

Health and Sport Committee: Draft Call for Evidence - Stage 1 consideration of the Food (Scotland) Bill

Key Contact: Prof Derek Stewart (derek.stewart@hutton.ac.uk)

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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 send 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.