting the relevant offence, and

(b) by reason of which the compliance notice is issued.
Restrictions on issuing of a compliance notice

(1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—

(a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or

(b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.

(2) A compliance notice issued in contravention of subsection (1) is of no effect.

Withdrawal of a compliance notice

(1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.

(2) A compliance notice—

(a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and

(b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.

(3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

Appeal against a compliance notice

(1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.

(2) An appeal is to be made by way of summary application.

(3) In subsection (1), the “relevant period” means—

(a) the period of one month beginning with the date of issue of the compliance notice, or

(b) the compliance period, whichever expires earlier.

(4) In an appeal under this section, the sheriff may—

(a) cancel the compliance notice, or

(b) affirm the notice, either with or without modifications.

(5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.

(6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.
48 Power to make supplementary etc. provision

(1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.

(2) Regulations under subsection (1) may, in particular, include provision—

(a) facilitating, prohibiting or restricting—

(i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,

(ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,

(b) for early payment discounts in relation to fixed penalty notices,

(c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—

(i) section 20 (offences due to fault of another person),

(ii) section 21 (defence of due diligence),

(iii) section 30(8) (documentary evidence in proceedings for offences),

(iv) section 32 (powers of entry),

(v) section 33 (obstruction etc. of officers),

(vi) section 34 (time limit for prosecutions),

(vii) section 36 (offences by bodies corporate),

(viii) section 36A (offences by partnerships),

(ix) section 40 (power to issue codes of practice),

(x) section 45 (regulations as to charges),

(xi) section 49(3) to (5) (authentication of documents),

(xii) section 50 (service of documents).

(3) Regulations under subsection (1) containing provision referred to in subsection (2)(a) may also make such modifications of sections 37 and 44 as the Scottish Ministers consider necessary or expedient in connection with the provision.

(3A) But regulations under subsection (1) containing provision referred to in subsection (2)(a) may not modify section 37 or 44 in such a way that a person may be convicted of a relevant offence arising out of an act or omission if the person, having been issued with both a fixed penalty notice and a compliance notice—

(a) makes payment in accordance with the fixed penalty notice, and

(b) complies with the requirements of the compliance notice or though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice.
(4) In subsection (2)(a), “another sanction” means—
(a) a fixed penalty notice (in relation to a compliance notice),
(b) a compliance notice (in relation to fixed penalty notice),
(c) an improvement notice under section 10 of the 1990 Act,
(d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and
(e) an emergency control order under section 13 of the 1990 Act.

(5) The Scottish Ministers may by regulations modify subsection (4).

49 Regulations

(1) Before making any regulations under this Part, the Scottish Ministers must—
(a) have regard to any relevant advice given by Food Standards Scotland, and
(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.

(2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

(3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

50 Lord Advocate’s guidance

(1) The Lord Advocate may issue guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.

(1A) The Lord Advocate must publish any such guidance (in such manner as the Lord Advocate considers appropriate).

(1B) Subsection (1A) does not apply to the extent that the Lord Advocate considers that publication would, or would be likely to, prejudice—
(a) the effective exercise of the functions of enforcement authorities, or their authorised officers, under this Part,
(b) the prevention or detection of crime,
(c) the apprehension or prosecution of offenders, or
(d) the administration of justice.

(2) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance in exercising those functions.

(3) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

51 Interpretation of Part

In this Part—
“appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises.

“authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,

“compliance notice” has the meaning given in section 41(2),

“compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 42(1)(d),

“fixed penalty notice” has the meaning given in section 35(2),

“payment period”, in relation to a fixed penalty notice, means the period stated in the notice in accordance with section 36(1)(e),

“relevant offence” means a specified offence under food legislation,

“specified” means specified in regulations made by the Scottish Ministers.

PART 4
INTERPRETATION

52 Meanings of “food” and “animal feeding stuffs”

(1) In this Act—

“food” has the same meaning as in Regulation (EC) No. 178/2002 (as at 7 December 2004),

“animal feeding stuffs” means feeding stuffs for any description of animal.

(2) The reference in subsection (1) to “feeding stuffs” includes any nutritional supplement or other similar substance which is not administered through oral feeding.

53 Meaning of “food matter”

In this Act, “food matter” means any matter connected with—

(a) health which may arise in relation to the consumption of food, or

(b) other interests of consumers in relation to food.

54 Meaning of “other interests of consumers in relation to food”

In this Act, “other interests of consumers in relation to food” includes in particular interests in relation to—

(a) the labelling, marking, presentation or advertisement of food,

(b) the descriptions which may be applied to food.

55 Meaning of “animal feeding stuffs matter”

(1) In this Act, “animal feeding stuffs matter” means any matter connected with—

(a) animal health which may arise in connection with the consumption of animal feeding stuffs, or
(b) other interests of users of animal feeding stuffs.

(2) “Other interests of users of animal feeding stuffs” includes in particular interests in relation to—

(a) the labelling, marking, presentation or advertisement of animal feeding stuffs,

(b) the descriptions which may be applied to animal feeding stuffs.

56 Meaning of “food legislation”

(1) In this Act, “food legislation” means legislation for the time being in force—

(a) relating to food, including in particular legislation relating to—

(i) the protection of the public from risks to health which may arise in connection with the consumption of food,

(ii) the production, processing, importing, exporting or distribution of food,

(iii) the labelling, marking, presentation or advertisement of food, or

(iv) the descriptions which may be applied to food, or

(b) relating to food sources or animal feeding stuffs, but only so far as the legislation relates to food matters.

(2) In subsection (1), “legislation” means any enactment, or any obligation or restriction to which section 2(1) of the European Communities Act 1972 applies.

57 General interpretation

(1) In this Act—

“the 1990 Act” means the Food Safety Act 1990,

“the 1999 Act” means the Food Standards Act 1999,

“advertisement” includes—

(a) any notice, circular, label, wrapper, invoice or other document,

(b) any public announcement made orally or by any means of producing images or sound,

“article” includes a live fish which is used for human consumption while it is alive, but does not otherwise include a live animal,

“business” includes (except in “agricultural business”)—

(a) a canteen, club, school, hospital or institution, whether carried on for profit or not,

(b) an undertaking or activity carried on by a public body or office-holder,

“commercial operation” means—

(c) in relation to food or contact material—

(i) selling, possessing for sale or offering, exposing or advertising for sale,

(ii) consigning, delivering or serving by way of sale,
(iii) preparing for sale (including packaging) or presenting, labelling or wrapping for the purpose of sale or for purposes connected with sale,

(iv) storing or transporting for the purpose of sale,

(v) importing or exporting,

(b) in relation to a food source, deriving food from it for the purpose of sale or purposes connected with sale,

“contact material” means any article or substance which is intended to come into contact with food,

“enforcement authority” means an authority having functions under food legislation in relation to the enforcement of food legislation,

“food business” means any business in the course of which commercial operations with respect to food or food sources are carried out,

“food premises” means any premises used for the purposes of a food business,

“food source” means any growing crop or live animal from which food is intended to be derived (by, for example, harvesting, killing, milking or collecting eggs),

“premises” includes any place, vehicle, stall or moveable structure (and, for this purpose, “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a description specified by the Scottish Ministers by order),

“presentation”, in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising,


“sale” has the extended meaning given by section 2 of the 1990 Act (and “selling” is to be construed accordingly),

“substance” includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour,

“undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors and has not been discharged in respect of it,

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

(e) who has been adjudged bankrupt and has not been discharged, or

(f) who is subject to any other kind of arrangement or undertaking, anywhere in the world, which is analogous to those described in paragraphs (a) to (d).
(2) The reference in subsection (1) to preparing for sale is to be construed, in relation to a contact material, as a reference to manufacturing or producing for sale.

(3) Before making an order under subsection (1) (see the definition of “premises”), the Scottish Ministers must—

(a) have regard to any relevant advice given by Food Standards Scotland, and

(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(4) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (3)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

**PART 5**

**Final provisions**

**58** Modification of enactments

The schedule (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

**59** Subordinate legislation

(1) Each power of the Scottish Ministers to make an order or regulations under this Act includes power—

(a) to make different provision for different purposes,

(b) to make any supplementary, incidental, consequential, transitory, transitional or saving provision which they consider appropriate.

(2) The following are subject to the affirmative procedure—

(a) an order under section 34(1),

(aa) regulations under section 48(1) which modify section 37 or 44,

(ab) regulations under section 48(5),

(c) an order under section 60 which adds to, replaces or omits any part of the text of this or any other Act.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(4) Subsections (1) and (3) do not apply to an order under section 62(2).

**60** Ancillary provision

The Scottish Ministers may by order make—

(a) any supplementary, incidental or consequential provision which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act,

(b) any transitional, transitory or saving provision which they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.
61 Crown application

(1) Nothing in this Act affects Her Majesty in Her personal capacity.

(2) The Crown is not criminally liable in respect of any contravention of a relevant provision.

(3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown in contravention of a relevant provision.

(4) Despite subsection (2), a relevant provision applies to persons in the public service of the Crown as it applies to other persons.

(5) In this section, “relevant provision” means provision in or under this Act.

62 Commencement

(1) This Part (except section 58) comes into force on the day after Royal Assent.

(2) The rest of this Act comes into force on such day as the Scottish Ministers appoint by order.

(3) Such an order may include transitional, transitory or saving provision.

63 Short title

The short title of this Act is the Food (Scotland) Act 2014.
SCHEDULE
(introduced by section 58)
MODIFICATION OF ENACTMENTS

Agriculture Act 1947

A1 In section 80 of the Agriculture Act 1947, after paragraph (e) insert—

“(f) to Food Standards Scotland for purposes connected with the carrying out of any of its functions.”.

Agricultural Statistics Act 1979

A2 In section 3(2) of the Agricultural Statistics Act 1979, after paragraph (g) insert—

“(ga) to Food Standards Scotland for purposes connected with the carrying out of any of its functions.”.

Food and Environment Protection Act 1985

1 (1) The Food and Environment Protection Act 1985 is amended as follows.

(2) In section 1(12) the words “or is made on their behalf by the Food Standards Agency in accordance with an arrangement made under section 17 of the Food Standards Act 1999” are repealed.

(3) In section 2, after subsection (6) insert—

“(7) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

Food Safety Act 1990

2 (1) The 1990 Act is amended as follows.

(2A) In section 6, after subsection (4) insert—

“(4A) In the application of subsections (3) and (4) to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(2B) In section 13, after subsection (7) insert—

“(8) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

(3) In section 33—

(a) in subsection (2), after “with” insert “section 15C(1) above or”,

(b) in subsection (3), after “subsection (1)(b)” insert “, section 15C(1) or section 15D(2)”.

(4) In section 34, for “section 35(2)” substitute “section 35(A1), (A2) or (2)”.

(5) In section 35, before subsection (1) insert—

“(A1) A person guilty of an offence under section 15B(5) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
(A2) A person guilty of an offence under section 15C(2) or 15D(3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.’’.

(6) In section 35, after subsection (1) insert—

“(1A) A person guilty of an offence under section 33(2), in so far as it relates to section 15C(1) or 15D(2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.’’.

(6A) In section 40, after subsection (5) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(6B) In section 41—

(a) the existing provision becomes subsection (1),
(b) after that subsection insert—

“(2) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(6C) In section 42, after subsection (1) insert—

“(1A) In the application of subsection (1) to Scotland, the reference to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(6D) In section 48, after subsection (5) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(7) In section 53(2), after the entry for “food business” insert the following entries—

“food information section 15A
food information law section 15A”.

Environmental Protection Act 1990

2A(1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 108, after subsection (10) insert—

“(11) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(3) In section 111, after subsection (11) insert—

“(12) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(4) In section 126, after subsection (8) insert—

“(9) In the application of this section to Scotland, the reference in subsection (8) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.
Radioactive Substances Act 1993

2B(1) The Radioactive Substances Act 1993 is amended as follows.

(2) In section 16, after subsection (4A) insert—

“(4B) In the application of this section to Scotland, the references in subsection (4A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(3) In section 17, after subsection (2A) insert—

“(2B) In the application of this section to Scotland, the references in subsection (2A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”

(4) In section 25, after subsection (3A) insert—

“(3B) In the application of this section to Scotland, the references in subsection (3A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”

Environment Act 1995

2C In section 42 of the Environment Act 1995, after subsection (11) insert—

“(12) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”

Food Standards Act 1999

3 (1) The 1999 Act is amended as follows.

(2) The following sections are repealed—

section 17,
section 27,
section 30.

(3) In section 43—

(a) in subsection (5), after “Scotland” insert “(subject to subsection (6))”,
(b) after subsection (5), insert—

“(6) Sections 17, 27 and 30 do not extend to Scotland.”.

Water Environment and Water Services (Scotland) Act 2003

4 In section 11(6)(fa) of the Water Environment and Water Services (Scotland) Act 2003, for “the Food Standards Agency” substitute “Food Standards Scotland”.

Gaelic Language (Scotland) Act 2005

5 Section 10(3) of the Gaelic Language (Scotland) Act 2005 is repealed.
Regulatory Reform (Scotland) Act 2014

6 In schedule 1 to the Regulatory Reform (Scotland) Act 2014, the entry for the Food Standards Agency is repealed.
Food (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

Introduced by: Alex Neil
Supported by: Michael Matheson
On: 13 March 2014
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Food (Scotland) Bill (which was introduced in the Scottish Parliament on 13 March 2014) 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 sideling in the right margin.

2. These 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 Bill is structured in the following Parts:
   - **Part 1** establishes Food Standards Scotland (FSS) as a body corporate and sets out its core objectives to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and FSS. The Scottish Ministers may request advice and assistance from FSS in relation to particular matters and may give FSS directions in certain circumstances.
   - **Part 2** introduces specific provisions in relation to food and feed law. These include provision for a food hygiene information scheme, to make regulations on animal feeding stuffs, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain or seize and remove such food and for a sheriff to determine the treatment of such food.
   - **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.
   - **Part 4** sets out interpretation provisions for the Bill.
PART 1: FOOD STANDARDS SCOTLAND

Section 1: Establishment

5. This section establishes Food Standards Scotland (FSS) as a public body. Outwith the scope of this Bill, a section 104 order will be made under the Scotland Act 1998 to designate FSS as a non-ministerial office of the Scottish Administration. That will be the basis of its operational autonomy from the Scottish Ministers. FSS will be accountable to the Scottish Parliament and its employees will be civil servants.

Section 2: Objectives

6. Section 2 lists FSS’ three objectives: to protect the public from risks arising from consuming food, to improve the diet of the public and to protect consumers’ other interests with regards to food. These objectives are deliberately wide in scope. This gives FSS flexibility to be involved in a very broad range of policies, too numerous to try to define. For example FSS, under these objectives could contribute to policies on animal health or to policies which would be marginal to food itself such as food sustainability or food poverty. The general nature of the objectives gives FSS the flexibility and authority to act in relation to a wide range of food matters.

Section 3: General functions

7. The general functions of FSS are designed to focus effort and expertise on delivering the objectives, above. The functions are set out in detail, but in summary they are to develop (and assist public bodies or office-holders to develop) policies, provide advice and assistance to public bodies or office-holders, to keep the public and users of animal feeding stuffs informed about significant matters which concern them about food and feeding stuffs and to monitor the performance of, and to promote best practice by, the authorities who enforce food law. The reference to public bodies and office-holders covers any such body or office-holder; it is not limited to public bodies and office-holders in Scotland e.g. it could include, and therefore enable FSS to work with, UK or European public bodies and office-holders. As with the objectives, these functions are deliberately wide so as not to be overly restrictive. It is intended that FSS as the independent body with policy responsibility in Scotland for food matters is seen to be able to operate without overly prescriptive boundaries.

8. FSS must comply with requests from the Scottish Ministers where reasonably practicable. This is designed to provide public assurance both on the operational independence of FSS and that the Scottish Ministers can still influence FSS transparently, in the public interest. In short, this provision allows flexibility in the relationship between the Scottish Government and FSS – allowing them to work together across food policy areas in a way that does not put the independence of FSS at risk.

Section 4: Governance and accountability

9. This provision will ensure that, as a public body, FSS must work in a proportionate, transparent and accountable manner. This is consistent with its other general statutory duties of
sustainable growth, efficiency, effectiveness and economy from the Public Services Reform (Scotland) Act 2010\(^1\).

**Section 5: Statement on performance of functions**

10. FSS must develop a statement setting out how it will carry out its functions in order to meet its objectives and operate in accordance with section 4. This needs to be approved by the Scottish Ministers (with or without modifications) and laid before the Scottish Parliament. Having a published statement such as this will ensure transparency and public accountability, as it will be clear how FSS is aiming to perform its functions and how it intends to demonstrate that transparently. FSS must review the statement from time to time and consequently may submit a revised statement to the Scottish Ministers for approval and laying before the Scottish Parliament.

**Section 6: Number and appointment of members**

11. This section sets out the number of members FSS can have (which includes a chair) and lists certain office-holders who are automatically excluded from being a member. Members are appointed by the Scottish Ministers for such a period and under such terms and conditions as the Scottish Ministers may determine. Members will normally be referred to collectively as “the board”. The Scottish Ministers may assign one of the members to deputise for the chair which includes giving that member the function of chairing the board during any period where a chair has not been appointed. Subsection (3) specifies that during a recruitment process to appoint members, equal opportunity requirements must be followed.

**Section 7: Early ending of membership**

12. This section sets out situations when a person’s membership of FSS will end. This is to prevent a conflict of interest and to maintain FSS’ independence. For example, membership will end if the person becomes a member of the Scottish Parliament. It is also to enable the Scottish Ministers to end a person’s membership in the circumstances set out in subsection (2).

**Section 12: Committees**

13. Section 12 allows FSS to create committees as and when required and to regulate their procedures. These committees could be set up to address specific issues on a case-by-case basis. This approach is more flexible than having a set of statutory committees in place permanently when there was no need for them for most of the time.

**Section 12A: Validity of things done**

14. This section makes clear that certain circumstances arising, such as a vacancy for a member or the ending of membership for a member, would not affect the validity of things done by FSS.

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\(^1\) Section 32 of the PSR Act 2010, Public functions: duty to provide information on exercise of functions
Section 14: Annual and other reports

15. FSS must publish an annual report on its functions and performance and lay it before the Scottish Parliament who it will be accountable to. As an independent body not accountable to the Scottish Ministers, this section provides for transparency and public accountability on its work and performance.

Section 15: General powers

16. Section 15 gives FSS a general power to do anything it deems necessary in order to carry out its functions. This provision gives FSS operational independence and wide-ranging autonomy to take action on things like training and direct stakeholder engagement for example. This freedom is subject to two exceptions: moving office premises without approval of the Scottish Ministers and charging for services at a profit. These restrictions will ensure FSS acts in accordance with wider Scottish Administration principles.

Section 16: Application of legislation relating to public bodies

17. Section 16 inserts reference to FSS into various pieces of legislation that confer duties and responsibilities on listed public bodies in Scotland. For example, FSS will have to adhere to the Freedom of Information (Scotland) Act 2002. These individual enactments confer particular duties on FSS, and these are commonly applied to public bodies in Scotland.

Section 17: Serious failure

18. This section provides the Scottish Ministers authority to step-in where there has been a serious failure by FSS to meet its functions. Subsection (2) allows the Scottish Ministers to give FSS directions in order to remedy the failure. If FSS fails to comply with a direction, the Scottish Ministers can end the membership of all of FSS’ members and carry out their functions until replacements are appointed. This provision demonstrates how important independence will be for FSS as well as providing assurance to consumers that ultimately in extreme circumstances, the Scottish Ministers will be able to step in to protect consumers.

Section 18: Duty to acquire, compile and keep under review relevant information

19. In order for FSS to carry out its functions – developing policy and giving advice – and come to sound decisions, it has a duty to keep up-to-date with, and review, developments in food matters and animal feeding stuffs matters. It can also carry out or commission research on food matters and on animal feeding stuffs. The meaning of a “food matter” and an “animal feeding stuff matter” is set out in Part 4 of the Bill.

Section 19: Observations with a view to obtaining information

20. To assist FSS in carrying out its duty to compile and review information, section 19 allows it to carry out observations, for example, through visits and inspections either routine or unannounced, of businesses in any part of the supply chain in order gain information about food or animal feeding stuffs. This provision extends to all aspects of food production (e.g. farms and production plants), food supply (e.g. wholesale or retail) or food consumption (e.g. food outlets and restaurants).
Section 20: Powers for persons carrying out observations

21. Section 20 confers powers on a person authorised by FSS to carry out observations. An authorised person can be a FSS employee or any other individual, for example, a local authority employee. The powers are to enter premises, take samples, inspect and copy documents and require the person under observation to provide documents and information. These powers can only be used if it is necessary to carry out an observation. Documents can include the health records of individuals held by the business to assess an individual’s suitability for working in the production or supply of food. For example, in order to prevent a public health risk, employers may need to obtain medical certificates about their employees’ suitability to carry out certain duties with food. This section does not allow FSS access to the personal health records of an individual.

Section 21: Offences in relation to section 20

22. Section 21 makes it an offence for an authorised person carrying out an observation to disclose or use information gathered which relates to a trade secret, outwith the course of their duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during an observation to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out their duty to gather information as part of an observation.

Section 22: Setting performance standards

23. FSS may set standards of performance for enforcement authorities (as defined in section 57), which would include FSS itself and local authorities’ trading standards and environmental health departments, to enforce “food legislation” (as defined in section 56). Who the enforcement authorities are for particular pieces of food legislation is designated in food legislation (mostly in regulations made by the Scottish Ministers). This provision gives FSS the role of setting the performance standards for the enforcement authorities in respect of all food legislation in Scotland.

Section 23: Reporting own enforcement activities

24. FSS must include information about enforcement action it has taken in its annual report. As an autonomous office in the Scottish Administration, the intention of this provision is for FSS to be open about its own activities.

Section 24: Reporting on enforcement action by others

25. Section 24 allows FSS to make a report on any enforcement authority’s performance and provide them with guidance on how to make improvements and meet any standards set out by FSS. This open and transparent system is designed to provide public assurance on the performance of authorities.
Section 25: Power to request information in relation to enforcement action

26. This section gives FSS the power to require information from enforcement authorities and others to help it make an assessment of the performance of enforcement authorities.

Section 26: Offences in relation to section 25

27. This provision makes it an offence to fail to comply with the requirement to provide information to FSS under section 25. It also makes it an offence to provide or knowingly or recklessly provide false or misleading information. Having an offence of failing to provide information will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.

Section 27: Powers for persons monitoring enforcement action

28. Section 27 provides FSS the power to allow an authorised person to enter premises (other than a dwelling house), take samples and copy documents in order to monitor enforcement action. It includes a power to require any person present on the premises to provide assistance to an authorised officer which is reasonably requested. The detail of these powers is set out in the section, and the intention is to help ensure FSS has access to all the information it needs to be able to assess the performance of enforcement authorities. An authorisation issued by FSS must be made in writing and it may contain such limitations or conditions as FSS determine (e.g. hygienic precautions to be taken by an authorised officer in exercising powers under the authorisation).

Section 28: Offences in relation to section 27

29. Section 28 makes it an offence for an authorised person monitoring enforcement action to disclose information or use information gathered outwith the course of that person’s duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during monitoring to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out that person’s powers under section 27 to monitor enforcement action. This subsection will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.

Section 29: Power to issue guidance on control of food-borne diseases

30. FSS may issue guidance to the Scottish Ministers and Scottish public bodies about their general responsibilities for the control and management of food-borne diseases. Any such guidance must be published. This will ensure transparency and public accountability for measures that should be taken to combat food-borne disease. The Scottish Ministers and Scottish public bodies have to have regard to this guidance as required. The section provides that the power to issue guidance includes power to issue revised guidance.

Section 30: Publication and disclosure of advice and information

31. Section 30 gives FSS a right to publish or disclose information. This power is subject to that publication or disclosure not being prohibited by another law, not being in contempt of court and
This document relates to the Food (Scotland) Bill as amended at Stage 2 (SP Bill 48A)

not being outweighed by considerations of confidentiality attaching to it. Otherwise FSS will be free to publish information as it sees fit. This power applies to information gathered from observations and monitoring (or obtained from any other source). The intention is for this to safeguard the autonomy of FSS. This power could be used to publish advice and information unrestrained by the Scottish Ministers or other stakeholders.

Section 31: Certain functions of Food Standards Agency ceasing to be exercisable

32. This section provides that (to the extent made possible by the legislative competence of the Scottish Parliament) all the functions that the Food Standards Agency exercises in or as regards Scotland which are conferred by the Food Standards Act 1999 cease to be exercisable in Scotland. Equivalent functions through this Bill will now be conferred on FSS.

PART 2: FOOD AND FEEDING STUFFS

Section 32: Food information

33. Section 32 inserts 4 new provisions into the Food Safety Act 1990. Section 15A defines “food information” as having the same meaning as the European definition contained in EU Regulation 1169/2011 on the provision of food information to consumers, and provides the Scottish Ministers with a power to define “food information law” by regulations. Giving this power to the Scottish Ministers builds in flexibility to be able to redefine food information law as and when new enactments are made in Scotland which relate to food information e.g. where the Scottish Ministers make regulations in future to give effect to requirements in EU law on food information.

34. Section 15B creates a new power for authorised officers to issue a notice to detain food which contravenes food information law – for example, where the description on the label does not match the content. This applies where it appears to an authorised officer (in the course of carrying out an inspection or otherwise) that food information law is being, or has been, contravened in relation to food intended for human consumption which is placed on the market within the meaning of EC Regulation 178/2002. A definition of “placing on the market” is contained in Article 3 of that Regulation. A notice can be given to a person in charge of the food or the owner of the food (if different and if known). It will be an offence for anyone to contravene a detention notice. The notice may require the food not to be removed from where it is or that it is not to be removed from a place specified in the notice. The officer must determine as soon as reasonably practicable and in any event within 21 days of the notice being issued whether or not food information law has been contravened, after which time the notice must be lifted. The officer may seize the food at any time and refer the case to the sheriff to determine if food information law has been contravened.

35. Where food is seized the authorised officer may copy or take away food information related to the food (including information held in electronic form). An authorised officer must inform the person in charge of the food of the officer’s intention to have the matter dealt with by the sheriff; the owner of the food (if different) must also be informed unless, after making reasonably inquiries, it is not possible to identify the owner. Anyone who might be prosecuted for breaching food information law in relation to the seized food is entitled to be heard and call witnesses if that person attends before the sheriff. If food information law has been breached, the sheriff has the discretion to have the food destroyed or disposed of or to require the
information to be corrected so the food can be distributed for consumption; and the sheriff must require the owner of the food to meet any expenses reasonably incurred in connection with any disposal etc. of the food.

36. Where a detention notice is withdrawn by an authorised officer or where a sheriff refuses to make an order about the seized food (or any related food information), the food authority must pay the food owner compensation. The term “food authority” has the same meaning it does in section 5(2) of the Food Safety Act 1990 and will usually be local authorities. Any dispute about the amount of compensation is to be determined by arbitration in accordance with the Arbitration (Scotland) Act 2010.

37. These arrangements are modelled on existing arrangements for food which is believed to contravene food safety requirements, which are contained in section 9 of the Food Safety Act 1990. This section will help guard against food which is mislabelled entering the food chain, as happened in the horse meat food fraud incidents in 2013.

38. Section 15C inserts a new duty on food business operators to inform FSS where food information law is or has been contravened, i.e. where a food business operator is in charge of any food intended for human consumption and that food has been placed on the market. A person who fails in this duty is guilty of an offence, and this is a new offence. “Food business operator” is to be construed in accordance with Article 3 of EC Regulation 178/2002.

39. Section 15D sets out a duty on food business operators who have informed FSS about contraventions of food information law to then provide such relevant information FSS reasonably requests. Failing to do so will be an offence.

40. In sections 15A to 15D reference to “food” means food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

Section 33: Food hygiene information scheme

41. This section inserts provisions into section 16(1), and Schedule 1 to, the Food Safety Act 1990 which allows the Scottish Ministers to establish by regulations a food hygiene information scheme. Section 16 (food safety and consumer protection) is the primary regulation-making power contained in the 1990 Act and is relied on to make many regulations in food law in Scotland, including on food hygiene. The new provisions inserted into Schedule 1 (provisions of regulations made under section 16(1)) elaborate on what the power to establish the scheme in section 16(1) can, in particular, be used to do. The intent is to make mandatory a food hygiene information scheme based on an existing Scottish voluntary scheme. The aim of the scheme is to improve hygiene standards and therefore make food safer for the consumer. The references to “food” in the amendments made here to the 1990 Act mean food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

Section 34: Regulation of animal feeding stuffs

42. This section allows the Scottish Ministers to make orders in relation to animal feeding stuffs. This is a general power which the Scottish Government anticipates would be used only if
existing powers (largely contained under section 2(2) of the European Communities Act 1972) could not be relied on to make regulations on animal feeding stuffs. The section also limits the provision which may be made for punishment of offences contained in such an order.

43. A similar power is currently available in the 1999 Act, and although it has not been used in the past it may still be prudent to retain it as a fall-back power. The Scottish Ministers must consult widely and take advice from FSS before making any such order.

PART 3: ADMINISTRATIVE SANCTIONS

Section 35: Fixed penalty notices

44. This section provides for fixed penalty notices for relevant offences, as an opportunity for the person who is believed to have committed the offence to discharge liability by paying a specified sum of money. The Scottish Ministers, by regulations, will specify the sum of money to be paid as a penalty for the fixed penalty notice. The sum of money which the Scottish Ministers can specify for a fixed penalty notice (or different sums in respect of notices for different relevant offences) cannot exceed level 4 on the standard scale (currently £2,500). Setting this by regulation allows for the sum to be changed over time in line with the cost of living and inflation without having to amend primary legislation.

45. These fixed penalty notices can be issued by authorised officers to someone who they believe has breached a relevant offence. The standard of proof to be used to satisfy authorised officers that a relevant offence has been committed before they can issue a fixed penalty notice – i.e. beyond reasonable doubt or on the balance of probability etc. – is also to be set by regulations. This allows for changes to be made to the standard to reflect changing circumstances without having to amend primary legislation. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the fixed penalty scheme by regulations. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences.

46. Setting sums of money payable, the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of fixed penalty notices. Enforcement authorities must comply with that guidance.

Section 36: Content and form of fixed penalty notice

47. This section describes the information which must be included in a fixed penalty notice, and gives the Scottish Ministers power to make regulations to set the period of time within which payment is to be made, and to make any further provisions about the form and content of the notice by regulations.

Section 37: Effect of fixed penalty notice on criminal proceedings

48. Criminal proceedings for a relevant offence cannot be initiated if a fixed penalty notice has been issued and is still in force. If the person to whom the notice is issued makes payment in
accordance with the notice then that person may not be convicted of a relevant offence in respect of the relevant act or omission.

Section 40: Income from fixed penalties to be paid to the Scottish Ministers

49. This section states that sums received by enforcement authorities for payment of fixed penalty notices must be paid over to the Scottish Ministers. This will ensure that enforcement authorities are not seen to be using fixed penalty notices to pay for services they provide.

Section 41: Compliance notices

50. This section enables authorised officers of enforcement authorities to issue compliance notices in relation to a relevant offence. The notice will stipulate steps that need to be taken to rectify the offence.

51. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences. As with fixed penalty notices, the Scottish Ministers will by regulation set what the specified standard of proof will be for a relevant offence – i.e. beyond reasonable doubt or on the balance of probability etc. In practice, a compliance notice could be issued for minor offences where either a fixed penalty notice or a report to the Procurator Fiscal Service would be disproportionate to the offence.

52. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the compliance notice scheme by regulations.

53. Setting the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of compliance notices. Enforcement authorities must comply with that guidance.

Section 42: Content and form of compliance notice

54. This section describes what information needs to be contained in a compliance notice, including details on a right of appeal and the consequences for failure to comply with the notice. Scottish Ministers have a power to make any further provisions about the form and content of the notice by regulations.

Section 43: Failure to comply with a compliance notice

55. It is an offence to fail to comply with a compliance notice and within the compliance period. The penalty on summary conviction is a fine not exceeding level 5 (£5,000) on the standard scale.
Section 44: Effect of compliance notice on criminal proceedings

56. Criminal proceedings for the relevant offence cannot be initiated, and if the person on whom the notice is served complies with the notice, then that person may not be convicted in respect of the relevant act or omission, if a compliance notice has been issued and is still in force.

Section 48: Power to make supplementary etc. provision

57. This section gives the Scottish Ministers power to make supplementary, incidental or consequential provision for the administrative sanctions regime, by regulation. This covers both fixed penalty and compliance notices as well as how enforcement authorities carry out their functions under Part 3 of the Bill. This is a general power, but the section gives particular reference to regulations for facilitating, prohibiting or restricting the use of sanctions where another sanction has already been imposed or issued for the same act or omission. These sanctions could be fixed penalty notices, compliance notices or another sanction.

58. The section also refers to regulations providing for early payment discounts in relation to fixed penalty notices. The section also provides for regulations being made to modify certain provisions of the 1990 Act. These include modifying provisions on offences and defences, on powers of entry and powers to issue codes of practice. This section in particular also provides for the effect of fixed penalty notices and compliance notices on criminal proceedings.

Section 50: Lord Advocate’s guidance

59. This section gives the Lord Advocate, as head of the Crown Office and Procurator Fiscal Service, the right to issue guidance to enforcement authorities about how they exercise their functions with regards to fixed penalty notices and compliance notices. The content of the guidance will be a matter for the Lord Advocate, but it may, for example, set conditions for certain offences to be treated administratively. Enforcement authorities must comply with this guidance. The section also requires the Lord Advocate to publish such guidance, unless the Lord Advocate considers that publishing it would prejudice those activities specified in subsection (1B).

Section 51: Interpretation of Part

60. Part 3 introduces administrative sanctions; this section describes the key terms used. This section includes a power to make regulations to specify what “relevant offences” are in respect of fixed penalty and compliance notices. Determining what constitutes a relevant offence by regulation rather than on the face of the Bill allows greater flexibility to amend the list of offences over time and following further consultation. This means not having to amend primary legislation if another type of offence is identified or where particular offences are to be treated differently, as may be the case following Lord Advocate’s guidance being issued from time to time under section 50 of the Bill.

PART 4: INTERPRETATION

61. Part 4 sets out interpretation provisions, definitions and meanings of key terms used in the Bill. Section 52 defines the meanings of “food” and “feeding stuffs” in a way which aligns the meanings in the Bill with the meanings used in European legislation and in the Scotland Act
1998. Section 54 makes it clear that the term “other interests of consumers in relation to food” which is found in section 2 regarding FSS’ functions, includes the labelling and advertisement of food.

PART 5: FINAL PROVISIONS

Section 58: Modification of enactments

62. Section 58 introduces the schedule which makes various amendments to Acts including the Food Safety Act 1990 and Food Standards Act 1999. In particular, it sets out the maximum penalty for those found guilty of an offence under food information law, failing to report non-compliance of food information and failing to give an enforcement authority further information with regards to non-compliant food information.

Section 59: Subordinate legislation

63. The Scottish Ministers are given powers under this Bill to make regulations and orders. Section 59(2) lists which of these will be subject to the affirmative procedure. Section 59(3) provides for all other regulations and orders under the Bill are to be made by the negative procedure. The powers inserted into the 1990 Act by sections 32 and 33 of the Bill are also subject to negative procedure. Those subject to affirmative procedure must get approval from the Scottish Parliament before becoming law and those subject to negative procedure mean they will become law when they are made unless there is an objection from the Scottish Parliament.
FOOD (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Food (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. In this case, no new provisions conferring power to make subordinate legislation were introduced to the Bill at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

2. The amended delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

Section 34 – Regulation of animal feeding stuffs

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

3. Section 34 confers a power on the Scottish Ministers to, by order, 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 specific provision which may be made using the power is described in section 34(2)(a) and (b).

4. Section 34(2)(b) was amended at Stage 2. Section 34(2)(b), as introduced, enabled the Scottish Ministers to make provision equivalent to any of the provisions of the Food Safety Act 1990 (“the 1990 Act”). Section 34(2)(b), as amended, enables the Scottish Ministers to make provision equivalent to, or reasonably similar to, any of the provisions of the 1990 Act.

5. A new subsection was added to section 34 at Stage 2 (section 34(2A)). This narrows the power in section 34 so that it may not be used to make provision creating an
offence which is punishable with imprisonment for a period of more than 2 years or punishable on summary conviction with imprisonment for a period of more than 12 months or a fine of more than £20,000.

Reason for taking power

6. The reason for taking the power, as introduced, was to ensure that the Scottish Ministers still have a power to regulate animal feeding stuffs which is equivalent to the power they currently have under section 30 of the Food Standards Act 1999 (“the 1999 Act”). The Bill repeals section 30, together with other provisions of that Act which are within the legislative competence of the Scottish Parliament. Section 34 is intended to restate the Scottish Ministers’ powers under section 30.

7. The amendment of section 34(2)(b) is to ensure that the specific provision which may be made using the power is the same as the specific provision which may currently be made under section 30 of the 1999 Act. Section 30(2) enables the making of provision “corresponding to, any provisions of the 1990 Act….with or without modifications”. Section 34(2), as introduced, enabled the making of provision which applies (with or without modifications) any provisions of the 1990 Act, or provision which is equivalent to any provisions of the 1990 Act. Consequently, if the Scottish Ministers chose to apply provisions of the 1990 Act, they could apply modified versions of the provisions but if they chose to restate provisions of the 1990 Act, they would have to be exactly the same. The amendment is to ensure that the Scottish Ministers’ power to restate provisions of the 1990 Act is sufficiently wide to enable the making of provisions which are slightly different from, but still reasonably similar to, the provisions of the 1990 Act.

8. The insertion of a new subsection in section 34 is in response to the Committee’s comment that the power could be exercised so as to make subordinate legislation which applied offence provisions under the 1990 Act but which removed the restrictions which the 1990 Act places on the maximum penalties which may be imposed for offences under that Act. The Scottish Government considers that it is appropriate to place a restriction on the maximum penalties which may be imposed for offences created by an order under section 34 and the new subsection achieves that.

Choice of procedure

9. The choice of procedure is unchanged. An order made under section 34 remains subject to the affirmative procedure, for the reasons given in the original Delegated Powers Memorandum.

Section 48(1) – Power to make supplementary etc. provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

10. Section 48(1) enables the Scottish Ministers to make, by regulations, such supplementary, incidental or consequential provision as they consider appropriate in
connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under Part 3 of the Bill. Regulations under section 48(1) may make provision facilitating, prohibiting or restricting the issuing of more than one sanction in respect of the same relevant offence arising out of the same act or omission. Regulations which make such provision may also make modifications of sections 37 (effect of a fixed penalty notice on criminal proceedings) and 44 (effect of a compliance notice on criminal proceedings) as the Scottish Ministers consider necessary or expedient in connection with the provision.

11. At Stage 2, a new subsection was added to section 48 (section 48(3A)). This narrows the power so that regulations cannot modify section 37 or 44 in such a way that a person may be convicted of a relevant offence arising out of an act or omission if the person has been issued with both a fixed penalty notice and a compliance notice and has paid the fixed penalty and complied with the compliance notice (or has not complied with the compliance notice but, by virtue of section 43(2), does not commit an offence in relation to it).

Reason for taking power

12. The reason for taking the power, as introduced, to make regulations under section 48 was to enable supplementary, incidental or consequential provision to be made to ensure that the administrative sanctions scheme works effectively in practice. The power enables provision to be made to facilitate, prohibit or restrict the issuing of more than one sanction so that the technical detail of the relationship between different sanctions can be set out in regulations after consultation with Food Standards Scotland. It enables provision to be made modifying section 37 or 44 (on the effect of an administrative sanction on criminal proceedings) so that there is flexibility to modify those sections if this is necessary to enable more than one sanction to be issued in respect of the same offence.

13. The insertion of the new subsection in section 48 is in response to one of the Committee’s recommendations (found at paragraph 33 of the Committee’s 34th Report of 2014). The recommendation was that, if the power is exercised to modify section 37 or 44 (in connection with a provision which facilitates, prohibits or restricts the issuing of more than one sanction), the power should not enable a “wholesale removal of the discharge of criminal liability which sections 37 and 44 provide in circumstances where an administrative sanction has been issued and complied with”. The new subsection restricts the power so that it cannot be used to remove the discharge of criminal liability of a person who has been issued with more than one sanction and has complied with both. There may be circumstances in which it would be appropriate to issue more than one sanction in respect of the same offence and it may therefore be appropriate to defer the discharge of criminal liability until the point of compliance with both sanctions. For that reason, the power has been restricted to prevent a wholesale removal of the discharge of criminal liability in circumstances in which a person complies with the sanctions issued to the person but the power has been left wide enough to enable a deferral of the discharge of criminal liability until the point of compliance with both sanctions (if two sanctions are issued).

14. The Scottish Government has given further thought to whether this goes far enough to meet the policy aim. As the provision currently stands, if a person is issued only with one
This document relates to the Food (Scotland) Bill as amended at Stage 2 (SP Bill 48A)

administrative sanction (e.g. a fixed penalty notice) and that is complied with, there remains a theoretical possibility that the power in section 48 could still be exercised to make provision which provides for the removal of the discharge of criminal liability under sections 37 and 44, resulting in the position that criminal proceedings could still be brought.

15. In order to address this theoretical position and to better reflect the intended policy, the Scottish Government is currently considering a further amendment at Stage 3 of the Bill to make it clear that the power in section 48(3) may only be exercised in relation to a case in which a person has been issued with both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission. This will result in the position that alterations to the discharge of criminal liability are enabled only in circumstances where the regulations provide for situations where a person receives both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission.

Choice of procedure

16. At Stage 2, the procedure for regulations under section 48(1) which modify section 37 or 44 was changed from negative procedure to affirmative procedure. This responds to the Committee’s recommendation that regulations which modify primary legislation be made subject to a higher level of scrutiny.

Section 48(5) – Power to modify section 48(4)

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

17. Section 48(5) enables the Scottish Ministers to make regulations modifying subsection (4). Subsection (4) provides a definition of the term “another sanction” for the purposes of subsection (2)(a) (which is about making provision facilitating, prohibiting or restricting the issuing of an administrative sanction in cases where “another sanction” has been issued or imposed).

18. The only change at Stage 2 was to change the parliamentary procedure from negative to affirmative procedure.

Reason for taking power

19. The power was taken so that the meaning of “another sanction” could be modified to take account of developments in the law and lessons learned once the administrative sanctions scheme is in place.
Choice of procedure

20. At Stage 2, the procedure was changed from negative to affirmative procedure in response to the Committee’s recommendation that regulations which modify primary legislation be made subject to a higher level of scrutiny.

Other relevant amendments

21. The amendments described above are amendments which substantially alter provisions conferring powers to make subordinate legislation. In addition, the Committee will wish to note that there was also an amendment to remove the order making power in section 52, in consequence of the insertion of definitions of “food” and “animal feeding stuffs”, and an amendment of section 50 to require the Lord Advocate to publish any guidance issued to enforcement authorities (subject to certain exemptions).
Delegated Powers and Law Reform Committee

68th Report, 2014 (Session 4)

Food (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 2 December 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
      (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
      (ii) [deleted]
      (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
John Mason
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 2 December 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Food (Scotland) Bill as amended at Stage 2 (“the Bill”)1. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced by the then Cabinet Secretary for Health and Wellbeing on Thursday 13 March 2014. It makes provision for the establishment of Food Standards Scotland, a new food advisory body which will provide advice to the Scottish Ministers on food, taking over from the Food Standards Agency. The Bill also makes provision and creates offences in relation to food information law. Finally, the Bill establishes a new regime of administrative sanctions for food-related offences. Two types of sanction are created: compliance notices and fixed penalty notices.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”2).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 34th report of 2014.

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1 Food (Scotland) Bill [as amended at Stage 2] available at: http://www.scottish.parliament.uk/S4_Bills/Food%20(Scotland)%20Bill/b48as4-stage2-amend.pdf
2 Food (Scotland) Bill Supplementary Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/Food_Bill_-_SDPM.pdf
DELEGATED POWERS PROVISIONS

5. There are no new powers in the Bill after Stage 2 however several powers have been amended. The Committee considered each of the substantially amended delegated powers provisions.

6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the substantially amended delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

- Section 34 – Regulation of animal feeding stuffs
- Section 48(5) – Power to modify section 48(4)
- Section 50 – power to issue guidance to enforcement authorities

7. The Committee’s comments and, where appropriate, recommendations on the remaining substantially altered delegated power in the Bill as amended are detailed below.

Section 48(1) – Power to make supplementary etc. provision

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative</td>
</tr>
</tbody>
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8. Section 48(1) of the Bill confers power on the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under Part 3 of the Bill.

9. Section 48(2)(a)-(c) lists particular types of provision that may be contained in regulations made under section 48(1). Section 48(2)(a) provides that Ministers may make regulations under section 48(1) for the purpose of “facilitating, prohibiting or restricting” the issuing of a fixed penalty notice or a compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been imposed or issued. The converse provision may also be made i.e. provision facilitating, prohibiting or restricting the imposition of another sanction in circumstances where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission. In its original Delegated Powers Memorandum, the Scottish Government explained that the power was being taken in order to allow for the relationship between the different types of administrative sanction to be managed effectively through the making of subordinate legislation.

10. Section 48(3) provides that regulations made under section 48(1) which contain the provision in section 48(2)(a) may also make such modifications of sections 37 and 44 of the Bill as the Scottish Ministers consider necessary or
expedient in connection with the provision. Sections 37 and 44 refer to the effect of, respectively, a fixed penalty notice and a compliance notice on criminal proceedings and provide specifically that where a person has been issued with either type of notice with which they have complied, that person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

11. In its Stage 1 report, the Committee voiced concerns about the provision in section 48(3). The Committee considered that the provision could enable the Scottish Ministers to modify the two sections in the Bill which protect an individual from criminal conviction where that person has been issued with an administrative – i.e. non-criminal – sanction with which they have complied in full. The Committee considered that the power in section 48(3) could be exercised so as to remove the discharge of criminal liability which sections 37 and 44 provide, with effect that a person could remain liable to criminal proceedings despite compliance with an administrative sanction being rendered in full. The Committee was not persuaded by the Scottish Government’s argument that it did not intend to use the power in section 48(3) in this way, and recommended that the power be restricted at Stage 2 so as to prevent its exercise in the manner described.

12. The power in section 48(3) has been amended at Stage 2. As it now stands, the power may not be exercised so as to remove the discharge of criminal liability provided for in sections 37 and 44 but only in circumstances where a person who has been issued with both a fixed penalty notice and a compliance notice and has paid the penalty under the fixed penalty notice and has complied with the requirements of the compliance notice.

13. The Committee considers that the power as amended at Stage 2, while going some of the way towards meeting the Committee’s concern as expressed in the Stage 1 report, does not address that concern in full. It remains possible, having regard to the terms of the power as amended, for the power to be exercised so as to remove the discharge of criminal liability as provided for in sections 37 and 44 in circumstances where an individual has been issued with only one administrative sanction with which that person has complied. The Committee considers that the power ought to be restricted further, so as to provide that it may not be exercised so as to remove the discharge of criminal liability as provided for in sections 37 and 44 in circumstances where a person has been issued with not only both administrative sanctions, but where a person has been issued with one administrative sanction and has complied with it in full.

14. In that regard, the Committee notes that the SDPM states that the Scottish Government is considering a further amendment to section 48 to clarify its intended policy for Stage 3 and to address what it refers to as the “theoretical possibility” that the power may be exercised so as to remove a discharge of criminal liability where only one administrative sanction has been issued and complied with.

15. The Committee draws the provision in section 48(3) as amended at Stage 2 to the attention of the Parliament. The Committee notes that the power prevents the amendment of sections 37 and 44 in a way that removes the discharge of criminal liability provided for by those sections but only in circumstances where an individual has been served with both a compliance
notice and a fixed penalty notice and has complied with both. The Committee considers that the power as amended leaves open the possibility that the power in section 48(3) could still be used to remove the discharge of criminal liability in sections 37 and 44 in circumstances where a person has been issued with only one administrative sanction. The Committee calls on the Scottish Government to consider a further amendment to the Bill for Stage 3 so as to remove that possibility.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 63
Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Dr Richard Simpson
4 In section 2, page 1, line 19, at end insert—
<(  ) In determining how to achieve the improvement referred to in subsection (1)(b), Food Standards Scotland is to consider in particular what improvements are necessary in relation to the content and calorie value of food and its advertising and promotion.>

Section 3

Dr Richard Simpson
5 In section 3, page 2, line 7, leave out <significantly>

Section 6

Dr Richard Simpson
6 In section 6, page 3, line 30, leave out <3> and insert <4>

Section 7

Dr Richard Simpson
7 In section 7, page 4, line 29, at end insert—
<(1A) But the Scottish Ministers may, if the condition mentioned in subsection (1B) is met, determine that a person whose membership of Food Standards Scotland would otherwise end under subsection (1) is to remain a member for such period as the Scottish Ministers consider appropriate.

(1B) The condition is that the Scottish Ministers consider that the immediate ending of the person’s membership under subsection (1) would prevent Food Standards Scotland from carrying out its functions effectively.>
Section 14

Dr Richard Simpson

8 In section 14, page 7, line 2, after <report> insert <and a statement setting out any costs incurred in printing copies of the report>

Dr Richard Simpson

9 In section 14, page 7, line 4, at end insert—

<Reports laid before the Scottish Parliament under subsection (6) are normally to be laid only in electronic form.>

Section 32

Maureen Watt

1 In section 32, page 16, line 41, after <under> insert <subsection>

After section 33

Dr Richard Simpson

10 After section 33, insert—

<Display of information on food calorie value>

Display of information on food calorie value

In section 16(1) of the 1990 Act, after paragraph (da) (as inserted by section 33(1)) insert—

“(db) provision requiring proprietors of food businesses which serve food (whether for consumption on or off the premises on which the food is served) to display information on the calorie value of all such foods sold on the premises;”>

Section 48

Maureen Watt

2 In section 48, page 25, line 32, leave out from <connection> to end of line 36 and insert <relation to the case mentioned in subsection (3ZA).>

(3ZA) That case is where, in consequence of the provision, a person has been issued with both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission.

(3ZB) But the provision which may be made by virtue of subsection (3) does not include provision which has the effect that the person may still be convicted of the offence if the person both—>
Maureen Watt

3 In the schedule, page 32, line 8, leave out paragraph A2
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 proceedings, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on all of the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Improving extent to which public have diets conducive to good health**
4, 10

**Group 2: Matters in relation to which Food Standards Scotland must keep public informed**
5

**Group 3: Membership of Food Standards Scotland**
6, 7

**Group 4: Annual and other reports**
8, 9

**Group 5: Minor and technical amendments**
1, 2, 3

Debate to end no later than 35 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-11828—That the Parliament agrees that, during Stage 3 of the Food (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 to 5: 35 minutes.

The motion was agreed to.

**Food (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2 and 3.

Amendment 6 was disagreed to (by division: For 45, Against 62, Abstentions 0).

The following amendments were moved and, with the agreement of the Parliament, withdrawn: 4, 5 and 8

The following amendments were not moved: 7, 9 and 10.

**Food (Scotland) Bill:** The Minister for Public Health (Maureen Watt) moved S4M-11826—That the Parliament agrees that the Food (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Food (Scotland) Bill: Stage 3

14:17

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 of the Food (Scotland) Bill. Members should have the bill as amended at stage 2, which is document SP bill 48A; the marshalled list of amendments, which is SP bill 48A-ML; and the groupings, which is SP bill 48A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 2—Objectives

The Deputy Presiding Officer (Elaine Smith): Group 1 is on improving the extent to which the public have diets that are conducive to good health. Amendment 4, in the name of Dr Richard Simpson, is grouped with amendment 10.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Amendment 4 aims to clarify the objectives for improvement in diet for public health purposes, in respect of specification of content, including calories. Obesity, diabetes, heart disease and stroke remain among the greatest challenges that we face, and if we are serious about improving the health of the public, our independent food agency will need to play a vigorous leading role.

The elements that must be addressed by our new independent agency include salt, saturated fats, trans fats, sugar and calories. The Food Standards Agency has done excellent work on content in some respects—for example, in setting maximum values for trans fats, saturated fats, sodium and sugar as well as minimum protein specifications. Those were all put into regulations as part of the school meals programme in 2004. On 19 June 2013, the Food Standards Agency in Scotland launched a new front-of-pack nutrition labelling scheme, which was very welcome, and I am delighted that we now have a traffic-light system. Over the years, the Food Standards Agency has done an excellent job in many areas, including in reducing the amount of salt in our diet. Nevertheless, salt consumption remains high at 8.1g to 8.8g per day; it is important that we achieve a level of 6g per day across the adult population.
There has been good progress on trans fats, but the restriction on all trans fats that are not naturally occurring would have been achieved had my member’s bill received support in the previous session of Parliament. Too many fast foods still have those dangerous fats present in them. There has also been progress on saturated fats and sugars.

However, one thing that has yet to be tackled so vigorously is calories. Amendment 10 specifies that the agency will have the power to introduce a national scheme on calorie values. At present, the bill refers to a “hygiene information scheme”, which is welcome. Progress has also recently been made on voluntary action, with Sainsbury’s, for instance, including calorie values on its wine labelling. More than 20 years ago, I visited the Mayo clinic in the United States, and calorie and saturated fat levels were being shown on menus then, so we need to make a step change in this area. It is welcome that Parliament has been putting calorie values on its menus—I hope that some members have paid attention to that.

Section 2(2) makes clear the risks that are referred to in section 2(1)(a), which relate to “the way in which food is produced or supplied.”

However, amendment 10 would make it clearer, in respect of the new objective in section 2(1)(b), that beyond the safety and integrity of food, its calorie content, its advertising and its promotion would be defined objectives. We currently have warning signs on tobacco and we have traffic lights for labelling on food, but we need to ensure that in advertising and promotion of food throughout the industry, there are strict conditions to ensure that obesity and public health issues are made clear and that the public are fully informed.

I move amendment 4.

The Minister for Public Health (Maureen Watt): We all agree that the content of food and its calorific value are important in a healthy diet. I am therefore grateful to Dr Simpson for raising those issues. I know how passionately he promotes them.

Nevertheless, although the amendments are well intentioned, I do not believe that they are necessary or that they would improve the bill. Amendment 4 could cause confusion by inserting into the objectives of food standards Scotland what is, in essence, a function such as those that are contained in section 3. That could be confusing in that it would give the particular function undue emphasis, to the detriment of all the other important functions that FSS must perform. The functions in section 3 already include giving advice and information and informing the public about matters that affect their capacity to make informed decisions about food. If content and calories are matters of concern to consumers, giving information about those will already be part of what the FSS will do, so there is no need for amendment 4. More important is that calorific values and food content are not the only factors that bear on a healthy diet, so referring to them expressly in the bill would create a risk of focusing unduly on those factors at the expense of considering issues of food health in the round.

Further, amendment 4 suggests that FSS would have a role in setting standards in respect of calories, content, advertising and promotion. That will not be the case. Food information and, to some extent, nutrition are matters that are regulated at European Union level. Setting the standards for industry on the basis of evidence and advice from bodies such as FSS is a role for the EU and the Scottish Government, not for FSS.

Amendment 10 is similarly well intentioned, but I consider that it would not be right to have it amend the bill at this time. It would add a relatively significant new enabling power without the Health and Sport Committee or the Delegated Powers and Law Reform Committee having had an opportunity to offer input on it. Subject to advice from FSS and others, the Scottish ministers may well, in due course, support a public consultation on a mandatory scheme that would require food businesses to display nutritional values. That is what we did for the prospective mandatory scheme on displaying hygiene information, for which the bill provides. However, before we could go ahead with the idea, more work would be required on whether displaying calorie values or wider nutritional information is effective in helping consumers to have healthy diets. For instance, I would first like to hear from consumers about whether they would prefer such a scheme to focus on sugar or salt.

The most significant reason for not accepting amendment 10 is the impact that it would have on small businesses and local authorities. Every time mandatory schemes on calorie values, sugar and salt content and so on are considered, the impact on small producers is highlighted. We cannot ignore that; we must be proportionate in our approach and we must balance the benefits and the impacts. It is arguable that larger food producers and retailers will have more resource to dedicate to researching and preparing the display of calorie values. Indeed, as Dr Simpson highlighted, many larger organisations already have policies on that. However, smaller businesses such as caterers or restaurants would find the proposed provision extremely expensive to comply with. Furthermore, the additional burden on local authority officers, who would have to check all the additional displays, would be significant.
We need to take a proportionate and partnership-based approach to any scheme that might put undue pressure on our businesses and on our local authority colleagues. For the reasons that I have outlined, I believe that amendment 10 is premature and that more work and consultation need to be done in order to work up proposals for a scheme before legislation could be considered.

Amendments 4 and 10 are well intended, but existing legislation can be used to deliver the same outcomes. The effect of amendments 4 and 10, as they stand, would be disproportionate, and the measures that they seek to implement have not been consulted on. I therefore invite Parliament not to accept amendments 4 and 10.

**The Deputy Presiding Officer:** I ask Dr Simpson to wind up and to say whether he intends to press or to seek to withdraw amendment 4.

**Dr Simpson:** I thank the minister for her words. I understand the reasons that the Government has given for saying that what I propose is not, at present, necessary.

However, it is possible for a Government to introduce provisions and not to activate them until it is ready to do so. I give the example of the social responsibility levy on alcohol, which has still not been regulated on even though it was introduced in an act that was passed five years ago. It would be for the Government to decide on the appropriate timing.

I welcome the fact that the minister agrees that information on calories, as well as on all the other things that I listed, is important. Amendments 4 and 10 would have sent a message to the industry that we intended to tackle such matters vigorously and that it ought to prepare for that, but, in the light of what the minister has said, I am prepared to seek to withdraw amendment 4 and not to move amendment 10.

***Amendment 4, by agreement, withdrawn.***

**Section 3—General functions**

**The Deputy Presiding Officer:** Group 2 is on matters in relation to which food standards Scotland must keep the public informed. Amendment 5, in the name of Richard Simpson, is the only amendment in the group.

**Dr Simpson:** I lodged amendment 5 because I feel strongly that the inclusion in section 3(1)(c) of the word “significantly” will unnecessarily restrict the new agency in protecting the public. Section 2, which is on the objectives of food standards Scotland, talks about the agency acting proportionately and in a manner that enables it to fulfil its objectives—in other words, it will be up to the agency how it deals with such matters—but section 3 says that it must define “significantly”, which will be difficult.

I do not fully understand the legal definition of what constitutes “significant”. For example, if something affects a very small minority, is that effect significant? It is for that minority, but in global terms—for the population of Scotland as a whole—it is not and might in that context be regarded as quite insubstantial. When added to other small effects, those small effects can collectively become substantial. To be quite frank, the word “significantly” therefore sticks in my craw. We tried to have it removed from the bill at stage 2, but at the time there was some debate about whether I was allowed to intervene.

In moving amendment 5, I am seeking to make a point and to find out how the minister defines the word “significantly”. Depending on how she does so, I will decide whether to press or to seek to withdraw amendment 5.

I move amendment 5.

14:30

**Maureen Watt:** As Dr Simpson said, an amendment that was the same as amendment 5 was lodged at stage 2. It was debated, and it was withdrawn following a division. As my predecessor said at stage 2,

“We understand the intention of the proposal ... to remove the word ‘significantly’. It is important that food standards Scotland acts on a wide range of interests that are important to consumers, and that is what its intended objective is. However, the practical effect of the seemingly small change”

would be disproportionate, meaning that the new body

“could have to turn its attention to a wide range of concerns, significant or not. That could risk FSS losing focus on the most important matters”.

The word “significantly” is vital to make it clear that

“although FSS will be concerned with all matters of interest to consumers, it cannot lose focus on matters that have the most impact on consumers.”—[Official Report, Health and Sport Committee, 11 November 2014; c 10-11.]

For that reason, I invite Parliament not to accept amendment 5.

**Dr Simpson:** I accept the definition of ‘significantly’ that the minister has now put on the record, which is that, if something affects people in the way that I have described, then it affects a small minority of people, but they are affected substantially. Action would be taken, because that would be a priority for them.

Generally, of course, food standards Scotland should be considering matters of greater
By the Government, amendment 7 would become Government. If amendment 6 were to be rejected amendment 6. It is intended to be helpful to the
that I will move amendment 6.

Let us consider the minimum number of members proposed under the bill, which is three plus the chair. If two members are absent, that
could reduce the board to two. I am not speaking entirely theoretically. I have looked at a number of non-governmental organisations, where
the absence of two members is not unusual. I do not believe that a board could or should function without at least three members present. I have
therefore proposed a modest increase to four plus the chair, in the hope that at least three will be present on every occasion.

Looking at other evidence suggesting that there
should be an employee director, gender balance and a strong consumer interest, I think that my
proposed modest increase is appropriate.

In his response at stage 2, the then Minister for
Public Health said that it would be attempted to
keep the board at a higher level than three. If that
is the case, food standards Scotland should have
a higher minimum, too, not least because that
would ensure that matters are dealt with in an
appropriate way.

The minister also said that the board would be
smaller because the functions of the new agency
were smaller. The board’s powers and the things
that it must do are expanding significantly. Matters
of public safety in relation to food have come to
the fore in the past year, since preparation of the
bill began. I suggest that we need a board that is
strong enough to be effective. It is on that basis
that I will move amendment 6.

Amendment 7 has a similar intent to that of
amendment 6. It is intended to be helpful to the
Government. If amendment 6 were to be rejected
by the Government, amendment 7 would become
more important. It would ensure that, when
members are disqualified in connection with any
office listed in section 7(1), ministers have the
power to grant an extension in order to ensure that
the board is functional.

I move amendment 6.

Dr Simpson: I appreciate that we had a good
debate on this matter at stage 2 in the Health and
Sport Committee, when an amendment was
moved by Aileen McLeod to change the minimum
number of members to five. The minister at the
time did not accept the amendment, although the
increase was supported in evidence by such
disparate groups as Quality Meat Scotland and
Which?

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members are disqualified in connection with any
office listed in section 7(1), ministers have the
power to grant an extension in order to ensure that
the board is functional.

I move amendment 6.

Amendment 5, by agreement, withdrawn.

Section 6—Number and appointment of
members

The Deputy Presiding Officer: We move on to
group 3, on membership of food standards
Scotland. Amendment 6, in the name of Dr
Richard Simpson, is grouped with amendment 7.

Dr Simpson: I appreciate that we had a good
debate on this matter at stage 2 in the Health and
Sport Committee, when an amendment was
moved by Aileen McLeod to change the minimum
number of members to five. The minister at the
time did not accept the amendment, although the
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amendment 6. It is intended to be helpful to the
Government. If amendment 6 were to be rejected
by the Government, amendment 7 would become
more important. It would ensure that, when
members are disqualified in connection with any
office listed in section 7(1), ministers have the
power to grant an extension in order to ensure that
the board is functional.

I move amendment 6.

Amendment 7 is unnecessary and impractical. It
is unnecessary in that it is extremely unlikely that a
member would take up any of the public offices or
employment listed in section 7(1) of the bill without
being in a position to give ministers some notice.
That would usually allow ministers sufficient time
to make arrangements to protect FSS’s ability to
carry out its functions. For someone to remain a
member of FSS while taking up many of the listed
posts would lead to immediate conflicts of interest.
In any case, taking up many of the posts
— particularly the parliamentary and council posts—
would mean having to declare an interest and then
taking no part in FSS decisions. There is nothing
that ministers can do to set that aside. That makes
the arrangement suggested in amendment 7
wholly redundant.

Nanette Milne (North East Scotland) (Con): A
number of significant witnesses sought a larger
minimum number of people on the board. Richard
Simpson has given a number of very good
reasons why his amendment 6 should be
approved, and I am happy to support it.

Maureen Watt: As Dr Richard Simpson said, an
amendment that was similar to amendment 6 was
moved and withdrawn without objection at stage 2.
The Health and Sport Committee also considered
the number of members at stage 1 and accepted
that the number that is set out in the bill is only a
minimum. Ministers have given the committee an
assurance on that.

I will shortly announce the appointment of seven
further members to add to the appointment of
Ross Finnie as chair designate, which was
 announced last month. I hope that that is clear
evidence of the Government’s commitment to run
food standards Scotland with its full complement
of eight—seven members and the chair—as the
norm.

The minimum number in the bill—three
members plus the chair—has to be low enough to
allow flexibility during reappointment rounds or in
case of emergencies. That number and lower
numbers already work for other bodies of a similar
size. The Office of the Scottish Charity Regulator
has a minimum of four members including the
chair and the Scottish Housing Regulator has a
minimum of three members including the chair,
and that has not caused difficulty for them. The
Government sees no reason to reconsider the
minimum number.

Amendment 7 is unnecessary and impractical. It
is unnecessary in that it is extremely unlikely that a
member would take up any of the public offices or
employment listed in section 7(1) of the bill without
being in a position to give ministers some notice.
That would usually allow ministers sufficient time
to make arrangements to protect FSS’s ability to
carry out its functions. For someone to remain a
member of FSS while taking up many of the listed
posts would lead to immediate conflicts of interest.
In any case, taking up many of the posts—
particularly the parliamentary and council posts—
would mean having to declare an interest and then
taking no part in FSS decisions. There is nothing
that ministers can do to set that aside. That makes
the arrangement suggested in amendment 7
wholly redundant.
I therefore invite the Parliament not to support amendments 6 and 7.

Dr Simpson: In summing up, I will deal with the amendments in reverse order.

I do not agree with what the minister said on amendment 7. If someone is elected as a member of the Scottish Parliament or the House of Commons, they go straight into business and will not be able to give a lot of notice. That is problematic. If there is an immediate disqualification, the member of food standards Scotland would have to leave the board immediately, so no notice would be given.

However, amendment 7 was intended to be helpful to the minister and future Governments, including—one hopes—a Labour Government. If the minister chooses to reject that—I see her smiling—I am happy not to move amendment 7.

That is not the case with amendment 6, however. The arguments that the minister has put forward are not sufficient. The other NGOs or agencies that the minister mentioned have quite different functions. The new body will deal with the FSA in England, the Board of Trade in England and the European Food Safety Authority. It will deal with all our public safety matters on nutrition and meat inspection—the list of functions is huge—and massive experience will be required across those areas.

I very much welcome the appointment of Ross Finnie as the prospective chair of food standards Scotland, provided the bill is passed. He is a man of great experience. However, it is not unreasonable to ask the Government for a minimum of four members and I am disappointed that it proposes to reject that. I press amendment 6.

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As it is the first division this afternoon, the Parliament will be suspended for five minutes.

14:38

Meeting suspended.

14:43

On resuming—

The Deputy Presiding Officer: We will proceed with the division on amendment 6.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)

Against

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Makik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Glasgow) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabella (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
amendment was probably ahead of its time.

Although I dispute that, in so far as those members of the public who do not have personal access to the internet do have access through their public libraries, I accept that my original access to the internet do have access through members of the public who do not have personal online because that would exclude some people. I therefore ask FSS would have to have good reason in a given case to lodge a physical document or that it could choose in any case to lodge a physical document, as MSPs should all be reasonably digital-savvy by now. Of course, those online reports can also be in formats that are suitable for those with a visual disability or other disabilities.

I hope that the minister will accept these revised amendments as representing a more timely approach to the matter of trying to reduce the amount of paper that floats around the system, costs a fortune and destroys trees.

I move amendment 8.

Maureen Watt: If the intention of amendment 8 is to help keep a handle on the costs that are associated with printing reports and the environmental impact of printing them, I am happy to offer my assurance that that is something that ministers are always keen to encourage. However, the specific amendment is unclear and unnecessary. It is not clear whether the option for FSS to lay a statement of costs would concern the costs that were associated with printing copies of reports to be laid in Parliament or the costs of all copies that were printed. That is confusing.

I hope that amendment 8 is also unnecessary. It is not something that any other public body is being asked to do. The statutory duties of best value require public bodies to demonstrate and be audited on how they operate efficiently and economically. In any case, for the avoidance of any doubt over our commitments, I will be happy to emphasise the need to consider printing costs and impacts in the FSS statement of performance of functions.

Amendment 9 is also unnecessary. Ministers have already pointed out at stage 2, when a very similar amendment was lodged, that how documents are laid in Parliament is already well regulated. The amendment is also vague, in that it is not clear whether “normally” would mean that FSS would have to have good reason in a given case to lodge a physical document or that it could choose in any case to lodge a physical document, provided that it followed a general practice of lodging documents electronically. I therefore ask Parliament not to accept amendments 8 or 9.

Dr Simpson: I thank the minister for her response. I accept, from what she is saying, that the Government will seek to reduce the number of paper reports that come in as far as possible, and I hope that the Parliament may look at the amendments as representing a more timely approach to the matter of trying to reduce the amount of paper that floats around the system, costs a fortune and destroys trees.

I move amendment 8.

Maureen Watt: If the intention of amendment 8 is to help keep a handle on the costs that are associated with printing reports and the environmental impact of printing them, I am happy to offer my assurance that that is something that ministers are always keen to encourage. However, the specific amendment is unclear and unnecessary. It is not clear whether the option for FSS to lay a statement of costs would concern the costs that were associated with printing copies of reports to be laid in Parliament or the costs of all copies that were printed. That is confusing.

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Dr Simpson: I thank the minister for her response. I accept, from what she is saying, that the Government will seek to reduce the number of paper reports that come in as far as possible, and I hope that the Parliament may look at the regulations regarding the submission of reports.

The one thing that I do not accept in what the minister is saying is in relation to whether all
reports or some reports need to be submitted electronically. The amendment left it to FSS to make a decision on that. There may be occasions on which a paper report is appropriate, and the wording of the amendment was designed to give FSS some wriggle room.

With the permission of the Parliament, I will not press the amendments.

Amendment 8, by agreement, withdrawn.
Amendment 9 not moved.

Section 32—Food information

The Deputy Presiding Officer: We move to group 5, on minor and technical amendments. Amendment 1, in the name of the minister, is grouped with amendments 2 and 3.

Maureen Watt: The amendments in the group are minor ones that either update the draft bill or provide more clarity. They will improve the clarity and consistency of the bill’s provisions.

Amendment 1 corrects a minor oversight in the bill, as introduced. The word “subsection” is required for consistency with neighbouring subsections and to give full effect to section 32.

Amendment 2 provides clarity on the circumstances in which regulations that are made in connection with administrative sanctions can allow for discharging criminal liability where someone has been served with both a fixed-penalty notice and a compliance notice. The section, which was added at stage 2, was intended to cover that situation. However, last Wednesday, the Delegated Powers and Law Reform Committee published its report on the bill, as amended at stage 2, and its report recommended that we make the further change that the amendment makes.

Amendment 3 updates the list of acts that would be modified by the enactment of the bill. It is now clear that the Agricultural Statistics Act 1979 does not extend to Scotland and so requires no modification. The amendment removes it from the schedule accordingly.

I move amendment 1.

Nigel Don (Angus North and Mearns) (SNP): I rise as the convener of the aforementioned Delegated Powers and Law Reform Committee.

I thank the Government for taking seriously what we said. There was an entirely unintended consequence of some drafting, and I am grateful that the Government has tidied it up.

Amendment 1 agreed to.

After section 33
Amendment 10 not moved.
Section 48—Power to make supplementary etc. provision
Amendment 2 moved—[Maureen Watt]—and agreed to.

Schedule
Amendment 3 moved—[Maureen Watt]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Food (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith):
The next item of business is a debate on motion S4M-11826, in the name of Maureen Watt, on the Food (Scotland) Bill.

14:52

The Minister for Public Health (Maureen Watt): I am pleased to open the stage 3 debate on the Food (Scotland) Bill. [Interruption.]

The Deputy Presiding Officer: Order, please.

There is far too much noise. We cannot hear the minister.

Maureen Watt: I thank the Health and Sport Committee for its consideration of the bill and for its careful handling of the bill at stage 2, as well as the Delegated Powers and Law Reform Committee for its very detailed scrutiny. I also thank the bill team and my colleague Michael Matheson for doing the bulk of the work surrounding the bill.

The Scottish Government is committed to ensuring that people in Scotland live longer, healthier lives. Ensuring that we eat a good, nutritious diet of safe food is vital to achieving that ambition. Food-borne diseases, for example, cost Scotland £140 million a year. More significantly, of the 130,000 consumers who contract food-borne diseases each year, around 2,000 will be hospitalised and around 50 will, sadly, die. Similarly, poor eating habits are one of the most significant causes of ill health in Scotland and are a major factor in obesity.

The Food (Scotland) Bill gives Scotland some of the levers that we can use to tackle those issues. First, the bill will create food standards Scotland to be Scotland’s independent food safety and standards body. We have already announced the appointment of Ross Finnie as the chair designate. I met Mr Finnie last week and will shortly announce the names of the other members.

FSS will comprise eight members, including the chair, as allowed for in the bill. I have noted concerns, which were expressed earlier, about the minimum number of members allowed for in the bill. I hope that appointing a full complement of members now demonstrates the Government's intention to maintain a broad membership for food standards Scotland. As FSS will be a non-ministerial body, operating free from the influence of ministers, the board and chief executive will need sufficient space to prepare and develop their strategic thinking and build key relationships with partners.

We have also announced the appointment of the acting Food Standards Agency director Geoff Ogle as chief executive designate. I met him on Friday and he is keen to make progress. He is assembling his executive team and working with staff in Aberdeen to be ready for FSS to take on its full range of functions on 1 April 2015.

Food standards Scotland’s clear objectives as set out in the bill will be to “protect the public from risks to health which may arise in connection with the consumption of food ... improve the extent to which members of the public have diets which are conducive to good health” and “protect the other interests of consumers in relation to food.”

To achieve those objectives, the bill sets out clear functions: to develop, and help others develop, policies on food and animal feeding stuffs; to advise the Scottish Government, other authorities and the public on food and animal feeding stuffs; to keep the public and users of animal feeding stuffs advised to help them to make informed decisions about food and feedstuffs; and to monitor the performance of enforcement authorities in enforcing food legislation.

The bill sets out specific duties and associated powers for the new body on acquiring and reviewing information through carrying out observations and inspections, monitoring developments and carrying out, commissioning or co-ordinating research.

New food law provisions are the second lever that we are introducing through the bill to tackle food issues in Scotland. They are designed to protect and improve public health and other interests of consumers by driving up hygiene standards and reducing the incidence of food-borne disease; providing safeguards against food standards incidents such as the horsemeat food fraud; and strengthening and simplifying the penalties regime for breaches of food law.

The bill provides powers to seize and detain food that does not comply with food information law. Those powers will more closely align food information powers with existing food safety powers. Currently, if food is unsafe, it can be seized or detained and the courts must order its destruction. However, there are no such powers for food that is safe but which does not comply with food information requirements.

We believe that in light of the horsemeat food fraud incidents, we have introduced the power to seize or detain food that does not meet food information requirements—in respect of labelling, for example—which will help to eliminate food fraud.
Without such a power being available, a food business might still be able to pass on food that does not comply with food information law.

The bill also provides for the creation of a statutory offence of failure to report breaches of food information law. That will more closely align food standards requirements with the existing duty to report breaches of food safety legislation. Under the suggested arrangements, it would become an offence to fail to notify food standards Scotland if any person suspected that food did not comply with food information law.

The bill provides the Scottish ministers with powers to introduce a statutory scheme that, among other things, will require food businesses to display inspection outcomes. That is intended to drive up food hygiene standards and reduce the incidence of food-borne disease.

The bill will streamline Scotland’s food law enforcement regime by offering a range of new administrative sanctions so that offences will be dealt with more quickly and at less cost. That sanctions regime, which will comprise compliance notices and fixed penalties, will give enforcement officers more flexibility to deal appropriately with food offences. The use of administrative penalty options will reduce the burden on the courts and the costs to local authorities of prosecuting through the court system.

I will offer reassurances on some commitments that my predecessor gave at stage 2 to consider issues that were raised in amendments that the committee did not accept. I can confirm that, as with all public bodies, ministers will expect that as much as possible of the business of food standards Scotland in terms of board meetings and committee meetings will be conducted in public.

As a non-ministerial office, food standards Scotland will be operationally autonomous. However, to achieve transparency, section 5 of the bill requires food standards Scotland to set out, in a statement, how it will perform its functions. I will be responsible for signing off that statement and will have power to modify the statement if I consider that to be appropriate.

The statutory statement will have to include specific operational matters ranging from how consumer interests will be safeguarded to how reports are published and what business matters the board would not consider in public, and why. That statement of performance of functions will be an important mechanism, helping food standards Scotland to build public trust.

At stage 2, my predecessor also committed to exploring the practicability of introducing a scheme to encourage food business operators to report the outcomes of their testing and sampling. The Government has explored that further, and I can confirm that we will take the idea forward. Ministers already have legislative power to make regulations in that regard, so no amendment is required to the bill.

We must, first, concentrate on bedding in food standards Scotland with its current objectives and functions. However, during 2015, ministers will be expecting a public consultation on regulations to introduce a testing disclosure scheme. The details will be developed for consultation next year.

The bill will ensure that food safety is given the prominence that it deserves in Scotland by creating food standards Scotland and equipping it with the necessary functions and powers to make expedient decisions that are focused on issues that specifically affect Scotland, and to take action to improve the diet of the people of Scotland.

I move,

That the Parliament agrees that the Food (Scotland) Bill be passed.

15:02

Dr Richard Simpson (Mid Scotland and Fife) (Lab): We have had a Food Standards Agency since 1999, but as part of a United Kingdom agency. The agency has been a success and has acted on its own initiative, for example, as I said at stage 3, on standards for school meals. More recently, it has produced independent research on food fraud, on which it led the rest of the UK.

However, with the UK Tory-Liberal Democrat coalition breaking up the UK agency, consideration of the future of FSA Scotland was necessary. Professor Scudamore’s report in March 2012 strongly recommended Scotland having an independent agency. That is a classic example of powers with a purpose, and Labour has backed the general principles of the bill from the outset.

In what has become a standard Scottish approach that seeks to ensure that experts and the public are fully engaged in any new bill, we have had two consultations, and there have been two further reports following the horsemeat scandal, with Scudamore reporting again, on food and feed safety, and Ray Jones reporting on traceability, labelling, assurance schemes and provenance issues associated with primary red meat production and processing.

We have come a long way since the Swann report on antibiotics in veterinary use, which was published in the late 1960s. However, the issue of chemicals in meat production is a matter of concern. If the transatlantic trade and investment partnership is approved, we must ensure that US...
meat that is produced using growth hormones is controlled.

Most of the evidence that the committee received supported a new independent agency, but some people argued that the preservation of the status quo would ensure consistency of approach, communication and advice across the UK, maintain good links to the European Union and avoid duplication of effort. The committee rightly rejected that view. I believe that it is vital to Scotland’s food production that we have an agency that is seen to be independent and which can ensure that Scotland’s reputation for quality is fully protected. For example, our farmed salmon is the only salmon with the Label Rouge, making it a premium product.

As the minister said, the new agency’s powers are to be enhanced. My amendments sought to reinforce the agency’s powers on diet and nutrition, working in partnership with the Government and Health Protection Scotland, which will be important in tackling what I believe will emerge as the biggest challenge in public health.

Currently, tobacco is the main legacy issue that we are tackling. Of course, alcohol is important and progress is being made through price control and availability restriction. I hope that, with support for many of the 10 elements in my proposed member’s bill, we will continue to make progress on alcohol. However, obesity, which currently affects 27.8 per cent of adults, threatens to reverse the gains in life expectancy over the past 20 years. When I started in medicine, the level of type 2 diabetes was at 1 per cent of the population, but it is now at 6 per cent across the UK, with more than 250,000 people in Scotland affected.

The new agency will have to meet head-on the issues of food content, such as saturated fat, trans fat, salt, sugar and food density or calories. That will mean challenging the current buy-one-get-one-free approach of retailers as well as the approach of the food industry. To that end, I supported many of the amendments that Which?, one of the premier consumer bodies, suggested at stage 2. It is imperative that, in the appointments to the board, there should be a powerful consumer interest as well as an employee director, as Unison has suggested. There should also be gender balance.

Labour will seek to act if the agency fails to demonstrate sufficient power in the area of nutrition. The Health and Sport Committee noted the suggestions that it received that one role of the agency should be to help grow food and drink industries in Scotland. However, if it is to do so, it will need to ensure that its role as a regulator remains paramount. We must never forget that the feeding of brain and spinal cord to cattle as a money-saving device resulted in BSE, which, by the way, we have not seen the end of. As I mentioned, I have concerns about the use of antibiotics and growth hormone.

We are only now beginning to emerge from an era of excessive additives. Agents for anti-caking, anti-foaming, bulking, food colouring and colour retention as well as emulsifiers, humectants to prevent drying out, preservatives, stabilizers, sweeteners and thickeners—all named in Europe as E numbers—are widespread and pervasive. One example of the challenge of additives is whether certain colourants and sodium benzoate contribute to increases in attention deficit hyperactivity disorder in children.

There has been significant controversy associated with the risks and benefits of food additives. Some artificial additives have been linked with cancer, digestive problems, neurological conditions, ADHD—as I mentioned—heart disease and obesity. However, the evidence is often still equivocal. Natural additives may be similarly harmful or may be the cause of allergic reactions in certain individuals. One example is the azo dye sunset yellow, which is already banned in many Nordic countries. The UK has the highest consumption by children of soft drinks containing such dyes in the European Union, and Scotland has the highest in the UK. Therefore, clarity on safety is needed if at all possible.

Of course, that is mainly a matter for the European Food Safety Authority, which rightly sets many of the regulations for us. Its expert scientific panel that deals with food additives, the panel on food additives and nutrient sources added to food—the ANS panel—has started the process of reassessing all permitted food colours, of which there are 45 in total, including six additives that, in 2009, the UK FSA called for food manufacturers to voluntarily stop using. The banning of those colourings could result in significant challenges to our producers, including AG Barr, which produces Irn-Bru. However, AG Barr already exports a Ponceau-free Irn-Bru to Canada, which has banned the UK recipe. Therefore, it is not impossible for food producers to change production without having to wait for the final results of tests.

The new agency will need to commission research, but in doing so it will need a memorandum of understanding with the remnant FSA and it will need to work closely with the European FSA, if not have a memorandum of understanding with it. My view is that the agency must lead us in a transition to a simpler approach to food and a world in which a slightly misshapen carrot or apple is regarded as equally acceptable as the pre-packaged tracer gas-filled products in
supermarkets today, the packaging of which is neither biodegradable nor recyclable. We also need a world in which additives are minimised. The agency must rigorously apply the precautionary principle.

There are many other issues that I do not have time to go into. The hygiene aspect of the bill is critical, as we still have one of the highest rates of E coli 107. That is a challenge, as will be emerging bacteria or strains. My colleague Rhoda Grant will deal with the matter of local authority trading standards and Claire Baker will mention meat inspection, which we dealt with in the stage 1 debate and which is a critical part of the bill.

I could go on for some time, but my time is up. I commend the bill to the Parliament.

15:10

**Nanette Milne (North East Scotland) (Con):** The Food (Scotland) Bill was welcomed by most of the people who responded to the Health and Sport Committee’s call for evidence, and the relatively few amendments to it at stages 2 and 3 indicate the general approval of its measures. I said at stage 1:

“In this day and age, when so many of us rely increasingly on processed food and ready-prepared meals, it is crucial that we can trust the safety and nutrition value of the food that we eat.”—[Official Report, 2 October 2014; c 47.]

It is also vital that we begin to tackle the very serious problem of obesity in Scotland.

Given the changed remit of the Food Standards Agency south of the border and following the horsemeat scandal, it is generally accepted that the time is right for Scotland to set up a new stand-alone body, with wider powers than the FSA that it replaces. FSS will bring together the FSA’s existing public health protection role and a new objective on diet and nutrition, and it will also have powers in relation to labelled food and non-compliance with food law.

To be effective in tackling the complexities of diet and nutrition in Scotland, FSS will have to develop a strong leadership and co-ordinating role, which can be developed only through negotiation after the new body is in place. It must be adequately resourced and work closely with the Scottish Government’s scientific advisers.

At stage 1, the importance of the existing links between the advisory committees and the UK Food Standards Agency was highlighted. Those committees will be able to pull together the significant on-going work in the UK and across Europe, and give advice through the FSA to FSS as an independent body. That makes the memorandum of understanding between the FSA and FSS crucial to the success of the new body. It must set out how the two will work together, where appropriate, and enable them to exchange data and research findings in all areas of mutual interest. I confess that I do not know whether the MOU has yet been published, although I know that it was being drafted. I would appreciate an update from the minister on its development.

**Maureen Watt:** The memorandum of understanding with the UK FSA and the European FSA is being prepared. It will be one of the first things that the new board will sign off.

**Nanette Milne:** I look forward to hearing about that in due course.

I would also welcome a progress report on the Scottish Government’s monitoring of the food hygiene information schemes in Northern Ireland and Wales, and an indication of when such a scheme might be set up in Scotland.

Some concerns were expressed at stage 1, following which the consumer organisation Which? has welcomed the plans agreed at stage 2 to enhance enforcement powers through FSS working proactively with local authorities to drive up standards. Which? also welcomes the decision to allow the new agency to have improved access to food testing from retailers and manufacturers, which will allow action to be taken swiftly when and where food adulteration is detected, to protect consumers and other businesses that rely on the same supply chain. It is concerning that, just a few months ago, Which?, in its mystery shopping activity, found evidence of food adulteration and misrepresentation in a number of takeaways and fish and chip shops across the UK. It goes without saying that constant vigilance is required in relation to the contamination of chickens with the campylobacter organism, which Professor Hugh Pennington described in evidence as the commonest cause of food poisoning today.

A number of witnesses commented on the board size, which, at three plus the chairman, they believed to be too small. I am disappointed that Richard Simpson’s amendment to increase the minimum number to four was defeated. I hope that the Government’s faith that the board will always operate with enough expertise and will be consumer focused in all its work is justified, and I hope that the Government will monitor that, to be assured that the fears are unwarranted. I am pleased that the first board will have seven members plus the chairman, if I heard the minister correctly.

One important, as yet unresolved concern for the retail sector is the absence of robust appeals mechanisms for both fixed-penalty notices and compliance notices. The sector very much regrets that the Government would not agree to set out details of the appeals process or to provide
safeguards for retailers in the bill, and it would like assurances from the Government that it will work with retailers on any secondary legislation to ensure robust appeal systems for FPNs and compliance notices. Both the Scottish Retail Consortium and the Scotch Whisky Association have offered to comment on, or assist with, the drafting of regulations and guidance that will accompany the bill, and I hope that that offer will be taken up.

I will not go into detail on why retailers believe that the burden of proof for FPNs must be set beyond reasonable doubt and that a robust appeal system is important to ensure that decisions are based on the same level of evidence that is required for a criminal, rather than civil penalty, because I know that officials have been in talks with the retail sector about that as the bill has progressed through Parliament. Likewise for compliance notices, the lack of a strong appeal process could have very serious implications for the livelihoods of smaller producers.

I ask the minister to assure us that those concerns will be considered when any secondary legislation is under discussion and that the Government will explicitly consult organisations such as the SRC and the SWA, which have consistently stressed the importance of a clear and robust appeals process being available.

If those residual concerns are addressed, taking into account the pledges that the minister has made today, I think that the Food (Scotland) Bill can be a very effective piece of legislation in meeting the interests of food health protection and nutritional support in Scotland. I look forward to its implementation, assuming that it is approved at decision time today, and to hearing about the activities as food standards Scotland develops in the months and years ahead.

**The Deputy Presiding Officer:** We come to the open debate. Speeches should be of four minutes please. I call Christian Allard, to be followed by Claire Baker.

15:15

**Christian Allard (North East Scotland) (SNP):** I am delighted to speak today at the last stage of the very welcome Food (Scotland) Bill.

I first put on record my sincere congratulations to our new Minister for Public Health, the member for Aberdeen South and North Kincardine, Maureen Watt. In the stage 1 debate, I spoke a lot about the north-east and, of course, I recognise that the minister has promoted the north-east of Scotland as the country's natural larder many times before me. The minister's experience of the food industry and how to support food producers in the north-east and across Scotland will be a great help in her new role.

I believe that the bill will help Scotland become a healthy nation and a good food nation.

I would like to take this opportunity to congratulate the minister’s predecessor, Mr Matheson, on his announcement of the two senior appointments to lead food standards Scotland: Ross Finnie and Geoff Ogle will bring their own experiences in the food industry. I recently met Geoff Ogle in his office in Aberdeen and I am delighted with the two appointments. My meeting with Mr Ogle, then acting director Scotland at the Food Standards Agency, was to get reassurance that food producers will get a fair deal from any changes that this bill will bring.

The Health and Sport Committee visited one of those producers, a seafood producer based in Aberdeen, in the same street as Maureen Watt’s office in Torry. I know that the minister will be familiar with Joseph Robertson, the family seafood company, founded in 1892, which produces the very best quality sea-to-plate produce. Michael Robertson, the managing director, shared with the committee his concerns about the possible increasing costs for food producers that are associated with this bill. I trust the new agency headed by Geoff Ogle to reassure the industry on that point.

Scotland does not operate in a vacuum at home or abroad. Our Scottish producers have to be able to compete. That is why I believe that new labelling and regulations in Scotland must be accepted in the rest of the UK and in the EU if they are to be enforced.

Richard Simpson talked about a simpler approach to food. There is a need for clarity and transparency. I want to clarify a point that I made in October when debating this bill. The committee reported a discussion with Michael Robertson, managing director of Joseph Robertson, about inspection, in which the important point was made that local authority inspections were not as high quality as retailers’ own inspections. That is why I ask food standards Scotland to show leadership on the issue.

John Sleith, the chairman of the Society of Chief Officers of Environmental Health in Scotland, wrote to me and shared his members’ concern that I agreed with Michael Robertson. Let me reassure Mr Sleith that I do not consider major retailers to be above environmental health inspectors, but Mr Robertson has a point—the new agency must provide the benchmark for everyone dealing with food safety.

Food producers, particularly small and medium-sized food producers, cannot afford to spend the amount of money that they spend today on
responding to the constant demands of major retailers. To protect the consumer, it is imperative that inspections are of the same quality across Scotland and, to protect the food producers, it is imperative that they are accepted by all major retailers.

I agree with the minister rejecting amendments that would have increased the pressure on health inspectors and the local authorities that fund them.

I believe that the new agency will have a prime role to play. My plea to all members is to support our food industry and to remind Scottish consumers to buy locally and to eat the very best of healthy Scottish food.

15:19

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to make a contribution to the debate.

The Parliament recently held a food and drink debate. There is a growing recognition that the public health agenda and the food and drink sector need to be more closely aligned. The “Becoming a Good Food Nation” consultation indicates a different Scottish Government focus. It attempts to tie together the debates on growing food as a strong sector of our economy and how we address our domestic food challenges with regard to income and knowledge. That is to be welcomed.

It can be challenging to work successfully across Government, and the new food standards Scotland organisation, which will have responsibilities in public health as well as regulation of the food sector, is an example of the need for closer working and to produce food policies across Government portfolios that relate meaningfully to each other.

What are the challenges facing the new body? This afternoon will confirm the creation of the new organisation. Along with the chair, a board will soon be appointed, notwithstanding the debate about the board’s make-up. The organisation’s policy direction and focus will then be created. Therefore, the debate now moves on to what the new body will achieve.

The Parliament has led public debate on tobacco and alcohol and we need to turn our attention to food. By 2030, we will be spending £3 billion on tackling obesity if we continue the way that we are going. At a time when our overseas food export market has the potential to expand, with the development of new emerging markets, we will be fighting battles about food at home.

Alongside obesity, there are health issues associated with poor diet and food poverty. There needs to be realignment of our diets, and the new body has a role to play here. How do we have that debate? In the “Becoming a Good Food Nation” consultation, the Government proposes a food commission.

Debate around food in Scotland can be difficult, and Richard Simpson has the tabloid scars to prove it whenever he talks about a soda tax. A commission could provide the space for a reasonable, evidence-based assessment and proposals. I ask the minister to say how it would relate to the new food standards body. Also, if the new body is to have a greater public health role, how will it co-ordinate the work with the national health service to prevent duplication?

At the cross-party group on food and drink a few weeks ago, someone said that we should have not a good food nation but a good diet nation. In our parliamentary debate a few weeks ago, members took us on culinary tours of their constituencies. The focus was very much on pastries, pies and tablet. Does it matter if we consume such products as long as they are part of a balanced diet?

Christian Allard: Will the member give way?

Claire Baker: I am very tight for time.

Are people clear about what a balanced diet means? A focus on fad diets, even by the First Minister, does not change long-term habits and build good health.

The new body has a role to play in providing trusted information and the Government needs to support it in getting out that message. No coffee or kitchen-table book will be produced by the new body that competes with those that promise the latest starlet figure if people drink maple syrup—or whatever the latest fad is—but the Government and all partner agencies have a responsibility to promote clear messages and to do all that they can to support that by working with producers and suppliers.

We need to look at child obesity in particular. The reasons for such obesity are complex, but there is a lack of information for parents on portion size, calories and activity levels. Advice needs to be tailored and different from that provided to adults.

In the stage 1 debate, I focused on the organisation’s regulatory role and its responsibility for meat inspection. I say again that that must be robust and resourced. We have seen cuts in staff and inspection numbers; we have also seen such cuts at local authority level among environmental health officers. The new organisation will be challenged in reconciling capacity and demand to ensure food safety.

The reputation of Scotland’s food and drink sector is strong and the new organisation has an important role to play in keeping it that way.
15:24

Colin Keir (Edinburgh Western) (SNP): I thank my fellow Health and Sport Committee members for making this such an enjoyable and interesting piece of legislation to work on.

After what I might describe as the demise of the FSA in England and its reduction to a shell of its former self, this Parliament has the opportunity to put in place an organisation and regime in which the public and people at all levels of the food industry can have trust, which is incredibly important given the problems that we have had in past years. The recommendations in the Scudamore report have been accepted, and a single body, with clear responsibility for all aspects of food safety and standards, can be developed.

One of the most fascinating aspects of the committee’s work has been learning about the body’s ability to take on many of the problems that we face in this country. We know that people have had poor diets for a number of years. Dr Simpson made a number of good and valid points about matters that food standards Scotland will have to consider.

I welcome the minister’s announcement on the size of the FSS board, which is good news. The board will be the right size and will be led by the right person. I look forward to seeing the FSS develop to become the force in the industry that we really need. Trust is everything. Our food and drinks industry is vital to our country’s economy and we cannot see it go downhill because of a lack of legislation, food fraud and, frankly, dangerous behaviour in relation to infectious disease and the like.

Aside from all that, probably the most informative visit that the committee made was our visit to Aberdeen. As members said, we met the management at Joseph Robertson, who gave us an insight into the business aspects of the industry. The management team had serious concerns about labelling, our ability to maintain research funding and the like—at that point, prior to the referendum, some political points were being made about that—and how the bill would impact on transport, food identification and so on, which is where problems have arisen.

We considered the horsemeat scandal and food fraud, which must be fought. The FSS cannot deal with such issues just in this country; we must be international in outlook. As we were told, bugs do not operate within borders—or something along those lines. An international approach is critical if our food industry is to maintain its position at the top of the tree for people who regard it from outside.

We are a bit short of time, so I will just say that I am delighted that the bill will help local authority enforcement officers, who have had a tough job. Some of the fines that were handed out in the past did not come close to the profits that were being made. Anything that helps local authority enforcement officers is to be welcomed.

15:28

Jackson Carlaw (West Scotland) (Con): I was at my local bakery a couple of weeks ago; Mrs Carlaw and I are quite partial to its potato scones. Other, inferior, potato scones are no doubt available elsewhere. I was there during the local school’s lunch hour, which was quite an eye-opener. One pupil ordered a mutton pie and haggis in a roll. That was a combination that I had not hitherto heard of. The pupil ordered sauce—tomato and brown—and demolished the whole thing in short order. That made me think about the underlying obesity issue. One does not want to be po-faced about the occasional treat; I have had a mutton pie from time to time, and I like haggis, although I have never had the two combined in a roll, with two types of sauce.

It is easy for us to be intellectual and high-falutin’ about the responsibilities of food standards Scotland in relation to better diet. As we as a Parliament have found in grappling with many other cultural issues, such habits are deep-seated. It is quite a tall order—but nonetheless necessary, over time—that we address significantly within the broader health portfolio what we now understand to be an emerging crisis for the health service. When the Parliament was founded, we would not have included that issue on the agenda for future legislation.

Maureen Watt: Would Jackson Carlaw like to give way?

Jackson Carlaw: I will—as long as it is not about an alternative brand of potato scone.

Maureen Watt: Absolutely not. I am sure that Jackson Carlaw would like to take the opportunity to disassociate himself from the comments of his Westminster colleague who said that the poor cannot cook nowadays.

Jackson Carlaw: Naturally, I would: the Mary Berry skills of the average Scot are exemplary.

I must say that the announcement of Ross Finnie’s appointment had passed me by—I missed it. Some of us on the Conservative seats in the chamber had thought that the Deputy Prime Minister might have seen fit to ennoble Mr Finnie, but instead he saw in colleagues from past sessions of this Parliament talents that some of us had not fully appreciated.

Thankfully, Mr Finnie has now found favour with the Scottish Government, which has given him a useful occupation. I thought that he might have
joined us in the gallery today, but obviously the meter is not running yet. Nonetheless, I wish him every success in exercising his responsibilities. He is a serious player and he will, given his experience, be a first-class appointment. Those basal tones that have been lost to us here, which used to revive debates at that late hour in the afternoon as they boomed forth, will no doubt be well founded in his new role.

I hope that I do not sound too irreverent, because the bill is an important piece of legislation. As Nanette Milne said, the very fact that there were so few amendments underpins the broad cross-party consensus that exists.

In my years in the motor trade, we used to carry out customer satisfaction surveys. It was interesting, because people in the west of Scotland were never 100 per cent satisfied with anything, but we had to phone them up and tell them that they were, because sums of money depended on whether people were completely satisfied. I have always been very suspicious of those surveys ever since.

I bring that experience to bear on the issue of the subjectivity that will underpin fixed-penalty notices. It is very important that, in the forthcoming secondary legislation, there will be a common standard and understanding with regard to how fixed-penalty notices will be applied and the criteria that will underpin them. I hope, on a serious note, that the minister will ensure that that is the case, because many small businesses could find themselves being adversely affected if variable and subjective criteria are applied.

Nonetheless, I very much welcome the bill. I know that the minister will be grateful that it has not been the most difficult bill that she has inherited and has had to take through Parliament, and we look forward to supporting it in a few minutes’ time.

The Deputy Presiding Officer: I note that Nanette Milne is missing from the chamber. I respectfully remind members that if they participate in a debate, they should be here for the closing speeches.

15:33

Rhoda Grant (Highlands and Islands) (Lab): I thank committee members, and the committee clerks and support staff, for their help in working through the bill in the Health and Sport Committee. I also thank Joseph Robertson, the Food Standards Agency in Aberdeen and the other organisations that hosted the committee’s visit. It certainly made our job easier to see how the bill will impact in practice. The bill could have been very dry and difficult to deal with, but when we saw how companies had to put food standards and labelling into practice, that made it a lot easier for us to scrutinise the legislation.

I congratulate Ross Finnie on his appointment as chair of food standards Scotland; it is very welcome, and every member in the chamber has been happy to congratulate him on it, and wish him all the best in his new role.

We are supportive of the bill and recognise the need for it following the breaking up of the Food Standards Agency at UK level. We hope that it will provide a really robust regulatory regime that protects consumers, because consumers needs and protection must be at the heart of everything that food standards Scotland does. Those high standards not only protect consumers but help to promote our produce and protect our producers, as they give them the reputation—which other members have mentioned in the debate—that allows them to sell their products not only in Scotland but throughout the UK, in Europe and beyond.

I ask the minister to bring forward a procedure for appeal against the fixed-penalty notice, which a number of members including Nanette Milne and Jackson Carlaw mentioned. It is important that justice is seen to be done and is seen to be fair. Many people are keen on the fixed-penalty notice because it cuts through bureaucracy, time and cost, but it also needs to be fairly administered to ensure that any errors can be picked up and that people have a right to appeal against any judgment that is made.

I turn—as Richard Simpson said I would—to trading standards officers. An awful lot of the regulation will come from food standards Scotland, but we must ensure that it works and that the inspection and examination are done by local government, through trading standards officers, meat inspectors, food hygiene inspectors and environmental health officers. All those professionals have vital roles to play in protecting consumers and making sure that the work of food standards Scotland is carried out properly and is regulated at ground level. However, local government is facing cuts, and the worry is that the regime that food standards Scotland implements will not be properly policed at council level. We are looking for some reassurance that that will happen in order to protect consumers and producers alike.

Maureen Watt: I reassure Rhoda Grant that one of the functions of food standards Scotland will be to provide training to gear up people in local authorities so that they can do their job better.

Rhoda Grant: I am grateful for that reassurance.

I will turn quickly to the public health role of FSS, which was touched on by Claire Baker. It is
important that it will have that role, although we will have to see how it is developed. We are keen to see how it will interact with other public health roles in the national health service and so on. It is important that we look at public health. Richard Simpson talked about the increase in type 2 diabetes, which is enormous and needs to be tackled, and Claire Baker asked whether we should be a good diet nation rather than a good food nation.

I admit that I was one of those who took the culinary tour of the Highlands and Islands during the food debate a couple of weeks ago, and Jackson Carlaw continued that today with his promotion of tattie scones from his local baker. However, while we promote what is good—there is the old adage that a little of what you fancy does you good—we need to look at how we tackle obesity, especially childhood obesity, as well as people’s knowledge of nutrition. We get a lot of nutrition information on packaging, but it is not always understood that a child’s nutritional needs are quite different from an adult’s nutritional needs. We need to do more to promote that distinction on food labelling. Indeed, some of the food that is designed for children is loaded with sugar, which is not very good for them.

We need to think about how food is promoted and packaged; labelling plays an important role in that. Part of food standards Scotland’s remit will be to ensure that food is labelled properly and gives the right advice. It must be consistent with labelling in the rest of the United Kingdom and in line with EU legislation as well as legislation for other markets, because we want our produce to be sold further afield, but it is important that food labelling advises people what they should eat—in addressing imported foods from other parts of the world, Richard Simpson talked about antibiotics, additives and the like. We need to ensure that food labelling does all that, as well as promoting our food.

Food standards Scotland will help us to continue to build on the excellence that we have in the Scottish food industry. I hope that, at its heart, it will protect consumers but will also promote excellence within our industry.

15:39

Maureen Watt: I thank members for their contributions. I welcome the breadth of support that the bill has received through all its parliamentary stages and the constructive nature of what members have said in the debate.

I share Richard Simpson’s concerns about TTIP, which I discussed with officials before I came to the chamber. The European Commission has repeatedly stated that consumer health and safety and environmental standards will not be lowered and that there is, for example, no prospect that genetically modified crops or hormone-treated beef will be allowed into the EU. We will keep watching that space to make sure that that does not happen.

On having an employee director on its board, ministers will ensure that employee representation arrangements will be included in the statement of performance of functions that food standards Scotland will be required to produce.

I completely agree with Richard Simpson about the provenance of food and use of additives, which is why we need to encourage use, as far as possible, of good wholesome food from local sources.

I say to Nanette Milne that ministers will ask FSS for detailed advice on the introduction of the food hygiene information scheme through regulations, which will probably take place in late 2015.

On appeals against administrative sanctions, I remind members that it is a legal requirement that all food law is fully consulted on. I give an assurance that the appeal mechanism for compliance notices will be consulted on, but I know from having spoken to the industry that no appeal mechanism is possible in relation to fixed penalties.

The bill offers us a chance to make a real difference on food safety and healthy diet, which are areas of significant concern to the public. Setting out in the bill a nutrition and diet objective for FSS will give the body a more transparent and strategic role in this area. Having a clearer remit will give FSS the impetus to lead partnerships with other public bodies to tackle specific food and diet issues. That clear remit will help to clear up confusion about roles and responsibilities among partners.

I remind members that, with the bill, we are not simply rebadging the Food Standards Agency in Scotland. As well as giving FSS a clearer and wider remit on diet and nutrition, we are safeguarding the link between food safety, nutrition and labelling here in Scotland. Food standards Scotland will take on all the functions that are currently exercised in Scotland by the Scottish division of the UK-wide Food Standards Agency. The remit of the Scottish division has been wider than that of the FSA south of the border for some years. In 2010, the UK Government removed responsibility for labelling and for nutrition policy from the English arm of the FSA. In Scotland, we maintained the link between those aspects and food safety. The UK Government’s decision was subsequently seen to have been a factor that hindered its response to
the horsemeat scandal in 2013. The horsemeat scandal demonstrated the importance of having a single body that has clear responsibility for all aspects of food safety and standards.

It is important to note that the bill also requires FSS to operate in a way that is proportionate, transparent and accountable, and to carry out good decision making, which includes consulting people and making its decisions publicly available. That will help to build a new relationship with consumers, and is one example of how FSS will operate differently from how the FSA currently operates.

Another key new feature of the arrangements that we are making in Scotland involves making Scottish research more joined up. The FSS will play a more involved role in co-ordinating all grant-funded research into food and diet that is carried out by Scottish research bodies such as the Rowett institute of nutrition and health, and the James Hutton Institute.

Claire Baker is not in the chamber at the moment, but she asked about co-ordination of effort. It is proposed that there will be better co-ordination between the NHS and food standards Scotland. Through its creation, we can have better co-ordination between the FSS, the NHS and the Scottish Government.

I also agree with Claire Baker that we have, as a nation, lost our way on food portions. In our house, we were recently replacing chipped dinner plates, and I made sure that they were replaced with smaller ones. We will wait to see whether it makes a difference.

Linking grant-funded research to its research will provide FSS with a much wider knowledge base and a greater ability to co-ordinate efforts and focus. We will not lose the links with the rest of the UK and Europe. The UK Government and the FSA have given written assurance regarding access to scientific advice and representation in Europe for FSS.

Knowledge sharing goes two ways, of course. There are areas of expertise in Scotland—for example, on shellfish and E coli—which our colleagues in the rest of the UK will still wish to tap into.

I will now reflect on some of the issues that we have considered in the debate today. First, I will recap on the importance of section 5 and the statement on performance of functions. As I said in my opening speech, food standards Scotland will be operationally autonomous, so the statement will achieve transparency and will, we hope, build public confidence and trust. The statement is where we will find assurance on operational matters such as the method of publication of reports.

I give members a firm assurance that I will make certain that the issues that have been raised in the debate and that were proposed through stage 3 amendments will be considered carefully for inclusion in the statement on performance. That will hopefully offer clarity on a number of the issues that have been raised today.

Members have made very helpful contributions today. I thank them for all their input throughout all the bill’s stages. As Jackson Carlaw mentioned, I have picked up the Food (Scotland) Bill only now, at stage 3, and I am glad that it has been fairly uncontroversial. I hope that it will be passed unanimously at decision time today.
## CONTENTS

**Part 1**

**Food Standards Scotland**

*Food Standards Scotland*

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Establishment</td>
</tr>
<tr>
<td>2</td>
<td>Objectives</td>
</tr>
<tr>
<td>3</td>
<td>General functions</td>
</tr>
<tr>
<td>4</td>
<td>Governance and accountability</td>
</tr>
<tr>
<td>5</td>
<td>Statement on performance of functions</td>
</tr>
</tbody>
</table>

**Membership**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Number and appointment of members</td>
</tr>
<tr>
<td>7</td>
<td>Early ending of membership</td>
</tr>
<tr>
<td>8</td>
<td>Remuneration and expenses of members</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Chief executive</td>
</tr>
<tr>
<td>10</td>
<td>Other staff</td>
</tr>
</tbody>
</table>

**Operational matters**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Proceedings</td>
</tr>
<tr>
<td>12</td>
<td>Committees</td>
</tr>
<tr>
<td>12A</td>
<td>Validity of things done</td>
</tr>
<tr>
<td>13</td>
<td>Authority to exercise functions</td>
</tr>
<tr>
<td>14</td>
<td>Annual and other reports</td>
</tr>
<tr>
<td>15</td>
<td>General powers</td>
</tr>
</tbody>
</table>

**Legislation relating to public bodies**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Application of legislation relating to public bodies</td>
</tr>
</tbody>
</table>

**Step-in powers**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Serious failure</td>
</tr>
</tbody>
</table>

**Acquisition of information**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Duty to acquire, compile and keep under review relevant information</td>
</tr>
<tr>
<td>19</td>
<td>Observations with a view to obtaining information</td>
</tr>
<tr>
<td>20</td>
<td>Powers for persons carrying out observations</td>
</tr>
<tr>
<td>21</td>
<td>Offences in relation to section 20</td>
</tr>
</tbody>
</table>
Enforcement action
22 Setting performance standards
23 Reporting own enforcement activities
24 Reporting on enforcement action by others
25 Power to request information in relation to enforcement action
26 Offences in relation to section 25
27 Powers for persons monitoring enforcement action
28 Offences in relation to section 27

Issuing guidance on food-borne diseases
29 Power to issue guidance on control of food-borne diseases

Information sharing
30 Publication and disclosure of advice and information

Consequential provision
31 Certain functions of Food Standards Agency ceasing to be exercisable

PART 2
FOOD AND FEEDING STUFFS

Food information
32 Food information

Food hygiene information scheme
33 Food hygiene information scheme

Feeding stuffs
34 Regulation of animal feeding stuffs

PART 3
ADMINISTRATIVE SANCTIONS

Fixed penalty notices
35 Fixed penalty notices
36 Content and form of a fixed penalty notice
37 Effect of a fixed penalty notice on criminal proceedings
38 Restrictions on issuing of a fixed penalty notice
39 Withdrawal of a fixed penalty notice
40 Income from fixed penalties to be paid to the Scottish Ministers

Compliance notices
41 Compliance notices
42 Content and form of a compliance notice
43 Failure to comply with a compliance notice
44 Effect of a compliance notice on criminal proceedings
45 Restrictions on issuing of a compliance notice
46 Withdrawal of a compliance notice
47 Appeal against a compliance notice
General

48 Power to make supplementary etc. provision
49 Regulations
50 Lord Advocate's guidance
51 Interpretation of Part

PART 4

INTERPRETATION

52 Meanings of “food” and “animal feeding stuffs”
53 Meaning of “food matter”
54 Meaning of “other interests of consumers in relation to food”
55 Meaning of “animal feeding stuffs matter”
56 Meaning of “food legislation”
57 General interpretation

PART 5

FINAL PROVISIONS

58 Modification of enactments
59 Subordinate legislation
60 Ancillary provision
61 Crown application
62 Commencement
63 Short title

Schedule—Modification of enactments
Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Food (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

PART 1

FOOD STANDARDS SCOTLAND

Food Standards Scotland

1 Establishment

There is established a body corporate called Food Standards Scotland or, in Gaelic, Inbhe-Bidhe Alba.

2 Objectives

(1) The objectives of Food Standards Scotland are—

(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.

(2) The risks referred to in subsection (1)(a) include risks caused by the way in which food is produced or supplied.

(3) Food Standards Scotland must so far as reasonably practicable perform its functions in a way—

(a) which is compatible with its objectives, and

(b) which it considers most appropriate for the purpose of meeting those objectives.

3 General functions

(1) The general functions of Food Standards Scotland are—
Food (Scotland) Bill
Part 1—Food Standards Scotland

(a) to develop (and assist the Scottish Ministers and public bodies and office-holders to develop) policies in relation to food matters and animal feeding stuffs matters,

(b) to advise, inform and assist the Scottish Ministers and public bodies and office-holders and other persons in relation to food matters and animal feeding stuffs matters,

(c) to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters,

(d) to keep users of animal feeding stuffs adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about animal feeding stuffs matters, and

(e) to monitor the performance of, and promote best practice by, enforcement authorities in enforcing food legislation.

(2) Food Standards Scotland must so far as reasonably practicable comply with a request by the Scottish Ministers that—

(a) in pursuance of subsection (1)(a), it develops a policy, or assists the Scottish Ministers or a public body or office-holder to develop a policy, in relation to a particular matter,

(b) in pursuance of subsection (1)(b), it gives advice, information or assistance to the Scottish Ministers, a public body or office-holder or another person, in relation to a particular matter,

(c) in pursuance of subsection (1)(c), it informs or advises the public in relation to a particular matter,

(d) in pursuance of subsection (1)(d), it informs or advises users of animal feeding stuffs in relation to a particular matter.

4 Governance and accountability

(1) Food Standards Scotland must so far as reasonably practicable operate in a way which—

(a) is proportionate, transparent and accountable,

(b) constitutes good decision-making practice,

(c) develops and maintains effective links with the persons mentioned in subsection (3), and

(d) is consistent with any other principle of good governance which appears to it to constitute best practice.

(2) “Good decision-making practice” means—

(a) consulting people who may be affected by decisions before taking them,

(b) having good information on which to take decisions and taking decisions based on that information,

(c) recording decisions and the reasons for them, and

(d) making decisions and the reasons for them publicly available.

(3) The persons referred to in subsection (1)(c) are—

(a) the Scottish Ministers,
(b) public bodies and office-holders with functions in relation to food matters or animal feeding stuffs matters.

5 Statement on performance of functions

(1) Food Standards Scotland must prepare for approval by the Scottish Ministers a statement setting out how it intends to perform its functions.

(2) The statement must include information on how Food Standards Scotland intends—
   (a) to meet its objectives, and
   (b) to operate in accordance with section 4.

(3) The statement must be submitted to the Scottish Ministers by such time as they may direct.

(4) The Scottish Ministers may approve the statement with such modifications as they consider appropriate.

(5) Before approving the statement with modifications the Scottish Ministers must consult Food Standards Scotland.

(6) As soon as practicable after the statement is approved under subsection (4), Food Standards Scotland must—
   (a) lay a copy of it before the Scottish Parliament, and
   (b) publish it (in such manner as Food Standards Scotland considers appropriate).

(7) Food Standards Scotland—
   (a) must review the statement from time to time, and
   (b) may in consequence prepare and submit to the Scottish Ministers a revised statement.

(8) Subsections (2) and (4) to (7) apply to a revised statement as they apply to the original statement.

Membership

6 Number and appointment of members

(1) Food Standards Scotland is to consist of—
   (a) a person appointed by the Scottish Ministers to chair Food Standards Scotland, and
   (b) no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.

(2) A person may not be appointed as a member if the person is—
   (a) a member of the Scottish Parliament,
   (b) a member of the House of Commons,
   (c) a member of the European Parliament,
   (d) an office-holder in the Scottish Administration,
   (e) a councillor of any local authority,
   (f) an employee of any local authority.
(3) The Scottish Ministers must make appointments of members of Food Standards Scotland in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(4) In subsection (3), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998.

(5) Membership is (subject to sections 7 and 17) for such period and on such terms and conditions as the Scottish Ministers may determine.

(6) A member may resign by informing the Scottish Ministers in writing to that effect.

(7) A person may be re-appointed on, or after, ceasing to be a member.

(8) The Scottish Ministers may assign to one of the members appointed under subsection 10—

(a) the function of deputising for the person appointed under subsection 1(a),
(b) the function of chairing Food Standards Scotland during any period when there is no person appointed under subsection 1(a).

(9) A member to whom such a function is assigned—

(a) is assigned the function for such period as the Scottish Ministers may specify in the assignment,
(b) may resign the assignment by informing the Scottish Ministers in writing to that effect,
(c) is assigned and ceases to be assigned the function in accordance with such terms and conditions as the Scottish Ministers may determine.

7 Early ending of membership

(1) A person’s membership of Food Standards Scotland ends if the person becomes—

(a) a member of the Scottish Parliament,
(b) a member of the House of Commons,
(c) a member of the European Parliament,
(d) an office-holder in the Scottish Administration,
(e) a councillor of any local authority,
(f) an employee of any local authority.

(2) The Scottish Ministers may end a person’s membership of Food Standards Scotland if—

(a) the person becomes an undischarged bankrupt, or
(b) the Scottish Ministers are satisfied that the person—

(i) has, without the permission of Food Standards Scotland, been absent from its meetings for a period longer than 6 consecutive months,
(ii) is unable to perform the functions of a member, or
(iii) is unsuitable to continue as a member.

8 Remuneration and expenses of members

(1) A member of Food Standards Scotland is entitled to—
Part 1—Food Standards Scotland

5 (2) It is for Food Standards Scotland to pay any remuneration and other sums to which its members are entitled by virtue of subsection (1).

Staff

9 Chief executive

1 Food Standards Scotland is to have, as a member of staff, a chief executive.

2 The first chief executive is to be appointed by the Scottish Ministers on such terms and conditions as they determine.

3 Before appointing the first chief executive, the Scottish Ministers must consult Food Standards Scotland.

4 Food Standards Scotland may, with the approval of the Scottish Ministers, appoint subsequent chief executives on such terms and conditions as it, with the approval of the Scottish Ministers, determines.

10 Other staff

1 Food Standards Scotland may appoint staff other than the chief executive.

2 Members of staff are to be appointed on such terms and conditions as Food Standards Scotland, with the approval of the Scottish Ministers, determines.

3 The number of staff is not to exceed any maximum that the Scottish Ministers may determine.

Operational matters

11 Proceedings

It is for Food Standards Scotland to regulate its procedure (including any quorum).

12 Committees

1 Food Standards Scotland may establish committees.

2 A committee established by Food Standards Scotland may include as a member a person who is not a member of Food Standards Scotland.

3 Such a person is entitled to—

(a) such remuneration as Food Standards Scotland may determine,

(b) such sums as Food Standards Scotland may determine to reimburse or compensate the person in relation to expenses properly incurred in the exercise of the person’s functions.

4 It is for Food Standards Scotland to pay any remuneration and other sums to which such a person is entitled by virtue of subsection (3).
(5) It is for Food Standards Scotland to regulate the procedure (including any quorum) of any committee established by it.

12A **Validity of things done**

The validity of anything done by Food Standards Scotland or its committees is not affected by—

(a) a vacancy in membership,
(b) a defect in the appointment of a member,
(c) a person’s membership having ended under section 7.

13 **Authority to exercise functions**

(1) Food Standards Scotland may authorise the exercise of any of its functions by—

(a) one (or some) of its members,
(b) a committee established by it, or
(c) (subject to subsection (3)) a member of its staff.

(3) Subsection (1)(c) does not apply in relation to—

(a) the function of giving authorisations under section 20(1),
(b) the function of giving authorisations under section 27(1).

(4) Authorisation for the purposes of this section may be general or limited to the exercise of the function in specific circumstances.

(5) This section does not affect the responsibility of Food Standards Scotland for the exercise of its functions.

14 **Annual and other reports**

(1) As soon as practicable after the end of each financial year, Food Standards Scotland must prepare and publish an annual report on the exercise of its functions during that financial year.

(2) An annual report must contain Food Standards Scotland’s assessment of its performance of its functions in relation to—

(a) the statement of performance of functions under section 5 applying during the financial year to which the annual report relates, or
(b) if more than one statement of performance of functions applied during the financial year, each such statement for the period during the financial year when the statement applied.

(3) Subject to subsections (1) and (2), it is for Food Standards Scotland to determine the content of an annual report.

(4) It is for Food Standards Scotland to determine—

(a) the form of an annual report, and
(b) the manner of publication.

(5) As soon as practicable after publishing an annual report, Food Standards Scotland must—
(a) send a copy of the report to the Scottish Ministers,
(b) lay a copy of the report before the Scottish Parliament.

(6) Food Standards Scotland may lay a copy of any other report prepared by it before the Scottish Parliament.

15 **General powers**

(1) Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

(2) Food Standards Scotland may not however—

(a) determine the location of its office without the approval of the Scottish Ministers,
(b) make charges for facilities or services provided by it at the request of any person which exceed the reasonable cost of providing the facilities or services concerned.

**Legislation relating to public bodies**

16 **Application of legislation relating to public bodies**

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Crofting Commission insert—

“Food Standards Scotland”.

(2) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities) after paragraph 22 insert—

“22A Food Standards Scotland.”.

(3) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities) after paragraph 7A insert—

“7B Food Standards Scotland.”.

(4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) after the entry relating to the Crofting Commission insert—

“Food Standards Scotland”.

(5) In the Public Services Reform (Scotland) Act 2010—

(a) in schedule 8 (information on exercise of public functions: listed public bodies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”,

(b) in schedule 19 (persons subject to the user focus duty), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”,

(c) in schedule 20 (persons subject to the duty of co-operation), after the entry relating to the Accounts Commission for Scotland insert—

“Food Standards Scotland”.
(6) In the Public Records (Scotland) Act 2011, in the schedule (authorities to which Part 1 applies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—

“Food Standards Scotland”.

(7) In the Regulatory Reform (Scotland) Act 2014, in schedule 1 (regulators for the purposes of Part 1), before the entry relating to Healthcare Improvement Scotland insert—

“Food Standards Scotland”.

(8) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13A insert—

“13B Food Standards Scotland”.

Step-in powers

17 Serious failure

(1) This section applies where the Scottish Ministers consider that there has been a serious failure by Food Standards Scotland to exercise any of its functions.

(2) The Scottish Ministers may give Food Standards Scotland such directions as they consider appropriate to remedy the failure.

(3) But before doing so, the Scottish Ministers must consult Food Standards Scotland.

(4) A direction under this section—

   (a) must be in writing,

   (b) must include a statement summarising the reasons for giving it.

(5) The Scottish Ministers must publish any direction under this section (in such manner as they consider appropriate).

(6) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers may give effect to it (and for that purpose, may exercise any function of Food Standards Scotland in place of it).

(7) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers—

   (a) may end the membership of all its members, and

   (b) may, until new members are appointed, exercise any function of Food Standards Scotland in place of it (or appoint any other person to do so).

Acquisition of information

18 Duty to acquire, compile and keep under review relevant information

(1) For the purpose of enabling it to perform its other functions effectively and to operate in accordance with section 4, Food Standards Scotland is to acquire, compile and keep under review information about food matters and animal feeding stuffs matters.

(2) The function in subsection (1) includes in particular—
(a) monitoring developments in science, technology and other fields of knowledge relating to food matters and animal feeding stuffs matters,
(b) carrying out, commissioning or co-ordinating research on food matters and animal feeding stuffs matters.

19 Observations with a view to obtaining information

(1) For the purpose of exercising its function under section 18, Food Standards Scotland may carry out observations (or arrange for observations to be carried out on its behalf by any other person) with a view to obtaining information about—

(a) any aspect of the production or supply of food or food sources, or the consumption of food, or
(b) any aspect of the production, supply or use of animal feeding stuffs.

(2) The information which may be sought through such observations includes in particular information about—

(a) food premises, food businesses or commercial operations being carried out in relation to food, food sources or contact materials,
(b) agricultural premises, agricultural businesses or agricultural activities,
(c) premises, businesses or operations involved in fish farming,
(d) premises, businesses or operations involved in the production, supply or use of animal feeding stuffs.

(3) In this section—

“agricultural activity” has the same meaning as in the Agriculture Act 1947,
“agricultural business” has the same meaning as in section 1 of the Farm Land and Rural Development Act 1988,
“agricultural premises” means any premises used for the purposes of an agricultural business.

20 Powers for persons carrying out observations

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out observations under section 19 in relation to a particular matter.

(2) The powers are—

(a) entering premises (other than a dwelling house) at a reasonable time,
(b) taking samples of any articles or substances on the premises,
(c) taking samples from any food source on the premises,
(d) inspecting and copying any information in a recorded form on the premises which relates to a business which is the subject of the observations (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
(e) requiring any person carrying on a business which is the subject of the observations to provide such facilities or information and such other assistance as the authorised person reasonably requests.
(3) The reference in subsection (2)(d) to information which relates to a business includes a reference to information which—

(a) relates to the health of a person who has, may have or may come into contact with food or food sources in the course of that person’s work for the business, and

(b) was acquired or compiled for the purpose of assessing, or is kept for the purpose of recording, matters affecting the person’s suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if the person comes into contact with any food or food source).

(4) An authorisation under subsection (1)—

(a) must be in writing,

(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

(5) The powers specified in subsection (2) may be exercised only if it appears to the authorised person to be necessary to do so for the purpose of carrying out the observations concerned.

(6) An authorised person must if so required—

(a) produce evidence of the person’s identity and authorisation before exercising a power in pursuance of the authorisation,

(b) provide a document identifying any sample taken, or information copied, under those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

21 Offences in relation to section 20

(1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 20(2)(a).

(2) This subsection applies if—

(a) the information relates to a trade secret, and

(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 20(2)(a), (b), (c) or (d),

(b) fails without reasonable excuse to comply with any requirement imposed under section 20(2)(e), or

(c) in purported compliance with a requirement imposed under section 20(2)(e)—

(i) provides information which the person knows to be false or misleading in a material way, or

(ii) recklessly provides information which is false or misleading in a material way.
(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 20(1).

Enforcement action

22 Setting performance standards

(1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.

(2) Different standards may be determined in relation to—

(a) different enforcement authorities (or types of enforcement authorities),

(b) different food legislation (or types of food legislation).

(3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

23 Reporting own enforcement activities

(1) Food Standards Scotland must include in each annual report it prepares a report on—

(a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and

(b) its performance in relation to any standards determined under section 22(1) applying to those activities.

(2) In this section, “annual report” means a report prepared under section 14(1).

24 Reporting on enforcement action by others

(1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.

(2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—

(a) is necessary to enable the enforcement authority to meet any standards determined under section 22(1) which apply, or

(b) otherwise, would help to improve the performance of the authority.

(3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—

(a) to arrange for the publication (in such manner as may be specified) of—

(i) the report, or

(ii) specified information relating to the report, or

(b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.

(4) In subsection (3), “specified” means specified in the direction.
25 Power to request information in relation to enforcement action

(1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—

(a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or
(b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person’s control (and where such information is in electronic form, to make it available in a legible form).

(2) A requirement under subsection (1) may be imposed on—

(a) the enforcement authority, or any member, officer or employee of the authority, or
(b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

26 Offences in relation to section 25

(1) A person commits an offence if the person—

(a) fails without reasonable excuse to comply with any requirement imposed under section 25(1), or
(b) in purported compliance with a requirement imposed under section 25(1)—

(i) provides information which the person knows to be false or misleading in a material way, or
(ii) recklessly provides information which is false or misleading in a material way.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

27 Powers for persons monitoring enforcement action

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.

(2) The powers are—

(a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,
(b) taking samples of any articles or substances on the premises,
(c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
(d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.

(3) The premises in relation to which the power in subsection (2)(a) may be exercised are—

(a) any premises occupied by the enforcement authority (but see subsection (4)),
(b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,
(c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.

(5) An authorisation under subsection (1)—

(a) must be in writing,
(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

(6) An authorised person must if so required—

(a) produce the authorisation before exercising a power mentioned in subsection (2),
(b) provide a document identifying any sample taken, or information copied, under any of those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

28 Offences in relation to section 27

(1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 27(2)(a).

(2) This subsection applies if—

(a) the information relates to a trade secret, and
(b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 27(2)(a), (b) or (c),
(b) fails without reasonable excuse to comply with any requirement imposed under section 27(2)(d), or
(c) in purported compliance with a requirement imposed under section 27(2)(d)—

(i) provides information which the person knows to be false or misleading in a material way, or
(ii) recklessly provides information which is false or misleading in a material way.
(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 27(1).

Issuing guidance on food-borne diseases

29 Power to issue guidance on control of food-borne diseases

(1) Food Standards Scotland may issue to the persons mentioned in subsection (3) guidance about the exercise, generally, of their functions in relation to matters connected with the management of outbreaks (or suspected outbreaks) of food-borne diseases.

(2) “Food-borne diseases” means diseases of humans which are capable of being caused by the consumption of infected or otherwise contaminated food.

(3) The persons referred to in subsection (1) are—
   (a) the Scottish Ministers,
   (b) public bodies and office-holders.

(4) Different guidance may be issued to different persons or for different purposes.

(5) Food Standards Scotland must publish any such guidance (in such manner as it considers appropriate).

(6) A person to whom any such guidance is issued must have regard to the guidance in exercising any function to which it relates.

(7) The power to issue guidance under subsection (1) is without prejudice to the other powers of Food Standards Scotland.

(8) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

Information sharing

30 Publication and disclosure of advice and information

(1) Food Standards Scotland may—
   (a) publish (in such manner as it considers appropriate), or
   (b) disclose to the Scottish Ministers or a public body or office-holder,
       any material to which this section applies.

(2) This section applies to—
   (a) any advice given by Food Standards Scotland under section 3,
   (b) any information obtained by Food Standards Scotland through—
       (i) monitoring under section 3, or
       (ii) observations under section 19, or
   (c) any other information in the possession of Food Standards Scotland (whatever the source).

(3) Subsection (1) does not authorise publication or disclosure of material which—
   (a) is prohibited by an enactment, or
(b) would constitute or be punishable as a contempt of court.

(4) But, otherwise, the powers in subsection (1) are exercisable free from any prohibition on publication or disclosure (as the case may be) which would apply.

(5) Before deciding to exercise a power in subsection (1) in relation to any particular material, Food Standards Scotland must consider whether the public interest in the publication or disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.

(6) Where the material relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing food legislation, subsection (5) applies only so far as the material relates to a person other than—

(a) an enforcement authority, or

(b) a member, officer or employee of an enforcement authority acting in that person’s capacity as such.

Consequential provision

31 Certain functions of Food Standards Agency ceasing to be exercisable

(1) The relevant functions of the Agency conferred by the 1999 Act cease to be exercisable.

(2) In subsection (1), “relevant functions of the Agency” has the same meaning as in section 35 of the 1999 Act.

PART 2

FOOD AND FEEDING STUFFS

Food information

After section 15 of the 1990 Act insert—

“Food information

15A Meaning of “food information” etc.

In this Act—

(a) “food information” has the same meaning as it has in Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers;

(b) “food information law” means any enactment relating to food information as the Scottish Ministers may by regulations specify.

15B Contravention of food information law: seizure of food etc.

(1) This section applies where it appears to an authorised officer of a food authority, on an inspection carried out under section 9 above or otherwise, that food information law is being, or has been, contravened in relation to any food intended for human consumption which is placed on the market within the meaning of Regulation (EC) No. 178/2002.

(2) The authorised officer may—
(a) give notice that, until the notice is withdrawn—
   (i) the food, or any specified portion of it, is not to be used for human
   consumption; and
   (ii) the food, or any specified portion of it, and any related food
   information, or any specified part of it, is not to be removed (or is
   not to be removed except to some place specified in the notice); or
(b) seize the food and remove it in order to have it dealt with by the sheriff.

(3) Notice under subsection (2)(a) above is to be given to—
   (a) the person in charge of the food; and
   (b) the owner of the food (where not the person in charge of the food).

(4) But notice need not be given in pursuance of subsection (3)(b) above if the
   authorised officer, after making reasonable inquiries, does not know who owns
   the food.

(5) Any person who knowingly contravenes the requirements of a notice under
   subsection (2)(a) above commits an offence.

(6) An authorised officer who gives a notice under subsection (2)(a) above must,
   as soon as is reasonably practicable and in any event within 21 days, determine
   whether or not food information law has been contravened in relation to the
   food in respect of which the notice was given.

(7) After making a determination under subsection (6) above, the authorised
   officer must—
   (a) if satisfied that food information law has not been contravened, forthwith
   withdraw the notice; or
   (b) if not so satisfied, seize the food and remove it in order to have it dealt
   with by the sheriff.

(8) An authorised officer who seizes and removes food under subsection (2)(b) or
   (7)(b) above may also—
   (a) copy, make extracts of or take away any food information relating to the
   food that has been seized;
   (b) where any such food information is in electronic form, require the
   information to be produced in a legible form in which it may be copied
   or taken away.

(9) An authorised officer who seizes and removes food under subsection (2)(b) or
   (7)(b) above must inform the person in charge of the food and the owner of the
   food (where not the person in charge of the food) of the officer’s intention to
   have it dealt with by the sheriff.

(10) But the owner of the food need not be informed in pursuance of subsection (9)
    above if the authorised officer, after making reasonable inquiries, does not
    know who owns the food.

(11) Any person who might be liable to a prosecution for contravening food
    information law in relation to any food seized and removed under subsection
    (2)(b) or (7)(b) above is, if the person attends before the sheriff by whom the
    food falls to be dealt with, entitled to be heard and to call witnesses.
(12) If it appears to the sheriff that food information law has been contravened in relation to any food seized and removed under subsection (2)(b) or (7)(b) above, the sheriff may make such order as the sheriff considers appropriate in respect of the food and any food information relating to it.

(13) An order made under subsection (12) above may, in particular, order—

(a) that the food be destroyed or otherwise disposed of so as to prevent it from being used for human consumption;

(b) that any food information relating to the food be modified, destroyed or otherwise disposed of;

(c) that any food which is fit for human consumption (and any related food information, modified as the sheriff considers appropriate) be—

(i) returned to the person who was in charge of the food; or

(ii) distributed to such other person as the sheriff may determine.

(14) An order made under subsection (12) above—

(a) must, where the owner of the food is known, require the owner to meet any expenses reasonably incurred in connection with any destruction, modification, disposal, return or distribution of any food or food information which is carried out in pursuance of the order; and

(b) may require the owner of the food to meet any expenses reasonably incurred by the food authority in connection with any action taken by the authorised officer, or otherwise by or on behalf of the authority, in respect of any food or food information to which the order relates.

(15) Subsection (16) below applies if—

(a) a notice under subsection (2)(a) above is withdrawn; or

(b) the sheriff refuses to make an order under subsection (12) above in respect of any food seized and removed under subsection (2)(b) or (7)(b) above (or any food information which relates to it).

(16) Where this subsection applies, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(17) Any disputed question as to the right to or the amount of any compensation payable under subsection (16) above is to be submitted to arbitration for resolution.

(18) Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitration carried out in pursuance of subsection (17) above, that Act applies as if it were in force in relation to that arbitration.

15C Duty to report non-compliance with food information law

(1) A food business operator must as soon as reasonably practicable inform Food Standards Scotland if the food business operator—

(a) is, or has been, in charge of any food which is intended for human consumption and has been placed on the market within the meaning of Regulation (EC) No. 178/2002; and
(b) considers or has reason to believe that food information law is being contravened in relation to the food.

(2) Any person who fails to comply with subsection (1) above shall be guilty of an offence.

(3) For the purposes of subsection (1)(a) above, a food business operator is to be treated as being, or having been, in charge of any food which it has—

(a) received;
(b) imported;
(c) produced;
(d) processed;
(e) manufactured;
(f) distributed; or
(g) otherwise placed on the market within the meaning of Regulation (EC) No. 178/2002.

(4) For the purposes of this Act, “food business operator” is to be construed in accordance with Article 3 of Regulation (EC) No 178/2002.

15D Power to obtain information

(1) This section applies where a food business operator has informed Food Standards Scotland under section 15C(1) above.

(2) The food business operator must as soon as reasonably practicable provide any further information which is reasonably required by Food Standards Scotland which relates to—

(a) the food (and any food information relating to it);
(b) the circumstances which led the food business operator to inform Food Standards Scotland under section 15C(1) above.

(3) Any person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.”.

Food hygiene information scheme

33 Food hygiene information scheme

(1) In section 16(1) of the 1990 Act, after paragraph (d) insert—

“(da) provision for a food hygiene information scheme;”.

(2) In Schedule 1 to the 1990 Act, after paragraph 7 insert—

“8 (1) Provision for the following in connection with a food hygiene information scheme, namely—

(a) for a food authority—

(i) to assess hygienic conditions and practices in food premises;
(ii) to determine food hygiene ratings for food premises (by reference to criteria specified in or determined in accordance with the regulations);

(iii) to give reasons for, and opportunities to comment on, food hygiene ratings;

(iv) to issue certificates which show food hygiene ratings;

(v) to inform Food Standards Scotland about food hygiene ratings;

(b) for notifying the public of food hygiene ratings (for example, by requiring the display of certificates, or other information, in or on food premises, requiring persons involved in a food business to provide information about food hygiene ratings when asked to do so or requiring food authorities or Food Standards Scotland to publish food hygiene ratings);

(c) for the review or appeal of food hygiene ratings;

(d) for the promotion of the scheme.

(2) Provision for a food hygiene rating to be based on an assessment of hygienic conditions and practices carried out before the regulations come into force.”.

**Feeding stuffs**

34 **Regulation of animal feeding stuffs**

(1) The Scottish Ministers may, for the purpose of regulating—

(a) any animal feeding stuff, or

(b) anything done, or which might be done, to, or in relation to, or with a view to the production of, any animal feeding stuff,

by order make the provision mentioned in subsection (2).

(2) That is provision which—

(a) applies (with or without modifications), or

(b) is equivalent or reasonably similar to,

any of the provisions of the 1990 Act (including any power to make orders or regulations or to give directions).

(2A) But an order under subsection (1) may not make provision creating an offence which is—

(a) punishable with imprisonment for a period of more than 2 years, or

(b) punishable on summary conviction with—

(i) imprisonment for a period of more than 12 months, or

(ii) a fine of more than £20,000.

(3) An order under subsection (1) may modify any enactment.

(4) Before making an order under subsection (1), the Scottish Ministers must—

(a) have regard to any relevant advice given to them by Food Standards Scotland, and
(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(5) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (4)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

PART 3
ADMINISTRATIVE SANCTIONS

Fixed penalty notices

35

10 (1) An authorised officer of the appropriate enforcement authority may issue to a person a fixed penalty notice in relation to a relevant offence.

(2) In this Part, “fixed penalty notice” means a notice offering the person to whom it is issued the opportunity to discharge liability to conviction for the relevant offence in relation to which the notice is issued by paying to the appropriate enforcement authority a specified sum of money.

(3) The sum of money is to be treated as paid only if it is paid by such method of payment as the appropriate enforcement authority determines to be acceptable.

(4) An authorised officer may issue a fixed penalty notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

(5) A sum specified for the purposes of subsection (2) must not exceed level 4 on the standard scale.

(6) In this section, “standard scale” has the meaning given in section 225(1) of the Criminal Procedure (Scotland) Act 1995.

36 Content and form of a fixed penalty notice

(1) A fixed penalty notice must include the following information—

(a) a statement of the grounds for issuing the notice, including a statement of—

(i) the relevant offence that is alleged to have been committed, and

(ii) the act or omission giving rise to the offence,

(b) the amount of the sum that is to be paid to the appropriate enforcement authority,

(c) the date of issue of the notice,

(d) an explanation of how payment is to be made to the appropriate enforcement authority,

(e) the period of time within which payment is to be made,

(f) information about any early payment discounts,

(g) information about the person to whom, and as to how and by when, any representations about the notice may be made,
(h) an explanation of the effect of making payment in accordance with the notice and of the consequences of failure to make payment in accordance with the notice.

(2) The reference in subsection (1)(e) to the period of time within which payment is to be made is a reference to such period, beginning with the date on which the notice was issued, as may be specified.

(3) The Scottish Ministers may by regulations make further provision about the form and content of fixed penalty notices including, in particular—

(a) provision about the form and content of any of the information required to be included under subsection (1),

(b) provision about other information that is to be included in addition to that required under subsection (1).

37 **Effect of a fixed penalty notice on criminal proceedings**

(1) Where a fixed penalty notice is issued to a person in relation to a relevant offence—

(a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the payment period, and

(b) if the person makes payment in accordance with the notice, the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—

(a) constituting the relevant offence, and

(b) by reason of which the fixed penalty notice is issued.

38 **Restrictions on issuing of a fixed penalty notice**

(1) A fixed penalty notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—

(a) a fixed penalty notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or

(b) criminal proceedings—

(i) have been brought against the person for the same relevant offence arising out of the same act or omission, or

(ii) cannot, because of the expiry of relevant time limits for prosecution, any longer competently be brought against the person for the same relevant offence arising out of the same act or omission.

(2) A fixed penalty notice issued in contravention of subsection (1) is of no effect (and, accordingly, the appropriate enforcement authority must repay any amount paid in respect of the notice).

39 **Withdrawal of a fixed penalty notice**

(1) An authorised officer of the appropriate enforcement authority may withdraw a fixed penalty notice issued by an authorised officer of the authority.
(2) A fixed penalty notice—
   (a) may be withdrawn at any time before payment is made in accordance with the notice, and
   (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the fixed penalty notice was issued.

(3) Where a fixed penalty notice is withdrawn, it is to be treated as if it had never been issued.

40 Income from fixed penalties to be paid to the Scottish Ministers

(1) Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers.

(2) Payments by an enforcement authority under subsection (1) are to be made at such times and by such methods as the Scottish Ministers may determine.

Compliance notices

41 Compliance notices

(1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.

(2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.

(3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

42 Content and form of a compliance notice

(1) A compliance notice must include the following information—
   (a) a statement of the grounds for issuing the notice, including a statement of—
      (i) the relevant offence that is alleged to have been committed, and
      (ii) the act or omission giving rising to the offence,
   (b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,
   (c) the date of issue of the notice,
   (d) the period of time within which the required steps are to be taken,
   (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
   (f) information about the right of appeal, including the period of time within which an appeal may be made,
   (g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.
(2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.

(3) That period must not be less than the specified period.

(4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—

(a) provision about the form and content of any of the information required to be included under subsection (1),

(b) provision about other information that is to be included in addition to that required under subsection (1).

43 Failure to comply with a compliance notice

(1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.

(2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—

(a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and

(b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

44 Effect of a compliance notice on criminal proceedings

(1) Where a compliance notice is issued to a person in relation to a relevant offence—

(a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and

(b) if the person—

(i) complies with the requirements of the notice, or

(ii) though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice,

the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.

(2) In subsection (1), “the relevant act or omission” means the act or omission—

(a) constituting the relevant offence, and

(b) by reason of which the compliance notice is issued.
45 Restrictions on issuing of a compliance notice

(1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—

(a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or

(b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.

(2) A compliance notice issued in contravention of subsection (1) is of no effect.

46 Withdrawal of a compliance notice

(1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.

(2) A compliance notice—

(a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and

(b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.

(3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

47 Appeal against a compliance notice

(1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.

(2) An appeal is to be made by way of summary application.

(3) In subsection (1), the “relevant period” means—

(a) the period of one month beginning with the date of issue of the compliance notice, or

(b) the compliance period, whichever expires earlier.

(4) In an appeal under this section, the sheriff may—

(a) cancel the compliance notice, or

(b) affirm the notice, either with or without modifications.

(5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.

(6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.
48 Power to make supplementary etc. provision

(1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.

(2) Regulations under subsection (1) may, in particular, include provision—

(a) facilitating, prohibiting or restricting—

(i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,

(ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,

(b) for early payment discounts in relation to fixed penalty notices,

(c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—

(i) section 20 (offences due to fault of another person),

(ii) section 21 (defence of due diligence),

(iii) section 30(8) (documentary evidence in proceedings for offences),

(iv) section 32 (powers of entry),

(v) section 33 (obstruction etc. of officers),

(vi) section 34 (time limit for prosecutions),

(vii) section 36 (offences by bodies corporate),

(viii) section 36A (offences by partnerships),

(ix) section 40 (power to issue codes of practice),

(x) section 45 (regulations as to charges),

(xi) section 49(3) to (5) (authentication of documents),

(xii) section 50 (service of documents).

(3) Regulations under subsection (1) containing provision referred to in subsection (2)(a) may also make such modifications of sections 37 and 44 as the Scottish Ministers consider necessary or expedient in relation to the case mentioned in subsection (3ZA).

(3ZA) That case is where, in consequence of the provision, a person has been issued with both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission.

(3ZB) But the provision which may be made by virtue of subsection (3) does not include provision which has the effect that the person may still be convicted of the offence if the person both—

(a) makes payment in accordance with the fixed penalty notice, and
(b) complies with the requirements of the compliance notice or though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice.

(4) In subsection (2)(a), “another sanction” means—

(a) a fixed penalty notice (in relation to a compliance notice),

(b) a compliance notice (in relation to fixed penalty notice),

(c) an improvement notice under section 10 of the 1990 Act,

(d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and

(e) an emergency control order under section 13 of the 1990 Act.

(5) The Scottish Ministers may by regulations modify subsection (4).

49 Regulations

(1) Before making any regulations under this Part, the Scottish Ministers must—

(a) have regard to any relevant advice given by Food Standards Scotland, and

(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.

(2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

(3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

50 Lord Advocate’s guidance

(1) The Lord Advocate may issue guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.

(1A) The Lord Advocate must publish any such guidance (in such manner as the Lord Advocate considers appropriate).

(1B) Subsection (1A) does not apply to the extent that the Lord Advocate considers that publication would, or would be likely to, prejudice—

(a) the effective exercise of the functions of enforcement authorities, or their authorised officers, under this Part,

(b) the prevention or detection of crime,

(c) the apprehension or prosecution of offenders, or

(d) the administration of justice.

(2) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance in exercising those functions.

(3) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).
51 **Interpretation of Part**

In this Part—

“appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises,

“authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,

“compliance notice” has the meaning given in section 41(2),

“compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 42(1)(d),

“fixed penalty notice” has the meaning given in section 35(2),

“payment period”, in relation to a fixed penalty notice, means the period stated in the notice in accordance with section 36(1)(e),

“relevant offence” means a specified offence under food legislation,

“specified” means specified in regulations made by the Scottish Ministers.

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**PART 4**

**INTERPRETATION**

52 **Meanings of “food” and “animal feeding stuffs”**

(1) In this Act—

“food” has the same meaning as in Regulation (EC) No. 178/2002 (as at 7 December 2004),

“animal feeding stuffs” means feeding stuffs for any description of animal.

(2) The reference in subsection (1) to “feeding stuffs” includes any nutritional supplement or other similar substance which is not administered through oral feeding.

53 **Meaning of “food matter”**

In this Act, “food matter” means any matter connected with—

(a) health which may arise in relation to the consumption of food, or

(b) other interests of consumers in relation to food.

54 **Meaning of “other interests of consumers in relation to food”**

In this Act, “other interests of consumers in relation to food” includes in particular interests in relation to—

(a) the labelling, marking, presentation or advertisement of food,

(b) the descriptions which may be applied to food.
55 **Meaning of “animal feeding stuffs matter”**

(1) In this Act, “animal feeding stuffs matter” means any matter connected with—
   (a) animal health which may arise in connection with the consumption of animal feeding stuffs, or
   (b) other interests of users of animal feeding stuffs.

(2) “Other interests of users of animal feeding stuffs” includes in particular interests in relation to—
   (a) the labelling, marking, presentation or advertisement of animal feeding stuffs,
   (b) the descriptions which may be applied to animal feeding stuffs.

56 **Meaning of “food legislation”**

(1) In this Act, “food legislation” means legislation for the time being in force—
   (a) relating to food, including in particular legislation relating to—
       (i) the protection of the public from risks to health which may arise in connection with the consumption of food,
       (ii) the production, processing, importing, exporting or distribution of food,
       (iii) the labelling, marking, presentation or advertisement of food, or
       (iv) the descriptions which may be applied to food, or
   (b) relating to food sources or animal feeding stuffs, but only so far as the legislation relates to food matters.

(2) In subsection (1), “legislation” means any enactment, or any obligation or restriction to which section 2(1) of the European Communities Act 1972 applies.

57 **General interpretation**

(1) In this Act—
   “the 1990 Act” means the Food Safety Act 1990,
   “the 1999 Act” means the Food Standards Act 1999,
   “advertisement” includes—
   (a) any notice, circular, label, wrapper, invoice or other document,
   (b) any public announcement made orally or by any means of producing images or sound,
   “article” includes a live fish which is used for human consumption while it is alive, but does not otherwise include a live animal,
   “business” includes (except in “agricultural business”)—
   (a) a canteen, club, school, hospital or institution, whether carried on for profit or not,
   (b) an undertaking or activity carried on by a public body or office-holder,
   “commercial operation” means—
   (a) in relation to food or contact material—
(i) selling, possessing for sale or offering, exposing or advertising for sale,
(ii) consigning, delivering or serving by way of sale,
(iii) preparing for sale (including packaging) or presenting, labelling or wrapping for the purpose of sale or for purposes connected with sale,
(iv) storing or transporting for the purpose of sale,
(v) importing or exporting,
(b) in relation to a food source, deriving food from it for the purpose of sale or purposes connected with sale,

“contact material” means any article or substance which is intended to come into contact with food,

“enforcement authority” means an authority having functions under food legislation in relation to the enforcement of food legislation,

“food business” means any business in the course of which commercial operations with respect to food or food sources are carried out,

“food premises” means any premises used for the purposes of a food business,

“food source” means any growing crop or live animal from which food is intended to be derived (by, for example, harvesting, killing, milking or collecting eggs),

“premises” includes any place, vehicle, stall or moveable structure (and, for this purpose, “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a description specified by the Scottish Ministers by order),

“presentation”, in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising,


“sale” has the extended meaning given by section 2 of the 1990 Act (and “selling” is to be construed accordingly),

“substance” includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour,

“undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors and has not been discharged in respect of it,
(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,
(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
(e) who has been adjudged bankrupt and has not been discharged, or
(f) who is subject to any other kind of arrangement or undertaking, anywhere in the world, which is analogous to those described in paragraphs (a) to (d).

(2) The reference in subsection (1) to preparing for sale is to be construed, in relation to a contact material, as a reference to manufacturing or producing for sale.

(3) Before making an order under subsection (1) (see the definition of “premises”), the Scottish Ministers must—
   (a) have regard to any relevant advice given by Food Standards Scotland, and
   (b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(4) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (3)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

PART 5

FINAL PROVISIONS

58 Modification of enactments
The schedule (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

59 Subordinate legislation
(1) Each power of the Scottish Ministers to make an order or regulations under this Act includes power—
   (a) to make different provision for different purposes,
   (b) to make any supplementary, incidental, consequential, transitory, transitional or saving provision which they consider appropriate.

(2) The following are subject to the affirmative procedure—
   (a) an order under section 34(1),
   (aa) regulations under section 48(1) which modify section 37 or 44,
   (ab) regulations under section 48(5),
   (c) an order under section 60 which adds to, replaces or omits any part of the text of this or any other Act.

(3) All other orders and regulations under this Act are subject to the negative procedure.
(4) Subsections (1) and (3) do not apply to an order under section 62(2).

60 Ancillary provision
The Scottish Ministers may by order make—
(a) any supplementary, incidental or consequential provision which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act.

(b) any transitional, transitory or saving provision which they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

61 Crown application

(1) Nothing in this Act affects Her Majesty in Her personal capacity.

(2) The Crown is not criminally liable in respect of any contravention of a relevant provision.

(3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown in contravention of a relevant provision.

(4) Despite subsection (2), a relevant provision applies to persons in the public service of the Crown as it applies to other persons.

(5) In this section, “relevant provision” means provision in or under this Act.

62 Commencement

(1) This Part (except section 58) comes into force on the day after Royal Assent.

(2) The rest of this Act comes into force on such day as the Scottish Ministers appoint by order.

(3) Such an order may include transitional, transitory or saving provision.

63 Short title

The short title of this Act is the Food (Scotland) Act 2014.
Agriculture Act 1947

5 A1 In section 80 of the Agriculture Act 1947, after paragraph (e) insert—

“(f) to Food Standards Scotland for purposes connected with the carrying out of any of its functions.”.

Food and Environment Protection Act 1985

1 (1) The Food and Environment Protection Act 1985 is amended as follows.

2 (2) In section 1(12) the words “or is made on their behalf by the Food Standards Agency in accordance with an arrangement made under section 17 of the Food Standards Act 1999” are repealed.

(3) In section 2, after subsection (6) insert—

“(7) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

Food Safety Act 1990

2 (1) The 1990 Act is amended as follows.

(2A) In section 6, after subsection (4) insert—

“(4A) In the application of subsections (3) and (4) to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(2B) In section 13, after subsection (7) insert—

“(8) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

(3) In section 33—

(a) in subsection (2), after “with” insert “section 15C(1) above or”,

(b) in subsection (3), after “subsection (1)(b)” insert “, section 15C(1) or section 15D(2)”.

(4) In section 34, for “section 35(2)” substitute “section 35(A1), (A2) or (2)”.

(5) In section 35, before subsection (1) insert—

“(A1) A person guilty of an offence under section 15B(5) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(A2) A person guilty of an offence under section 15C(2) or 15D(3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(6) In section 35, after subsection (1) insert—
“(1A) A person guilty of an offence under section 33(2), in so far as it relates to section 15C(1) or 15D(2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(6A) In section 40, after subsection (5) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(6B) In section 41—

(a) the existing provision becomes subsection (1),
(b) after that subsection insert—

“(2) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(6C) In section 42, after subsection (1) insert—

“(1A) In the application of subsection (1) to Scotland, the reference to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(6D) In section 48, after subsection (5) insert—

“(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(7) In section 53(2), after the entry for “food business” insert the following entries—

“food information section 15A
food information law section 15A”.

Environmental Protection Act 1990

2A(1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 108, after subsection (10) insert—

“(11) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(3) In section 111, after subsection (11) insert—

“(12) In the application of this section to Scotland, the reference in subsection (7) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

(4) In section 126, after subsection (8) insert—

“(9) In the application of this section to Scotland, the reference in subsection (8) to the Food Standards Agency is to be read as a reference to Food Standards Scotland.”.

Radioactive Substances Act 1993

2B(1) The Radioactive Substances Act 1993 is amended as follows.

(2) In section 16, after subsection (4A) insert—
“(4B) In the application of this section to Scotland, the references in subsection (4A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(3) In section 17, after subsection (2A) insert—

“(2B) In the application of this section to Scotland, the references in subsection (2A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

(4) In section 25, after subsection (3A) insert—

“(3B) In the application of this section to Scotland, the references in subsection (3A) to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

Environment Act 1995

2C In section 42 of the Environment Act 1995, after subsection (11) insert—

“(12) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.”.

Food Standards Act 1999

3 (1) The 1999 Act is amended as follows.

(2) The following sections are repealed—

section 17,
section 27,
section 30.

(3) In section 43—

(a) in subsection (5), after “Scotland” insert “(subject to subsection (6))”,
(b) after subsection (5), insert—

“(6) Sections 17, 27 and 30 do not extend to Scotland.”.

Water Environment and Water Services (Scotland) Act 2003

4 In section 11(6)(fa) of the Water Environment and Water Services (Scotland) Act 2003, for “the Food Standards Agency” substitute “Food Standards Scotland”.

Gaelic Language (Scotland) Act 2005

5 Section 10(3) of the Gaelic Language (Scotland) Act 2005 is repealed.

Regulatory Reform (Scotland) Act 2014

6 In schedule 1 to the Regulatory Reform (Scotland) Act 2014, the entry for the Food Standards Agency is repealed.
Food (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

Introduced by: Alex Neil
Supported by: Michael Matheson
On: 13 March 2014
Bill type: Government Bill