

# **A Healthier Scotland: Consultation on Creating a New Food Body**

## Ministerial Foreword



The Scottish Government is committed to ensuring people in Scotland live longer, healthier lives. Bad eating habits are the second major cause of ill health in Scotland after smoking. The public cost of dealing with obesity is likely to rise to £3 billion by 2030. Food-borne disease also costs £140 million. More significantly, of the 130,000 consumers contracting food borne disease each year, around 2,000 will be hospitalised and around 50 will die. So making sure we eat a good, nutritious diet of safe, quality food is vital to achieving that ambition.

The current horsemeat incident has thrown into sharp relief the importance of having a single independent public body with clear responsibility for all aspects of food safety and standards in Scotland.

The important principles in delivering better standards are that advice on food safety, nutrition and labelling should be independent and transparent, and should be provided by an organisation which should remain at arm's length from central Government. As Westminster's Environment, Food and Rural Affairs Committee has pointed out recently, these principles were undermined by the UK Government's decision in 2010 to move responsibility for nutrition and food labelling in England from the FSA to the Department of Health and the Department of Environment, Food and Rural Affairs respectively.

We had already noted the potential risk to that approach, and it was for precisely this reason that Scottish Ministers took the decision last year to create a new food body for Scotland. The new food body will maintain these important principles.

This consultation on the role of the new food body is an opportunity for consumers as well as industry to tell us what they think about what the new food body should do, and how food safety and standards should be addressed in Scotland in the future. Our aim is to ensure that this consultation helps us deliver an effective and efficient food safety regime. And through that, give consumers in Scotland confidence in the food they eat.

A handwritten signature in black ink, appearing to read 'Alex Neil', written in a cursive style.

**ALEX NEIL MSP**

Cabinet Secretary for Health and Wellbeing

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## 1. Introduction

1. Scottish Ministers have an overarching ambition to help people in Scotland live longer, healthier lives through eating safe, healthy food. Ministers are committed to improve public health and have taken decisive action to tackle smoking and reduce alcohol consumption; improving diet offers similar potential to improve public health.
2. The current horsemeat scandal has clearly highlighted the importance of having a single independent public body with clear responsibility for all aspects of food safety and standards. It was for precisely this reason that Scottish Ministers took the decision last year to create a new food body for Scotland. The new food body will maintain the important principle that advice on food safety, nutrition and labelling should be independent and transparent, and should be provided by an organisation which should remain at arm's length from central Government.
3. The Scottish Government intends to bring forward legislation to create a stand-alone body in Scotland for food safety and standards, feed safety and standards, nutrition, food labelling, 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.
4. Scottish Ministers want to establish an efficient and effective food body which will be responsive to Scottish circumstances, particularly in ensuring that the Scottish Administration has the capacity needed to develop and implement policies to improve public health through diet and nutrition.
5. The new food body will carry out all the functions currently delivered by the FSA in Scotland. This consultation seeks views on whether the new food body could usefully expand its role and responsibilities beyond the those functions. We also seek views on how the new food body's independence from Government and the food industry could be assured.
6. The consultation questions are set out on pages 23-25. Annex B provides details on how you can respond. Responses are invited by no later than 22 May 2013. Dialogue with key stakeholders will continue throughout this period, and we may also hold a number of meetings to gather views.
7. In addition to the issues covered in this consultation, work is planned or underway on the many other issues needed to create the new food body.
8. The FSA will also run a consultation on proposed changes to food and feed safety legislation in Scotland, to a similar timescale to this consultation. This will ensure that the legislative basis for the new food body's regulatory and enforcement regime is as up to date as possible.

## 2. Background

9. 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), Scottish Ministers asked Professor Jim Scudamore to lead an independent review to assess the feasibility of establishing a stand-alone Scottish Food Standards Agency including a Scottish meat inspection delivery body, maintaining the Food Standard Agency (FSA)'s existing statutory objective to protect consumers. The Review Panel, and many stakeholders, felt that FSA UK had functioned well prior to the UK Government's Machinery of Government changes<sup>1</sup> in 2010.
10. The Scudamore Review<sup>2</sup> adopted two principles. Firstly as Scotland has unique and complex problems in relation to diet, obesity and certain food borne diseases, the Panel considered that food safety should not be divorced from nutrition and labelling and standards. Secondly there was general agreement that advice on food safety, nutrition and labelling should be independent and transparent and should be provided by an organisation which should remain at arms length from central Government.
11. The review panel also recommended that responsibility for the policy oversight and the operational delivery of meat official controls should remain independent from the Scottish Government, as well as the food industry. It should remain part of the wider food safety portfolio governance arrangements that are introduced in Scotland.
12. Scottish Ministers announced their decision to accept all of the recommendations in the Scudamore report on 27 June 2012.
13. More recently, the House of Commons Environment, Food and Rural Affairs Committee concluded, in its report into contamination of beef published on 14 February 2013, that "Whilst Ministers are properly responsible for policy, the FSA's diminished role has led to a lack of clarity about where responsibility lies, and this has weakened the UK's ability to identify and respond to food standards concerns."<sup>3</sup>
14. The new food body will further the Scottish Government's Strategic Objectives by:
  - tackling poor diet and food-borne diseases to help people in Scotland live longer, healthier lives.

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<sup>1</sup> Transfer of functions from one part of the public sector to another – in this instance the transfer of nutrition and labelling from FSA to the Department of Health and Defra in England

<sup>2</sup> [Scudamore Review](#)

<sup>3</sup> [Contamination of beef products - report of the House of Commons Environment, Food and Rural Affairs Committee](#)

- supporting children’s development through improved diet and nutrition, to improve life chances for children, young people and families at risk and help children have the best start in life.
- 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.
- contributing to tackling inequalities through involvement in addressing food poverty.

### **3. Scope of the new food body**

15. The FSA was established in 2000 as a UK-wide non-Ministerial Government Department with a wide remit. It has statutory responsibility for protecting public health from risks that may arise in connection with the consumption of food, and otherwise to protect the interests of consumers in all matters connected with food. It is responsible for the development and implementation of policy relating to food and animal feed safety and standards. Its responsibilities in Scotland also include the provision of transparent and independent advice in the fields of food and feed safety, nutrition, labelling and standards.

16. It is also the UK central competent authority for the delivery of most official controls<sup>4</sup> in relation to food and feed, including inspection and enforcement at food and feed establishments. The FSA has direct responsibility for the delivery of official controls in approved fresh meat establishments across Great Britain, and for delivery of dairy hygiene controls in England and Wales. Scottish Government delivers food and feed official controls on some farms, on behalf of FSA, whilst undertaking cross compliance inspections, with local authorities undertaking all other food & feed farm inspections. Official controls at other food and feed establishments, and at ports, are also delivered by local authorities.

17. Food and feed safety and standards are devolved matters and legislation relevant to Scotland is determined by the Scottish Parliament. The FSA in Scotland (FSAS) provides advice to Scottish Ministers, and is accountable to the Scottish Parliament through Health Ministers.

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<sup>4</sup> Activities undertaken to monitor and make sure businesses comply with EU and domestic food law.

18. The FSA's remit in relation to food and feed regulation has interfaces with a very wide range of related policy areas, including public health, environmental regulation, animal health and animal welfare. It also has links with wider aspects of law enforcement, emergency planning and both domestic and international trade.
19. Scottish Ministers are open to innovative ideas that will increase the efficiency or effectiveness of the new food body. These could involve an extension of the scope of the body beyond that currently covered by the FSAS. The intention to bring forward primary legislation to create the new food body in Scotland means that this is the right time to consider such opportunities.
20. It has been suggested that the new food body could widen its scope to encompass public health generally, for example by introducing more health based schemes to tackle problems like alcohol or obesity, tracking and measuring food poverty, or enhancing consumer information such as advising on health claims in food advertisements. Other suggestions are that its scope could include considerations of environment, provenance, sustainability or food security.

**Question 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?**

21. Please note that before taking any suggestions for potential extensions of scope further, we would need to discuss them with all who would be affected, and explore considerations of employment, practicability, cost and legislation.

## **4. Roles and Responsibilities**

### **FSA**

22. The FSA currently has a very wide range of roles and responsibilities many of which are detailed in legislation. The roles can be categorised into 6 main areas:
  - Food and feed safety and hygiene policy making including the drafting of legislation and the provision of advice
  - Food and feed standards and labelling policy making including the drafting of legislation and the provision of advice (in Scotland, Wales and Northern Ireland only)
  - Food and feed law enforcement and monitoring, working with LAs and other bodies, and including the production of Codes of Practice, and provision of enforcement guidance and advice
  - Science and evidence gathering to inform policy and operations, through commissioning of research, monitoring and surveillance and obtaining expert advice through the independent scientific advisory committees

- International negotiation in the European Union (EU) and other international bodies on behalf of the UK
- Diet and nutrition policy and advice (in Scotland and Northern Ireland only)

23. Within each of the above categories the FSA has a range of responsibilities covering many technical areas including:

- food and feed hygiene/microbiological safety, including products of animal origin such as meat, milk, eggs, fish, shellfish
- chemical food safety related to contaminants
- food contact materials
- radiological food safety
- genetically modified (GM) food and feed, novel foods and nanotechnology in relation to food and feed
- prevention of, and response to, food and feed incidents, resulting from, for example, chemical contamination or environmental pollution
- allergen labelling
- front of pack nutrition labelling
- working with the food industry to encourage reformulation to reduce levels of saturated fat, salt and calories in food products
- monitoring Scottish dietary targets.

24. In addition the FSA represents the UK Government on food and feed safety and some food standards issues in the EU. The FSA works in close collaboration with other government departments across the UK, the European Commission, the Council of the EU, Standing Committees, the European Parliament and the European Food Safety Authority. It also works internationally, representing the UK Government on international bodies for example on the Codex Alimentarius Commission with the World Health Organization and the Food and Agriculture Organization of the United Nations where it seeks the views of the devolved administrations.

25. Since responsibility for nutrition in England and Wales moved to the Department of Health and responsibility for labelling and most food standards in England to Defra, the FSA no longer represents the UK on these matters. The respective UK Government departments lead on EU and international negotiations, in consultation with the FSA as appropriate and with the devolved administrations.

### **FSA in Scotland**

26. FSAS is responsible for and delivers in Scotland all of the technical areas listed in paragraph 22 above, working closely with colleagues across the FSA and in the Westminster Department of Health and Defra. FSAS staff include policy officials, environmental health professionals with extensive experience of enforcement, communications and consumer engagement specialists, and scientists and public health nutritionists who provide advice to policy makers and manage research and evidence-gathering relating to food and feed safety and standards, food-borne disease and nutrition. FSAS also has a unit which manages contracts for the delivery of official controls relating to shellfish, a



dedicated team to support the delivery of official controls by local authorities, and its own audit team to audit the delivery of official controls by local authorities. A team of operations staff deliver official controls in meat plants in Scotland, and line management of this team was recently moved to the FSA Director Scotland, in accordance with recommendations from the Scudamore review.

27. FSAS works closely with the rest of the FSA, especially with respect to handling food incidents and on science and evidence-gathering, and sources expert advice on a range of issues from the FSA.

### **New food body**

28. The new food body will take on all the roles and responsibilities currently undertaken by FSAS, continuing its commitment to the established principles of better regulation (proportionate, consistent, accountable, transparent and targeted) and building upon the achievements of the FSA in Scotland. That said, the setting up of a stand-alone body for Scotland offers an opportunity to design a food body that reflects the particular needs of Scotland. The new body should tailor delivery of the current FSA functions to Scottish circumstances, as well as improve efficiency and effectiveness. It could also expand on the current role and responsibilities of the FSAS in order, for example, to achieve a more co-ordinated and efficient delivery of food safety controls, or to establish a more joined up way to address public health problems in Scotland.
29. We are open to suggestions as to how the new food body could build on the functions, roles and responsibilities of the FSAS, either by taking on a responsibility currently fulfilled by another body, or by taking responsibility for a role or function which no body fulfils at present. A range of suggestions has already been put forward, in a stakeholder workshop that we held in November 2012, and in letters from stakeholders. Those suggestions are set out in the paragraphs below. We would welcome your views on these, and any other suggestions you propose.

### **4.1 Diet and nutrition**

30. Scotland has one of the highest levels of obesity in Organisation for Economic Cooperation and Development (OECD) countries, with a consequent increased risk of conditions such as diabetes, heart diseases and cancer.
31. The new food body will ensure that there is the capacity in Scotland to develop and implement policies to improve public health through diet and nutrition. It will allow, where appropriate, tailored approaches to be taken in Scotland to tackle poor diet so that Scots live longer, healthier lives. This is a priority for Scottish Ministers, and an area where the new food body is expected to make a significant impact.
32. Stakeholders have commented that a range of parties are involved in attempts to improve the dietary health of the Scottish population, and that it is not always clear which is in the lead, or whether action is coordinated to the

best effect. It has been suggested that the process of establishing a new food body could usefully bring clarity to the delivery landscape by defining which organisations have responsibility for research, policy making and provision of consumer information and how these activities should be coordinated for greatest positive effect. Stakeholders have said that they would like to see stronger leadership by the new food body on nutrition and co-ordination of messaging, and have suggested an interface with the education system to ensure information provided to children and young people is consistent and accurate.

33. The current distribution of responsibilities between the Scottish Government and the FSAS is mapped out in detail in Annex A to this document. In essence, 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 FSAS is currently responsible for the provision of easily understood, scientifically based information about the nutritional content of individual foods and impartial advice on a balanced diet, and is also responsible for advising on the policy aspects of these issues. The Scottish Government has responsibility for wider public health policy issues related to nutrition, where nutritional status is one of a number of health risk factors. The FSA also has joint responsibility with NHS Health Scotland for the implementation of national health education on diet and nutritional issues, and where appropriate the two bodies co-ordinate their research and surveillance activities and share relevant information.
34. The new food body will take a leading role in science and evidence based, consumer focused public nutrition policy. Development, maintenance and communication of a strong evidence base will be a central responsibility, and will form the foundation for the new food body's functions including:
- policy advice from the new food body to Ministers
  - legislation (if necessary)
  - input to, and advice to Ministers on, relevant discussions and negotiation lines at the EU
  - relevant work undertaken with the food industry and other stakeholders
  - information to health professionals
  - advice to the public.
35. In addition to the functions listed above, the new food body could also take the strategic lead for Scottish Government policies such as the Healthy Living Award for caterers, the Healthy Living Programme for neighbourhood shops and for technical support currently offered to small and medium food businesses to assist them reformulate their products to be lower in salt fats and sugars.

**Question 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?**

**Question 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.**

## **4.2 Science and evidence**

### **Access to independent scientific advice**

36. The work of the new food body will be shaped by independent, expert science and evidence, which takes full account of the Scottish landscape, whilst ensuring that decisions are informed by a balance of views. This may be achieved in part by securing access to the scientific advisory committees<sup>5</sup> that currently support the FSA, Defra, the Department for Health and the devolved administrations in their food and feed-related work. Additional sources of science and evidence may be needed, particularly if the role or remit of the existing scientific advisory committees changes over time. It may also be necessary to identify where it needs to develop stronger links with other networks of scientific expertise, both in the UK and internationally.

**Question 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.**

### **Scope of the new food body's science and evidence activities**

37. Scottish Ministers are clear that the new food body will be an evidence based organisation. The new food body will maintain the FSA's core principles of openness and transparency and will continue to ensure its work is underpinned by robust science and evidence. Detailed consideration will be given to the scope and governance of research and surveillance programmes commissioned by the new food body to ensure that its policy making is based on sound evidence.

**Question 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.**

38. There is an opportunity for the new food body to lead the co-ordination of all government funded research on food and feed safety and public health

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<sup>5</sup> The FSA is advised on a regular basis by 8 independent [scientific committees](#), and can source advice from several others when needed

nutrition in Scotland. This would require the new food body to develop more strategic links with Scottish Universities and Institutes and to strengthen collaborations with other government funders to influence the direction of food and feed-related research in the UK and ensure it takes full account of Scottish interests.

**Question 6: Do you consider 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.**

**Question 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.**

#### **4.3 Regulation policy, enforcement and monitoring – responsibilities and powers**

39. The FSA's role has recently come under scrutiny following the discovery of horse meat in widespread range of products labelled as containing beef. The UK Government's House of Commons Environment, Food and Rural Affairs Committee, in its report published on 14 February,<sup>6</sup> noted the machinery of government changes in England in 2010, and concluded that the FSA's diminished role had led to a lack of clarity about where responsibility lies. The Committee also suggested additional statutory powers with respect to testing.
40. In response to the machinery of government changes in England, Scottish Ministers decided that in Scotland the FSA would retain responsibility for food standards, labelling and nutrition. They also commissioned an independent review of the role of the FSA in Scotland, and accepted the review panel's recommendations that food safety should not be divorced from nutrition and labelling and standards, and that Scotland could be best served by a stand-alone food body.
41. The new food body will retain responsibility for food labelling and food standards as well as food safety, and will have at least the same statutory powers as the FSA has at present.

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<sup>6</sup> [Contamination of beef products - House of Commons Environment, Food and Rural Affairs Committee](#)

**Question 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.**

42. It is essential to have effective deterrents to fraudulent and negligent activity in place in order to prevent incidents such as the substitution of horse meat for beef. One method of deterrent is ensuring proportionate, effective and dissuasive sanctions are in place. Rather than reduce the regulation of labelling, in Scotland, we plan to retain criminal offences for non-compliance with food labelling law, and to provide for review of penalty levels to ensure they are proportionate and dissuasive. We also intend to retain offences for non-display of names and ingredients on food sold loose.
43. It will be important for the new food body to have a robust regulatory enforcement strategy which covers targeted intervention strategies to deal with contraventions of both food standards and safety law. Work to develop such a strategy will be undertaken as part of the preparations for creating the new food body.

**Question 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.**

#### **4.4 Related areas of regulation policy, enforcement and monitoring**

44. The new food body will take on all the areas of responsibility currently covered by the FSA in Scotland and outlined in paragraph 22 above. It has been suggested that there are related areas where the FSA does not currently have a role, but where consideration could be given to whether the new food body could improve effectiveness or efficiency by taking on regulatory policy or enforcement responsibilities, or perhaps changing or improving on the FSA's current working arrangements with the bodies currently responsible. Areas so far suggested by stakeholders for consideration include animal health and animal by-products, transmissible spongiform encephalopathies (TSE)<sup>7</sup>, all areas of food labelling, provenance, dairy and egg production controls, drinking water quality and responsibility for public analyst functions.
45. We would like to hear your views on these suggestions, and any other suggestions you propose. Please note that before taking any suggestions for potential additional responsibilities further, we would need to discuss them with all who would be affected, and explore considerations of employment, practicability, cost and legislation.

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<sup>7</sup> Cattle, sheep and goats are susceptible to a group of brain diseases known as transmissible spongiform encephalopathies (TSEs). The best known of these diseases is BSE, also known as 'mad cow disease'.

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

#### **4.5 Consideration of delivery of official food and feed controls**

46. The FSAS has direct responsibility for the delivery of official controls in approved fresh meat establishments. Official controls at other food and feed establishments, and at ports, are delivered by local authorities. The following suggestions were made with particular reference to the new food body's working relationship with local authorities.
47. It has been suggested that official controls currently delivered by local authorities could be delivered directly by the new food body, or that control of delivery could be centralised. Some stakeholders have expressed concern that this could jeopardise the current holistic nature of environmental health services, which also cover aspects of control, monitoring and advice in relation to infectious disease, pollution, environmental noise and occupational health and safety. They have also raised concerns regarding the potential detrimental effect that significant transfer of staff from local authorities to the new food body could have on the viability of environmental health services.
48. An alternative suggestion was for the new food body to take on direct responsibility only for certain official controls and functions currently delivered by local authorities, as listed in bullet points below. These suggestions were tempered with suggestions that flexibility could be built into the legislation to allow the transfer of enforcement responsibility between local authorities and the new food body where both parties agree that official controls at a particular establishment or class of establishments, would be better delivered by one or other body according to local needs and circumstances. Alternative arrangements could also be considered such as contracts or service level agreements with local authorities to deliver functions on behalf of the new body.
- Approval of those food and feed establishments that require approval under EU food hygiene legislation (Regulation (EC) No 853/2004) and all processes for the suspension or withdrawal of those approvals. Official controls other than approval or the suspension or withdrawal of approval would remain with local authorities. Responsibility for enforcement action relating to operation of an unapproved establishment requiring approval would rest within the new food body.
  - Where the new food body is the designated food authority for an approved establishment (such as slaughterhouses and meat cutting establishments), it should be responsible for official controls of all food commodities at the establishment and all official controls including those for food standards.

- Coordination of export certification and liaison with third countries.
- Import controls at ports of entry, including local authority controlled Border Inspection Posts and Designated Points of Entry.
- Delivery of official controls relating to animal feed hygiene and standards. In Scotland, feed law enforcement services are delivered by local authorities, but a small proportion at primary production level are undertaken by Scottish Government where they align with other on-farm inspections.
- Delivery of all official controls and related monitoring activity during primary production, including farming (including milk production holdings), game larders, fishing, and aquaculture. Consideration could also be given to first landings of fish at markets. Some primary production hygiene inspections are presently undertaken by the Scottish Government in tandem with other on-farm inspections.
- Delivery of official controls relating to the supply and manufacture of materials and articles in contact with food, food additives and processing aids.
- Recognition of natural mineral water sources.

49. The FSA currently develops technical and professional training of authorised officers whether they are employees of the FSA or of the local authorities. However, in addition, the new food body could, if resourced appropriately, also provide specialist advice to local authorities on food science, food technology and veterinary matters.

50. The Scottish Food Enforcement Liaison Committee (SFELC) is a group that co-ordinates the food law enforcement and sampling and surveillance activities of Scottish local authorities. Its membership includes representatives of central and local government and industry. It has been suggested that this group could be formalised through legislation as part of the setting up of the new food body.

51. It has also been suggested that the new food body could support and protect food law enforcement services by strengthening audit procedures (see section 4.6 below).

**Question 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.**

52. Please note that before taking any suggestions for potential additional responsibilities further, we would need to discuss them with all who would be affected, and explore considerations of employment, practicability, cost and legislation.

## 4.6 Audit

53. EU legislation places Member States under an obligation to enforce food and feed law and to ensure compliance (Regulation 178/2002)<sup>8</sup>. They are to designate competent authorities for the purposes of official controls, and these competent authorities are required to have internal audits, or to have external audits carried out (Regulation 882/2004)<sup>9</sup>. The FSA, as representative of the UK as Member State, provides assurance to the European Commission of delivery of official controls in the UK.
54. An audit team at FSAS audits the delivery of official controls by local authorities in Scotland. This provides assurance of delivery of official controls in Scotland. An additional benefit is said to be that the reporting process for audits to Chief Executives of local authorities is considered to be a significant factor in the protection of food and feed law enforcement services. It has been suggested that the new food body could support and protect food law enforcement services by establishing a clear standard for local authorities that has Ministerial backing and by strengthening audit procedures.
55. Delivery of meat and shellfish official controls by FSA and FSA operations staff in Scotland is currently audited by the FSA's internal audit team based in England. The new food body could expand upon the current audit capability of FSAS in order to carry out parallel internal audit of any aspect of the new food body's operation, including the Scottish meat and shellfish operations functions and any additional operational or enforcement functions that the new body might take on. This would provide assurance of delivery of official controls, meet the requirements of Regulation 882, and underpin the assurance of delivery of official controls provided by FSA to the European Commission.

**Question 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.**

## 4.7 International negotiation in the EU and other international bodies on behalf of the UK

56. The FSA would continue to represent the UK with respect to food and feed safety and hygiene at EU and other international bodies, as will Westminster's Department of Health and Defra with respect to diet and nutrition and food standards and labelling respectively. As with any other devolved matter, negotiations would be subject to consultation with devolved administrations – in the case of food and feed matters, this consultation would be with the new food body.

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

<sup>9</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:0141:EN:PDF>



## 5. Relationships with other organisations

57. The FSA works with a range of other organisations in a variety of ways to deliver its responsibilities. In particular it has a detailed protocol to handle food related incidents. The new food body will also need to collaborate, cooperate and coordinate with other organisations. These will include the FSA, Defra, Department of Health, local authorities, the Scottish Government, Health Protection Scotland (HPS), NHS Health Scotland, relevant professional bodies such as the Royal Environmental Health Institute of Scotland, academic institutions and research funders.
58. The new food body will establish appropriate working relationships with all relevant bodies, where necessary setting out contracts, service level agreements or memoranda of understanding, and ensuring in particular that a robust incident handling protocol will be established that will ensure consistency in approach and effective working with the FSA and with appropriate stakeholders, including the EU. This will be the subject of detailed discussion and negotiations during the programme to establish the new food body.

**Question 13: Are there any additional or alternative relationships that you would suggest that 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.**

## 6. Consumer engagement

59. The new food body will be consumer-focused. The FSA engages with consumers in a number of ways, to consult and to provide information or advice. One method is by means of a consumer panel. The FSA in Scotland, in addition, engages with „seldom-heard' consumers through a variety of organisations already engaged with these groups. We are keen to hear your suggestions for further ways in which the new food body can engage with consumers.

**Question 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?**

## 7. Independence from Government and food industry

60. Michael Matheson, Minister for Public Health has said: “The new body will be at arms-length from the Scottish Government. We will establish a new body which is independent, evidence-based, consumer-focused and transparent.”

61. The independence of the body is vital to ensure that consumers trust and follow the advice the body gives, particularly during outbreaks of food-borne diseases.
62. An appropriate governance structure can underpin independence. The FSA was constituted as a non-Ministerial department, with a Board made up of non-executive members who are appointed to act in the public interest. A similar arrangement could be an appropriate governance structure to underpin the independence of the new food body. As a non-Ministerial department, the new body would be part of the Scottish Administration rather than the Scottish Government, and would therefore be accountable to the Scottish Parliament rather than Scottish Ministers.
63. Confidence and trust in the new body could be helped by building safeguards into the legislation to set up the new food body, for example:
- An ability to independently provide advice and information, including on matters relating to the development of policy on food and feed safety and related matters, to any public authority (which would include, for example, local authorities or agencies of government) and to the public.
  - An ability to publish its advice to Ministers, which would be an important factor in its influence and independence.
  - The principle of regular review of the new food body by the appropriate parliamentary committee or scrutiny body.
  - A requirement to produce a statement of its general objectives, including consulting with interested parties on the new food body's activities, facilitating proper consultation between the new food body and other Departments of Government, local authorities and other public authorities on matters of mutual interest, and ensuring that the new food body's activities and decisions are open and transparent to the public.
  - A provision requiring the new food body to respond to any request from Ministers for information, support or advice on any matter within its remit, and allowing Ministers to direct the new food body to do or not do a specific function only if Ministers believe it has not followed key operating principles relating to having assessed costs, benefits and risks.

**Question 15: Do you agree with the suggested approach to ensuring the new food body's independence from Government and 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.**

**Question 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?**

### **Diet and nutrition – roles and responsibilities**

1. The respective roles of the Food Standards Agency (FSA) and the Scottish Government are independent in relation to health improvement and nutrition, taking account of both food and wider health issues.
2. In recognition of this, the Food Standards Agency and Scottish Government work in partnership with each other, and with other relevant agencies, in particular, NHS Health Scotland, to ensure effective co-ordination of their complementary activities in order to achieve the Food Standards Agency's objective of long-term improvements in the diet and nutrition of the Scottish population, and the Scottish Government's objective of making a step-change in Scotland's health and wellbeing a reality by improving and reducing dietary inequalities.
3. In practical terms, responsibility for taking forward specific aspects of tackling health inequalities is shared between the FSA and Scottish Government as outlined below.

#### **The Food Standards Agency is responsible for:**

4. The monitoring and surveillance of the nutrient content of food and the nutrient content of the diet, and the nutrient intake of the population specific subgroups including surveillance of the nutritional status of the population.
5. Providing authoritative, factual information about the nutrient content of individual foods and information on the diet as a whole as well as its components.
6. Providing the definition of a balanced diet for use in health education material produced by other bodies.
7. Proposing legislation, where appropriate, relating to nutritional aspects of food, including labelling and claims, dietary supplements sold as food, fortified foods and functional foods.
8. Representing the UK in EU & international negotiations on issues relating to nutritional content of food, except in relation to mothers who are breastfeeding, children, inequalities and groups and on foods for particular nutritional purposes.
9. Engaging with the UK food industry to promote reformulation of food: the reduction of salt, saturated fat, fat and sugar (including front of packet labelling) through a self reporting framework to highlight reductions.

**The Food Standards Agency leads on:**

10. Providing factual guidance in relation to nutritional aspects of the food chain, including production and catering.

**The Food Standards Agency:**

11. Formulates policy and provide advice to Cabinet Secretaries on the above issues (4-10)
12. Commissions research appropriate to its responsibility for the above issues (4-11)

**The Scottish Government is responsible for:**

13. Wider public health policy issues, including nutritional aspects of clinical conditions (such as cardiovascular disease, cancer, osteoporosis and obesity) where nutritional status is one of a number of risk factors.
14. Providing guidance and direction for the Scottish NHS and health professionals on nutrition topics such as breastfeeding promotion, clinical nutrition and dietetics, including hospital catering and nutritional therapy.
15. Undertaking general health surveillance of the population of Scotland.

**Scottish Government leads on:**

16. Health improvement, integrating diet and nutrition with other health topics such as substance misuse, tobacco, physical activity and mental health and wellbeing, utilising the expertise of NHS Health Scotland.
17. Identifying, through surveillance and research the needs of and provision for vulnerable groups including pregnant women, mothers who are breastfeeding, children and inequalities issues.
18. Co-ordination on a national scale, of the implementation Eating for Health-The Challenge on food in the public sector, in schools, in hospitals, in prisons in the workplace and in the home.

**Scottish Government :**

19. Formulates policy and provide advice to Cabinet Secretaries on the above issues (13-17)
20. Commissions research appropriate to its responsibility for the above issues (13-18)

## A Healthier Scotland: Consultation on Creating a New Food Body

### Responding to this consultation paper

We are inviting written responses to this consultation paper by 22 May 2013. **Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:**

[Newfoodbodyconsultation@scotland.gsi.gov.uk](mailto:Newfoodbodyconsultation@scotland.gsi.gov.uk)

or

Karen McCallum-Smith  
Public Health Division  
Directorate for Chief Medical Officer and Public Health  
Room 3.EN  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

If you have any queries contact Karen McCallum-Smith on 0131 244 2979.

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of the consultation questionnaire at Annex D as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. These will be made available to the public in the Scottish Government Library by 11 June 2013 and on the Scottish Government consultation web pages by 19 June 2013. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the scope and responsibilities of the new food body. We aim to issue a report on this consultation process by Autumn 2013. Primary legislation will be required, which this consultation will inform. There will also be secondary legislation made at Westminster and the Scottish Parliament.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Karen McCallum-Smith

Address: Public Health Division  
Directorate for Chief Medical Officer and Public Health  
Room 3.EN  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

E-mail: [newfoodbodyconsultation@scotland.gsi.gov.uk](mailto:newfoodbodyconsultation@scotland.gsi.gov.uk)

### The Scottish Government consultation process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**



## A Healthier Scotland: Consultation on Creating a New Food Body

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

#### 2. Postal Address

Postcode	Phone	Email

#### 3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).



**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Are you content for your **response** to be made available?

**Please tick as appropriate**

Yes  No

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

Yes

## 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

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

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

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

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

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

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

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

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

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

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

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

13: Are there any additional or alternative relationships that you would suggest that 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

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

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

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

### List of organisations consulted

Aberdeen City Council  
Aberdeenshire Council  
Academy of Medical Royal Colleges and Faculties in Scotland  
Agricultural Industries Confederation (AIC)  
Angus Council  
Arbroath Fish Processors Association  
Argyll & Bute Council  
Association for the Study of Obesity  
Association of Independent Meat Suppliers  
Association of Meat Inspectors  
Association of Scottish Shellfish Growers  
Aynsley - Green Consulting (Former Children's Commissioner for England)  
Barkers Highland Beef and Stirling Farmers Market (Also Chair of SAFM)  
BASC  
British Association for the Study of Community Dentistry  
British Dietetic Association  
British Heart Foundation  
British Hospitality Association  
British Meat Processors Association  
British Retail Consortium  
British Society of Animal Science  
British Soft Drinks Association  
British Trout  
British Veterinary Association  
British Veterinary Association Scottish Branch  
Caroline Walker Trust  
Cefas  
Centre for Epidemiology and Biostatistics  
Centre for Public Health - Nutrition Research  
Citizens Advice Scotland  
City of Edinburgh Council  
Clackmannanshire Council  
Comhairle nan Eilean Siar  
Community Composting Network  
Community Food and Health  
Consumer Focus Scotland  
Convention of Scottish Local Authorities  
CPAG (Child Poverty Action Group) in Scotland  
Crofting Commission  
Crown Office & Procurator Fiscals Service  
Dairy UK (Scotland)  
Diabetes UK  
Dumfries & Galloway Council  
Dundee City Council  
East Ayrshire Council

East Dunbartonshire Council  
East Lothian Council  
East Renfrewshire Council  
Edinburgh Scientific Services  
Education Scotland  
Equality and Human Rights Commission  
Europa  
Faculty of Public Health  
Falkirk Council  
Federation of Chefs Scotland  
Federation of City Farms and Community Gardens  
Federation of Scottish Aquaculture Producers  
Federation of Small Businesses  
Fife Council  
Fish Salesman's Association  
Food & Health Alliance  
Food Ethics Council  
Friends of the Earth Scotland  
Glasgow Caledonian University  
Glasgow City Council  
Glencoe Shellfish  
Health Protection Scotland  
Highland Council  
Hugh Pennington  
Improve LTD  
Institute of Food Science and Technology  
Inverclyde Council  
James Hutton Institute  
Meat Inspectors  
Midlothian Council  
Moreun Foundation  
National Beef Association Scotland  
National Fallen Stock  
National Heart Forum  
National Sheep Association Scotland  
NDR-UK  
Neogen  
NFUS Scotland  
NHS Ayrshire & Arran  
NHS Borders  
NHS Dumfries and Galloway  
NHS Fife  
NHS Forth Valley  
NHS Grampian  
NHS Greater Glasgow and Clyde Board  
NHS Health Scotland  
NHS Highland Health Board  
NHS Lanarkshire

NHS Lothian  
NHS Orkney Board  
NHS Shetland Board  
NHS Tayside  
NHS Western Isles  
North Ayrshire Council  
North Lanarkshire Council  
Northern Ireland Meat Exporters Association  
Orkney Meat Ltd  
Orkney Cheese Company Limited  
Orkney Islands Council  
Perth & Kinross Council  
Peter Bowbrick  
Peterhead & Fraserburgh Fish Processors Association  
Quality Meat Scotland  
Queen Margaret University  
Renfrewshire Council  
Robert Gordon University  
Roslin Institute  
Rowett Institute of Nutrition and Health  
Royal Dick School of Veterinary Studies  
Royal Highland Education Trust (RHET)  
Royal Environmental Health Institute for Scotland  
Royal Society of Public Health  
Scotch Whisky Association  
Scotland Food and Drink  
Scottish Agricultural College  
Scottish Agricultural Organisation Society  
Scottish Association for Marine Sciences  
Scottish Association of Farmers' Markets  
Scottish Association of Fish producers Organisation  
Scottish Association of Meat Wholesalers  
Scottish Bakers  
Scottish Beef Association  
Scottish Beekeepers Association  
Scottish Beer & Pubs Association  
Scottish Borders Council  
Scottish Cancer Prevention Network  
Scottish Countryside Alliance  
Scottish Council for Voluntary Organisations  
Scottish Crofting Federation  
Scottish Egg Producers Retailers Association  
Scottish Enterprise  
Scottish Environment Protection Agency  
Scottish Salmon Producers Organisation  
Scottish Farmers Market Partnership  
Scottish Federation of Meat Traders' Association  
Scottish Fishermen's Federation

Scottish Fishermen's Organisation  
Scottish Food and Drink Federation  
Scottish Food Enforcement Liaison Committee  
Scottish Food Quality Certification Ltd  
Scottish Game Dealers and Processors Association  
Scottish Grocers' Federation  
Scottish Land & Estates  
Scottish Licensed Trade Association  
Scottish Parliament's Cross Party Group (CPG) on Food  
Scottish Pig Producers  
Scottish Retail Consortium  
Scottish Salmon Producers' Organisation  
Scottish Scallop Association  
Scottish Shellfish Marketing Group  
Scottish United Rural Colleges - SRUC  
Scottish White Fish Producers Association  
Scottish Wholesale Association.  
Salmon Net Fishing Association of Scotland  
Scottish Women's Rural Institute  
Seafish Industry Authority  
Seafish/Seafood Scotland  
SEPA Corporate Office  
SG Regulatory Review Group  
Shetland Islands Council  
Shetland Agricultural Association  
SNH  
Society of Chief Environmental Health Officers in Scotland  
Society of Chief Executive Officers of Environmental Health in Scotland  
Society of Chief Officers of Trading Standards in Scotland  
Soil Association Scotland  
South Ayrshire Council  
South Lanarkshire Council  
SRUC (was SAC)  
SSPCA  
Stirling Council  
Stornoway Black Pudding Association  
Sustain  
The Moray Council  
The Rowett Institute of Nutrition and Health  
The Royal Society of Edinburgh  
Traditional Ayrshire Dunlop Cheese  
Unison  
University of Aberdeen  
University of Abertay Dundee  
University of Dundee  
University of Edinburgh  
University of Glasgow  
University of Stirling  
Veterinary Public Health Association



Weight Concern  
West Dunbartonshire Council  
West Lothian Council  
Which? Scotland



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First published by the Scottish Government, March 2013  
ISBN: 978-1-78256-413-3 (web only)

eBook first published by the Scottish Government, March 2013  
ISBN 978-1-78256-414-0 (ePub)

Kindle eBook first published by the Scottish Government, March 2013  
ISBN 978-1-78256-415-7 (Mobi)

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Government by APS Group Scotland  
DPPAS13947 (03/13)

Published by the Scottish Government, March 2013