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 *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.

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