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

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