

## New Food Body CONSULTATION QUESTIONS

1: Should the scope of the new food body extend beyond the current scope of the FSA in Scotland? If yes, what specific extensions of scope would you suggest, and why?

Comments:

SFELC would support extending the scope of the new food body beyond the current scope of FSA if in doing so the New Food Body would provide improved strategic leadership and better co-ordination of multi-agency service delivery. In respect of the areas mentioned in paragraph 20 of the consultation SFELC would comment as follows:

Alcohol – SFELC supports a multi-agency approach to dealing with health and societal problems associated with alcohol consumption. The new Food Body would have an important part to play in national strategies to tackle these problems, but SFELC believes the lead should come from health professionals/NHS in this area.

Obesity – SFELC would support the new food body being actively involved in this area. The new Food Body, working with other partners, would be well placed to deliver improvements in obesity levels in Scotland. The new food body would be in a position to influence the food industry on food composition and portion size, influence local authorities on the outcomes of food standards inspection and sampling programmes, build service delivery partnerships with NHS colleagues and where appropriate highlight to the Scottish Government the need for legislation.

Environment – SFELC recognises the impact the environment can have on food quality and safety and how adverse environmental conditions can affect human health. SFELC believes the new Food Body would work in partnership with other organisations, in particular local authorities and SEPA, on environmental factors that relate to food safety and quality. A good example would be to encourage food businesses to reduce their carbon footprint through local sourcing of food.

Food poverty – SFELC believes this is another legitimate area for the new Food Body to be involved in. Again, the new Food Body would be working with partners to track and measure food poverty and would be ideally positioned to initiate projects or programmes to tackle food poverty.

Food advertising – regulation in respect of health claims and advertising currently sits with local authorities and SFELC would recommend that this position is maintained to avoid any issues around dual enforcement in respect of food labelling and presentation. SFELC would support the new Food Body being actively involved in promotional activities to improve consumer awareness and to assist consumers in making healthier food choices.

Provenance – SFELC recognises that provenance is an important food labelling issue and has significant benefits for the Scottish food industry. SFELC would support the new Food Body being involved in this area and feels it sits well with the

food standards remit and helps to support the Scottish economy by promoting Scottish produce.

Sustainability – SFELC recognises that this is an overarching consideration for every policy area and the new Food Body should consider sustainability issues.

Food Security – SFELC would support the new Food Body being involved in this area. The new Food Body should establish links with emergency and contingency planning organisations. The new Food Body will want to be satisfied that for food there is a security of supply and the supply chain is protected from terrorism.

2: Should the new food body and the Scottish Government continue the arrangements for independent and partnership work on diet and nutrition set out in Annex A? If not, what changes would you suggest, and why?

Comments:

SFELC agrees the arrangements in annex A should continue. SFELC would support the new Food Body working with NHS & LA's to link into community planning partnerships and CHIP's. SFELC also agrees that in establishing the new food body clarity should be provided on which organisation takes the lead for diet and nutrition. SFELC suggests the improved clarity of roles and responsibilities will ensure better co-ordination and benefit everyone.

SFELC would also support the proposed interface with the education system and feels this is the correct age group to work with to bring about societal change.

SFELC would also support the new Food Body taking the lead in the areas outlined in paragraphs 34 and 35.

3: Are there any additional roles, responsibilities or functions in respect of diet and nutrition that you think the new food body could take on to help deliver an improvement to the health of the people in Scotland? Please give details and reasons.

Comments – SFELC feels the areas suggested in the consultation document are the appropriate functions for the new Food Body.

4: What steps do you think could be taken to ensure the new food body is able to access the best available independent expert advice it needs to underpin its work on food safety and public health nutrition in Scotland? Please give reasons.

Comments: SFELC recommends that the new Food Body links into existing agencies, scientific committees etc. in the UK e.g. HPA. This will avoid duplication of effort and recognises the integrated nature of the foods supply chain in the UK. SFELC suggests the new Food Body also establish links with international organisations, this is important due to the global nature of the food industry; as it is important that the new food body is aware of developments at an international level. SFELC also recognises that a great deal of expertise exists within Scotland and the new Food Body should establish effective links to HPS, research facilities and academic institutions. This would be particularly beneficial in light of the incidence of VTEC in Scotland and the work that has been carried out in Scotland over a number of years.

5: Do you consider that the new food body should focus its research and surveillance activities on issues that are particularly pertinent to Scottish citizens or should it also contribute to science and evidence programmes on wider issues which have relevance to the UK as a whole? Please give reasons.

Comments: SFELC recommends that the new Food Body should deal with both areas as food businesses link into the UK food supply chains and this is a significant part of the Scottish economy. SFELC suggests that the new Food Body should access national scientific advisory committees etc and also contribute to UK wide research. SFELC recommends establishing good working relationships with HPS and HPA in respect of research and surveillance. SFELC would recommend that the level of research and surveillance activities is maintained at a level such that a skills and investment gap does not develop within the UK.

SFELC would recommend that the new Food Body works with SFELC and local authorities through the Food Liaison Group network to design statistically valid surveys and sampling programmes to provide evidence to inform policy making.

6: Do you agree that the new food body should be responsible for the coordination of all Scottish Government funded research on food safety and public health nutrition? What steps could be taken to raise the profile of the new food body as a research funder across the UK and beyond? Please give reasons.

Comments:

SFELC supports the new Food Body being responsible for food safety research, but would suggest the new Food Body works in partnership with the NHS on public health nutrition research.

In respect of the profile as a research funder, SFELC would recommend using existing links to academic institutions and international network for overseas research.

7: Do you have any further suggestions for how the new food body could establish a strong independent evidence base for food safety, food standards and nutrition policy? Please give reasons.

Comments:

SFELC would recommend that the new Food Body works with SFELC and local authorities through the Food Liaison Group network when developing policy on food safety and standards. SFELC has successfully developed food policies over a number of years and the Committee's experience in this respect could be a valuable asset for the new Food Body. The wide membership of SFELC will also help in establishing the independent nature of the evidence used to develop policies.

In addition, SFELC would be happy to work with the new Food Body to design and co-ordinate statistically valid surveys and sampling programmes to provide evidence to inform policy making. SFELC would suggest that to get the maximum benefit from food surveillance sampling, all samples should be submitted to the UK FSS database. The new Food Body will need to make arrangements to have access to this system.

SFELC would suggest the new Food Body will need to consider what arrangements it will make to record and monitor service delivery in respect of food safety, food

standards and nutrition. Currently local authorities submit their performance data into the UK wide LAEMS database. SFELC is aware that some local authorities have called for a national data management system over the years and the creation of the new Food Body provides an opportunity to consider if this is a viable option. SFELC would recommend that careful consideration is given to the information requirements of the new Food Body in respect of food safety, standards and nutrition and thereafter appropriate IT provision is then designed to meet this need.

SFELC is aware that the recent food fraud incidents have highlighted the need for accurate, 'real time' reporting abilities. The new Food Body will need to consider how it can capture information on official controls and sampling activity carried out by other organisations, which will provide the new Food Body with the ability to independently report on enforcement and surveillance activity as and when required.

8: Do you consider that the new food body would require any further statutory powers, in addition to those that the FSA already has, to equip it to deal effectively with incidents such as the recent horse meat substitutions, and to prevent such incidents happening? Please give reasons.

Comments – SFELC would support additional enabling powers being available to the new Food Body and a copy of SFELC's response to the FSA consultation which is running concurrently with this consultation is attached. In addition, SFELC has discussed food standards enforcement and sanction at our meetings in December 2011 and February 2012. The following is an extract from the minutes of the December 2011 meeting:

"During the detailed discussion of sanctions there was general agreement on the following points:

Current sanctions for food standards are inadequate and there is a strong need to ensure that food standards enforcement is given adequate attention and profile with food law enforcement. There is need for proportionate measures that will produce swift results. A range of Notice procedures similar to those available for food hygiene should be considered.

Fixed penalty notices which work well in other areas of regulation such as in poultry marketing, should also be considered. These might be appropriate for offences such as display of food beyond a use by date.

Notice procedures would enable the enforcer to be clear about the nature of a contravention and the timescale for compliance. They should divert effective measures from the courts as far as possible but provide safeguards through appeals procedures.

Consideration should also be given to greater use of lower courts.

There was a need for a fully integrated approach to addressing wider areas of product description and marketing that may not be solely about product labelling or composition. Some of these matters may overlap with aspects of more general consumer protection legislation.

There was a need to establish whether differences in sanctions within particular devolved administrations would be problematic for industry and if so, in what respects. Initial views from members, included a need to recognise differences in the devolved environment.

FSA would value advice from SFELC about the effectiveness of existing sanctions available for food standards enforcement, together with possible options for improvement of sanctions and of food standards enforcement.”

At SFELC’s meeting in February 2012, the attached paper on Food Standards enforcement was discussed and there was agreement at the meeting that local authorities should use definitive legislation for enforcement, ahead of overarching statutory instruments. The paper presented at the meeting highlighted an apparent gap in that there were no powers available to enforce Protected Geographic Indications (PGI). SFELC would recommend that the new Food Body adopts the principle that definitive legislation should be used to enforce food issues and that powers are available to enforce PGI offences.

SFELC would recommend that the new Food Body considers the Audit Scotland report ‘Protecting Consumers’ and in particular the need for work-force planning. SFELC believes that only by having adequate resources available to deliver effective official controls, will local authorities be in a position to mitigate against the threat to consumers and reputable food businesses from incidents such as the recent food frauds.

9: Do you have any further comments about how the new food body might ensure that it can deal effectively with contraventions of food standards and safety law?

Please give reasons.

Comments:

SFELC believes there is a lack of options available to deal with food standards contraventions. SFELC would suggest the new Food Body consider introducing a range of notices that would fill the gap between informal action and reporting contraventions to the Procurator Fiscal. SFELC would also support research into the potential to introduce fixed penalty notices for food safety and food standards contraventions. SFELC is aware of the powers being proposed in the Regulatory Reform (Scotland) Bill in relation to environmental regulation and would suggest that the NFB should consider if similar powers would be appropriate to regulate food and feed businesses.

10: Should the new food body take on any roles and responsibilities not currently fulfilled by the FSA in Scotland? If yes, please give details and reasons.

Comments: SFELC believes the establishment of the new Food Body provides an opportunity to take stock of the roles and responsibilities of all organisations involved in food and feed official controls. SFELC would suggest that any changes are based on the following principles:

1. Rationalisation of controls to ensure that, to the greatest extent possible, every individual establishment has one food authority for regulating both food hygiene and food standards; with the resulting inspection regimes based on risk.

2. Centralisation of specialised Official Controls and specialised/complex activities which are very low in number and thinly dispersed geographically.
3. Centralisation of land and sea-based controls that may be difficult to allocate and deliver in terms of local authority boundaries.
4. Centralisation of particular controls highlighted by the European Commission's Food and Veterinary Office and of controls relating to international trade.
5. Provision of central support to local authorities where centralised provision is likely to be more efficient and fairer to individual local authorities.

In making any changes to existing roles and responsibilities SFELC recommends that any change should be designed to improve public health and address any gaps in the existing arrangements.

SFELC considers it vital that the current holistic nature of environmental health services should not be jeopardised through any consequent reorganisation of delivery of Food Controls. In particular, changes that would result in the significant transfer of staff from local authority services to a centralised delivery body are likely to have a detrimental effect on the viability of environmental health services. SFELC supports official control delivery remaining with local authorities as the food safety service is an integral aspect of the environmental health function and staff involved in the food safety service may be responsible for delivering a range of other environmental health functions at food businesses e.g. health & safety, waste management, smoking prohibition, etc. The attached spider diagram illustrates the relationships food controls have with other local authority functions.

11: Please tell us your views about these suggestions for changes to the delivery of official food and feed controls. Do you think that the new food body should work in a different way with local authorities? Please give reasons.

Comments: SFELC believes the existing partnership between local authorities and FSA works well and the successful partnership approach in Scotland should be the building block for the new Food Body. In respect of the bullet points in paragraph 48 SFELC comments as follows:

Approval of food and feed establishments – This is one of the most contentious proposals contained within the consultation to establish the NFB. Significantly, SFELC has been unable to reach a unanimous position to support this proposal. SFELC agrees with the consultation proposal that it could ensure consistency within the approval process. The proposal will also remove the existing anomaly where local authorities deal with unapproved establishments, even though they would not be responsible for enforcement once the establishment was approved. SFELC fully supports delivery of official controls remaining with local authorities for establishments where they currently deliver these controls. SFELC is aware that the North of Scotland Food Liaison Group and a number of other individual local authorities do not support the centralisation of the approvals process and have serious misgivings about the impact if this proposal was implemented. In particular there are concerns about the rationale behind the proposal and how the proposal will work in practice, especially where the range of products requiring approval can change regularly. Some local authorities have also expressed concern relating to the qualifications of the staff undertaking the approval of businesses that produce ready to eat food. SFELC is aware that these authorities have a significant number of

approved establishments and have a great deal of experience in working with approved establishments.

Given the strength of feeling that exists in relation to this aspect of the consultation, SFELC would recommend that Scottish Ministers are satisfied that there is evidence that this change is needed, that the proposed solution will fully resolve the concerns that lie behind the proposal and that all alternative arrangements are considered. SFELC would recommend that if this proposal is implemented, Scottish Government and/or the new Food Body should work closely with local authorities to establish the detail on how the proposal would be implemented and work in practice. SFELC recognises that approved food businesses are an important part of the local and national economy and substantial employers; it is therefore vital that no unnecessary delays are introduced to the approvals process.

Food standards and FSA ops – SFELC agrees that food standards should be delivered by the new Food Body where they also deliver food hygiene official controls. SFELC supports this proposal as it removes an area of dual enforcement. Obviously, if this proposal was implemented it could have implications for the new Food Body in respect of the qualifications of their enforcement staff and the new Food Body would need to ensure their enforcement officers meet the qualification requirements of the Food Law (Scotland) Code of Practice.

Coordination of export certification – SFELC agrees with this proposal in respect of the co-ordination of certification requirements. However, SFELC recommends that the actual service delivery remains with local authorities.

Import controls at ports of entry – SFELC recognises the benefits this could give in respect of consistency and may provide greater efficiency. However, given the small number of establishments this affects it is important to consider the impact any change would have on the local authorities involved. SFELC would suggest this could be an area where the flexibility to transfer enforcement responsibility could be utilised.

Delivery of official controls relating to animal feed hygiene and standards – SFELC would suggest that SCOTSS are best placed to comment on the wider impact this proposal would have on the Trading Standards service at local authorities. SFELC is aware of the Audit Advisory Committee's concerns in this area and the Audit Scotland report 'Protecting Consumer' which highlighted concerns relating to the resources available to deliver Trading Standards services. SFELC does recognise that the proposal could create a single enforcement organisation for the farming sector in respect of food and feed. SFELC would recommend that any changes in this area are considered carefully and do not adversely affect the delivery of the wider trading standards function by local authorities.

In respect of first landings of fish at fish markets, the inspection of fish at markets is currently undertaken by local authority inspectors who also undertake official controls at fish processing establishments maintaining continuity of inspection in the supply chain. If the inspection of fish was transferred to the new food body it would mean that official controls at the market would be undertaken by the local authority (e.g. hygiene standards/transport) with fish inspection undertaken by the new food body. Such a situation would break up the current position where one food body (the local

authority) has responsibility for food safety and standards at the premises and therefore SFELC is of the view that the inspection of fish on first landing should remain with the local authority.

At the recent Scottish Government consultation event with the Primary Production Working Group and the Feed Sub-committee a number of suggestions were made in respect of this proposal. From views expressed at the meeting it was recognised that the NFB could bring a strategic overview to feed enforcement. During discussions concerns relating to feed and feed ingredient imports were raised and this is an area SFELC would suggest the NFB should review. An emerging issue that SFELC would recommend the NFB considers relates to former food entering the feed chain and the impact of carry over packaging that enters the feed chain along with the food.

Delivery of all official controls and related monitoring activity during primary Production – SFELC recognises that this proposal will create a single enforcement authority for the primary food production sector and is consistent with the Scottish Government's SEARS project. SFELC believes the proposal could bring economies of scale and address gaps in the current arrangements. SFELC would recommend that any changes in this area are considered carefully and do not adversely affect the delivery of the wider environmental health and trading standards functions by local authorities.

Delivery of official controls relating to the supply and manufacture of materials and articles in contact with food, food additives and processing aids – SFELC agrees with this proposal as it will provide consistency and address any gaps in the current arrangements.

Recognition of natural mineral water sources – SFELC agrees with this proposal as it will provide consistency.

Para 49: technical and professional training – SFELC agrees with this proposal and believes it would be useful. SFELC recognises the potential to establish a similar role in relation to training for the new Food Body to that of HSE in providing specialist support to local authorities on occupational health and safety enforcement.

Para 50: Formalise SFELC through legislation – The value of SFELC lies in the broad membership, the willingness of members to commit their time to the work of the Committee and the ability to create working groups to take forward specific areas of work. SFELC believes the current arrangements are consistent with Schedule 2 of the Food Standards Act 1999 and that SFELC meets the requirements of a joint committee as detailed in section 8 of this schedule. SFELC would support legislation that is similar to the existing provisions to allow the new Food Body to establish joint committees. SFELC would recommend that SFELC should become a properly constituted advisory body to the new Food Body and that SFELC is formally consulted on relevant issues.

SFELC believes there is an area where more formalised recognition would be beneficial and this relates to the status of the guidance produced by SFELC.

SFELC guidance is generally designed to promote consistency and it would be beneficial if it was recognised in the same way as the Code of Practice or Practice Guidance and ultimately the guidance could be incorporated into these documents. SFELC is aware of the Scottish Government plans for Better Regulation legislation and see a definite role for SFELC in producing national standards for food safety.

12: Do you have any views on how the new food body should assure delivery of official controls and meet the relevant EU obligations? Please give reasons.

Comments

SFELC would recommend that the existing Food Law Code of Practice and Practice Guidance are replicated to detail the delivery of official controls. SFELC would suggest that this would provide an opportunity to review these documents and make any amendments to reflect the changes being introduced in Scotland.

SFELC also recommends the new Food Body prepares a Scottish Framework agreement similar to the framework agreement that currently exists and that the framework agreement is formally recognised and is binding on organisations delivering official controls. SFELC has been reviewing the existing UK framework agreement and a working draft is attached for information.

SFELC recognises the benefits of the current audit arrangements and would recommend the existing arrangements are not only retained but formalised.

SFELC is aware that the new Food Body will have the responsibility as the central competent body to ensure the provision of adequate resources to deliver official controls. Given the current concerns relating to work force planning the new Food Body may find benefit in establishing service level agreements with local authorities to have the assurance that official controls will be delivered adequately and consistently across Scotland. SFELC would also suggest that the New Food Body works with CoSLA on the workforce planning arrangements suggested in the Audit Scotland 'Protecting Consumers' report.

[ EC regulation 882/2004 - The competent authorities for performing official controls should meet a number of operational criteria so as to ensure their impartiality and effectiveness. They should have a sufficient number of suitably qualified and experienced staff and possess adequate facilities and equipment to carry out their duties properly.]

13: Are there any additional or alternative relationships that you would help the new food body achieve the Scottish Ministers' objective of longer, healthier lives for the people of Scotland? Please give details and reasons.

Comments: SFELC believes the existing partnership approach adopted by FSA has worked well and recommends the new Food Body builds on these existing arrangements.

The new Food Body will also need to develop a relationship with the UK FSA, which will be the central competent authority for the UK.

14: Do you have any suggestions about how the new food body can engage effectively with consumers, both in developing policy and providing information and advice?

Comments: SFELC welcomes the consumer focus proposed for the new Food Body and would recommend engagement is via the existing networks created by FSA. SFELC is aware that some local authorities have established citizen panels/forums and the new Food Body may consider liaising with local authorities to access consumers via local authority engagement mechanisms.

15: Do you agree with the suggested approach to ensuring the new food body's independence from Government and the food industry? Do you have any further suggestions for how the new food body could best establish and maintain its position as an arms length part of Government? Please give reasons.

Comments:

SFELC agrees with the approach to ensuring the new food body's independence from Government and the food industry. SFELC believes this is important for the delivery of Scottish Government's aim to protect public health and maintain consumer confidence. SFELC would recommend the existing liaison arrangements are continued as these can deliver a means of communicating effectively with Government and the food industry without compromising the independence of the new Food Body.

16: Do you have any further comments, or suggestions, on the creation of a new food body for Scotland that are not covered by any of the previous questions?

Comments:

SFELC would recommend that the creation of the new Food Body is an ideal opportunity to consider licensing of food businesses. Licensing of butchers shops was introduced after the Central Scotland E coli outbreak and operated successfully. Licensing would provide a means of prior approval to determine that a food business is able to operate safely and in line with legal requirements. Such arrangements already exist for Approved Food Establishments and other food businesses need to comply with licensing arrangements regarding the sale of alcohol, street trading and late hours opening. The introduction of pre-approval licensing would protect consumers and reputable food business operators.

SFELC would recommend that the new Food Body considers the requirements of EC Regulations 882/2004 on official controls and in particular determines the most appropriate methods to comply with Articles 3 and 4. The new Food Body will also need to establish a relationship with FSA UK as the central competent authority and determine the appropriate liaison arrangements that will be required between both organisations.