

# **FOOD (SCOTLAND) BILL**

---

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Food (Scotland) Bill introduced in the Scottish Parliament on 13 March 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 48–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

3. The Bill is structured in the following Parts:
  - **Part 1** establishes Food Standards Scotland (FSS) as a body corporate and sets out its core objectives to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and FSS. The Scottish Ministers may request advice and assistance from FSS in relation to particular matters and may give FSS directions in certain circumstances.
  - **Part 2** introduces specific provisions in relation to food and feed law. These include provision for a food hygiene information scheme, to make regulations on animal feeding stuffs, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain or seize and remove such food and for a sheriff to determine the treatment of such food.
  - **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.
  - **Part 4** sets out interpretation provisions for the Bill.
  - **Part 5** sets out general provisions on coming into force and modification of enactments.

### **PART 1: FOOD STANDARDS SCOTLAND**

#### **Section 1: Establishment**

4. This section establishes Food Standards Scotland (FSS) as a public body. Outwith the scope of this Bill, a section 104 order will be made under the Scotland Act 1998 to designate FSS as a non-ministerial office of the Scottish Administration. That will be the basis of its operational autonomy from the Scottish Ministers. FSS will be accountable to the Scottish Parliament and its employees will be civil servants.

## **Section 2: Objectives**

5. Section 2 lists FSS' three objectives: to protect the public from risks arising from consuming food, to improve the diet of the public and to protect consumers' other interests with regards to food. These objectives are deliberately wide in scope. This gives FSS flexibility to be involved in a very broad range of policies, too numerous to try to define. For example FSS, under these objectives could contribute to policies on animal health or to policies which would be marginal to food itself such as food sustainability or food poverty. The general nature of the objectives gives FSS the flexibility and authority to act in relation to a wide range of food matters.

## **Section 3: General functions**

6. The general functions of FSS are designed to focus effort and expertise on delivering the objectives, above. The functions are set out in detail, but in summary they are to develop (and assist public bodies or office-holders to develop) policies, provide advice and assistance to public bodies or office-holders, to keep the public and users of animal feeding stuffs informed about significant matters which concern them about food and feeding stuffs and to monitor the performance of the authorities who enforce food law. The reference to public bodies and office-holders covers any such body or office-holder; it is not limited to public bodies and office-holders in Scotland e.g. it could include, and therefore enable FSS to work with, UK or European public bodies and office-holders. As with the objectives, these functions are deliberately wide so as not to be overly restrictive. It is intended that FSS as the independent body with policy responsibility in Scotland for food matters is seen to be able to operate without overly prescriptive boundaries.

7. FSS must comply with requests from the Scottish Ministers where reasonably practicable. This is designed to provide public assurance both on the operational independence of FSS and that the Scottish Ministers can still influence FSS transparently, in the public interest. In short, this provision allows flexibility in the relationship between the Scottish Government and FSS – allowing them to work together across food policy areas in a way that does not put the independence of FSS at risk.

## **Section 4: Governance and accountability**

8. This provision will ensure that, as a public body, FSS must work in a proportionate, transparent and accountable manner. This is consistent with its other general statutory duties of sustainable growth, efficiency, effectiveness and economy from the Public Services Reform (Scotland) Act 2010<sup>1</sup>.

## **Section 5: Statement on performance of functions**

9. FSS must develop a statement setting out how it will carry out its functions in order to meet its objectives and operate in accordance with section 4. This needs to be approved by the Scottish Ministers (with or without modifications) and laid before the Scottish Parliament. Having a published statement such as this will ensure transparency and public accountability, as

---

<sup>1</sup> Section 32 of the PSR Act 2010, Public functions: duty to provide information on exercise of functions

it will be clear how FSS is aiming to perform its functions and how it intends to demonstrate that transparently. FSS must review the statement from time to time and consequently may submit a revised statement to the Scottish Ministers for approval and laying before the Scottish Parliament.

### **Section 6: Number and appointment of members**

10. This section sets out the number of members FSS can have (which includes a chair) and lists certain office-holders who are automatically excluded from being a member. Members are appointed by the Scottish Ministers for such a period and under such terms and conditions as the Scottish Ministers may determine. Members will normally be referred to collectively as “the board”. The Scottish Ministers may assign one of the members to deputise for the chair which includes giving that member the function of chairing the board during any period where a chair has not been appointed. Subsection (3) specifies that during a recruitment process to appoint members, equal opportunity requirements must be followed.

### **Section 7: Early ending of membership**

11. This section sets out situations when a person’s membership of FSS will end. This is to prevent a conflict of interest and to maintain FSS’ independence. For example, membership will end if the person becomes a member of the Scottish Parliament. It is also to enable the Scottish Ministers to end a person’s membership in the circumstances set out in subsection (2).

### **Section 12: Committees**

12. Section 12 allows FSS to create committees as and when required and to regulate their procedures. These committees could be set up to address specific issues on a case-by-case basis. This approach is more flexible than having a set of statutory committees in place permanently when there was no need for them for most of the time.

### **Section 14: Annual and other reports**

13. FSS must publish an annual report on its functions and performance and lay it before the Scottish Parliament who it will be accountable to. As an independent body not accountable to the Scottish Ministers, this section provides for transparency and public accountability on its work and performance.

### **Section 15: General powers**

14. Section 15 gives FSS a general power to do anything it deems necessary in order to carry out its functions. This provision gives FSS operational independence and wide-ranging autonomy to take action on things like training and direct stakeholder engagement for example. This freedom is subject to two exceptions: moving office premises without approval of the Scottish Ministers and charging for services at a profit. These restrictions will ensure FSS acts in accordance with wider Scottish Administration principles.

### **Section 16: Application of legislation relating to public bodies**

15. Section 16 inserts reference to FSS into various pieces of legislation that confer duties and responsibilities on listed public bodies in Scotland. For example, FSS will have to adhere to the Freedom of Information (Scotland) Act 2002. These individual enactments confer particular duties on FSS, and these are commonly applied to public bodies in Scotland.

### **Section 17: Serious failure**

16. This section provides the Scottish Ministers authority to step-in where there has been a serious failure by FSS to meet its functions. Subsection (2) allows the Scottish Ministers to give FSS directions in order to remedy the failure. If FSS fails to comply with a direction, the Scottish Ministers can end the membership of all of FSS' members and carry out their functions until replacements are appointed. This provision demonstrates how important independence will be for FSS as well as providing assurance to consumers that ultimately in extreme circumstances, the Scottish Ministers will be able to step in to protect consumers.

### **Section 18: Duty to acquire, compile and keep under review relevant information**

17. In order for FSS to carry out its functions – developing policy and giving advice – and come to sound decisions, it has a duty to keep up-to-date with, and review, developments in food matters and animal feeding stuffs matters. It can also carry out or commission research on food matters and on animal feeding stuffs. The meaning of a “food matter “and an “animal feeding stuff matter” is set out in Part 4 of the Bill.

### **Section 19: Observations with a view to obtaining information**

18. To assist FSS in carrying out its duty to compile and review information, section 19 allows it to carry out observations, for example, through visits and inspections either routine or unannounced, of businesses in any part of the supply chain in order gain information about food or animal feeding stuffs. This provision extends to all aspects of food production (e.g. farms and production plants), food supply (e.g. wholesale or retail) or food consumption (e.g. food outlets and restaurants).

### **Section 20: Powers for persons carrying out observations**

19. Section 20 confers powers on a person authorised by FSS to carry out observations. An authorised person can be a FSS employee or any other individual, for example, a local authority employee. The powers are to enter premises, take samples, inspect and copy documents and require the person under observation to provide documents and information. These powers can only be used if it is necessary to carry out an observation. Documents can include the health records of individuals held by the business to assess an individual's suitability for working in the production or supply of food. For example, in order to prevent a public health risk, employers may need to obtain medical certificates about their employees' suitability to carry out certain duties with food. This section does not allow FSS access to the personal health records of an individual.

### **Section 21: Offences in relation to section 20**

20. Section 21 makes it an offence for an authorised person carrying out an observation to disclose or use information gathered which relates to a trade secret, outwith the course of their duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during an observation to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out their duty to gather information as part of an observation.

### **Section 22: Setting performance standards**

21. FSS may set standards of performance for enforcement authorities (as defined in section 57), which would include FSS itself and local authorities' trading standards and environmental health departments, to enforce "food legislation" (as defined in section 56). Who the enforcement authorities are for particular pieces of food legislation is designated in food legislation (mostly in regulations made by the Scottish Ministers). This provision gives FSS the role of setting the performance standards for the enforcement authorities in respect of all food legislation in Scotland.

### **Section 23: Reporting own enforcement activities**

22. FSS must include information about enforcement action it has taken in its annual report. As an autonomous office in the Scottish Administration, the intention of this provision is for FSS to be open about its own activities.

### **Section 24: Reporting on enforcement action by others**

23. Section 24 allows FSS to make a report on any enforcement authority's performance and provide them with guidance on how to make improvements and meet any standards set out by FSS. This open and transparent system is designed to provide public assurance on the performance of authorities.

### **Section 25: Power to request information in relation to enforcement action**

24. This section gives FSS the power to require information from enforcement authorities and others to help it make an assessment of the performance of enforcement authorities.

### **Section 26: Offences in relation to section 25**

25. This provision makes it an offence to fail to comply with the requirement to provide information to FSS under section 25. It also makes it an offence to provide or knowingly or recklessly provide false or misleading information. Having an offence of failing to provide information will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.

### **Section 27: Powers for persons monitoring enforcement action**

26. Section 27 provides FSS the power to allow an authorised person to enter premises (other than a dwelling house), take samples and copy documents in order to monitor enforcement action. It includes a power to require any person present on the premises to provide assistance to an authorised officer which is reasonably requested. The detail of these powers is set out in the section, and the intention is to help ensure FSS has access to all the information it needs to be able to assess the performance of enforcement authorities. An authorisation issued by FSS must be made in writing and it may contain such limitations or conditions as FSS determine (e.g. hygienic precautions to be taken by an authorised officer in exercising powers under the authorisation).

### **Section 28: Offences in relation to section 27**

27. Section 28 makes it an offence for an authorised person monitoring enforcement action to disclose information or use information gathered outwith the course of that person's duties. This section does not prohibit FSS from using its own powers under section 30 to publish or disclose information. Instead, it is intended to apply to a situation where an authorised person gives a trade secret they have gathered during monitoring to a rival business. Subsection (3) makes it an offence for a person to obstruct an authorised person from carrying out that person's powers under section 27 to monitor enforcement action. This subsection will help ensure FSS has access to all information it needs to be able to assess the performance of enforcement authorities.

### **Section 29: Power to issue guidance on control of food-borne diseases**

28. FSS may issue guidance to the Scottish Ministers and Scottish public bodies about their general responsibilities for the control and management of food-borne diseases. Any such guidance must be published. This will ensure transparency and public accountability for measures that should be taken to combat food-borne disease. The Scottish Ministers and Scottish public bodies have to have regard to this guidance as required.

### **Section 30: Publication and disclosure of advice and information**

29. Section 30 gives FSS a right to publish or disclose information. This power is subject to that publication or disclosure not being prohibited by another law, not being in contempt of court and not being outweighed by considerations of confidentiality attaching to it. Otherwise FSS will be free to publish information as it sees fit. This power applies to information gathered from observations and monitoring (or obtained from any other source). The intention is for this to safeguard the autonomy of FSS. This power could be used to publish advice and information unrestrained by the Scottish Ministers or other stakeholders.

### **Section 31: Certain functions of Food Standards Agency ceasing to be exercisable**

30. This section withdraws all the functions the Food Standards Agency exercises in or as regards Scotland under the Food Standards Act 1999 i.e. the functions are withdrawn in Scotland to the extent made possible by the legislative competence of the Scottish Parliament. These functions through this Bill will now be conferred on FSS.

## **PART 2: FOOD AND FEEDING STUFFS**

### **Section 32: Food information**

31. Section 32 inserts 4 new provisions into the Food Safety Act 1990. Section 15A defines “food information” as having the same meaning as the European definition contained in EU Regulation 1169/2011 on the provision of food information to consumers, and provides the Scottish Ministers with a power to define “food information law” by regulations. Giving this power to the Scottish Ministers builds in flexibility to be able to redefine food information law as and when new enactments are made in Scotland which relate to food information e.g. where the Scottish Ministers make regulations in future to give effect to requirements in EU law on food information.

32. Section 15B creates a new power for authorised officers to issue a notice to detain food which contravenes food information law – for example, where the description on the label does not match the content. This applies where it appears to an authorised officer (in the course of carrying out an inspection or otherwise) that food information law is being, or has been, contravened in relation to food intended for human consumption which is placed on the market within the meaning of EC Regulation 178/2002. A definition of “placing on the market” is contained in Article 3 of that Regulation. A notice can be given to a person in charge of the food or the owner of the food (if different and if known). It will be an offence for anyone to contravene a detention notice. The notice may require the food not to be removed from where it is or that it is not to be removed from a place specified in the notice. The officer must determine as soon as reasonably practicable and in any event within 21 days of the notice being issued whether or not food information law has been contravened, after which time the notice must be lifted. The officer may seize the food at any time and refer the case to the sheriff to determine if food information law has been contravened.

33. Where food is seized the authorised officer may copy or take away food information related to the food (including information held in electronic form). An authorised officer must inform the person in charge of the food of the officer’s intention to have the matter dealt with by the sheriff; the owner of the food (if different) must also be informed unless, after making reasonable inquiries, it is not possible to identify the owner. Anyone who might be prosecuted for breaching food information law in relation to the seized food is entitled to be heard and call witnesses if that person attends before the sheriff. If food information law has been breached, the sheriff has the discretion to have the food destroyed or disposed of or to require the information to be corrected so the food can be distributed for consumption; and the sheriff must require the owner of the food to meet any expenses reasonably incurred in connection with any disposal etc. of the food.

34. Where a detention notice is withdrawn by an authorised officer or where a sheriff refuses to make an order about the seized food (or any related food information), the food authority must pay the food owner compensation. The term “food authority” has the same meaning it does in section 5(2) of the Food Safety Act 1990 and will usually be local authorities. Any dispute about the amount of compensation is to be determined by arbitration in accordance with the Arbitration (Scotland) Act 2010.

35. These arrangements are modelled on existing arrangements for food which is believed to contravene food safety requirements, which are contained in section 9 of the Food Safety Act 1990. This section will help guard against food which is mislabelled entering the food chain, as happened in the horse meat food fraud incidents in 2013.

36. Section 15C inserts a new duty on food business operators to inform FSS where food information law is or has been contravened, i.e. where a food business operator is in charge of any food intended for human consumption and that food has been placed on the market. A person who fails in this duty is guilty of an offence, and this is a new offence. “Food business operator” is to be construed in accordance with Article 3 of EC Regulation 178/2002.

37. Section 15D sets out a duty on food business operators who have informed FSS about contraventions of food information law to then provide such relevant information FSS reasonably requests. Failing to do so will be an offence.

38. In sections 15A to 15D reference to “food” means food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

### **Section 33: Food hygiene information scheme**

39. This section inserts provisions into section 16(1), and Schedule 1 to, the Food Safety Act 1990 which allows the Scottish Ministers to establish by regulations a food hygiene information scheme. Section 16 (food safety and consumer protection) is the primary regulation-making power contained in the 1990 Act and is relied on to make many regulations in food law in Scotland, including on food hygiene. The new provisions inserted into Schedule 1 (provisions of regulations made under section 16(1)) elaborate on what the power to establish the scheme in section 16(1) can, in particular, be used to do. The intent is to make mandatory a food hygiene information scheme based on an existing Scottish voluntary scheme. The aim of the scheme is to improve hygiene standards and therefore make food safer for the consumer. The references to “food” in the amendments made here to the 1990 Act mean food as defined in section 52 of the Bill by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Bill.

### **Section 34: Regulation of animal feeding stuffs**

40. This section allows the Scottish Ministers to make regulations in relation to animal feeding stuffs. This is a general power which the Scottish Government anticipates would be used only if existing powers (largely contained under section 2(2) of the European Communities Act 1972) could not be relied on to make regulations on animal feeding stuffs. A similar power is currently available in the 1999 Act, and although it has not been used in the past it may still be prudent to retain it as a fall-back power. The Scottish Ministers must consult widely and take advice from FSS before making any such regulations.

## **PART 3: ADMINISTRATIVE SANCTIONS**

### **Section 35: Fixed penalty notices**

41. This section provides for fixed penalty notices for relevant offences, as an opportunity for the person who is believed to have committed the offence to discharge liability by paying a specified sum of money. The Scottish Ministers, by regulations, will specify the sum of money to be paid as a penalty for the fixed penalty notice. The sum of money which the Scottish Ministers can specify for a fixed penalty notice (or different sums in respect of notices for different relevant offences) cannot exceed level 4 on the standard scale (currently £2,500). Setting this by regulation allows for the sum to be changed over time in line with the cost of living and inflation without having to amend primary legislation.

42. These fixed penalty notices can be issued by authorised officers to someone who they believe has breached a relevant offence. The standard of proof to be used to satisfy authorised officers that a relevant offence has been committed before they can issue a fixed penalty notice – i.e. beyond reasonable doubt or on the balance of probability etc. – is also to be set by regulations. This allows for changes to be made to the standard to reflect changing circumstances without having to amend primary legislation. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the fixed penalty scheme by regulations. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences.

43. Setting sums of money payable, the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of fixed penalty notices. Enforcement authorities must comply with that guidance.

### **Section 36: Content and form of fixed penalty notice**

44. This section describes the information which must be included in a fixed penalty notice, and gives the Scottish Ministers power to make regulations to set the period of time within which payment is to be made, and to make any further provisions about the form and content of the notice by regulations.

### **Section 37: Effect of fixed penalty notice on criminal proceedings**

45. Criminal proceedings for a relevant offence cannot be initiated if a fixed penalty notice has been issued and is still in force. If the person to whom the notice is issued makes payment in accordance with the notice then that person may not be convicted of a relevant offence in respect of the relevant act or omission.

#### **Section 40: Income from fixed penalties to be paid to the Scottish Ministers**

46. This section states that sums received by enforcement authorities for payment of fixed penalty notices must be paid over to the Scottish Ministers. This will ensure that enforcement authorities are not seen to be using fixed penalty notices to pay for services they provide.

#### **Section 41: Compliance notices**

47. This section enables authorised officers of enforcement authorities to issue compliance notices in relation to a relevant offence. The notice will stipulate steps that need to be taken to rectify the offence.

48. The definition of “relevant offence” in section 51 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences. As with fixed penalty notices, the Scottish Ministers will by regulation set what the specified standard of proof will be for a relevant offence – i.e. beyond reasonable doubt or on the balance of probability etc. In practice, a compliance notice could be issued for minor offences where either a fixed penalty notice or a report to the Procurator Fiscal Service would be disproportionate to the offence.

49. Under section 48 of the Bill, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the compliance notice scheme by regulations.

50. Setting the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 50 of this Bill the Lord Advocate may issue guidance to enforcement authorities about the exercise of compliance notices. Enforcement authorities must comply with that guidance.

#### **Section 42: Content and form of compliance notice**

51. This section describes what information needs to be contained in a compliance notice, including details on a right of appeal and the consequences for failure to comply with the notice. Scottish Ministers have a power to make any further provisions about the form and content of the notice by regulations.

#### **Section 43: Failure to comply with a compliance notice**

52. It is an offence to fail to comply with a compliance notice and within the compliance period. The penalty on summary conviction is a fine not exceeding level 5 (£5,000) on the standard scale.

#### **Section 44: Effect of compliance notice on criminal proceedings**

53. Criminal proceedings for the relevant offence cannot be initiated, and if the person on whom the notice is served complies with the notice, then that person may not be convicted in

respect of the relevant act or omission, if a compliance notice has been issued and is still in force.

#### **Section 48: Power to make supplementary etc. provision**

54. This section gives the Scottish Ministers power to make supplementary, incidental or consequential provision for the administrative sanctions regime, by regulation. This covers both fixed penalty and compliance notices as well as how enforcement authorities carry out their functions under Part 3 of the Bill. This is a general power, but the section gives particular reference to regulations for facilitating, prohibiting or restricting the use of sanctions where another sanction has already been imposed or issued for the same act or omission. These sanctions could be fixed penalty notices, compliance notices or another sanction.

55. The section also refers to regulations providing for early payment discounts in relation to fixed penalty notices. The section also provides for regulations being made to modify certain provisions of the 1990 Act. These include modifying provisions on offences and defences, on powers of entry and powers to issue codes of practice. This section in particular also provides for the effect of fixed penalty notices and compliance notices on criminal proceedings.

#### **Section 50: Lord Advocate's guidance**

56. This section gives the Lord Advocate, as head of the Crown Office and Procurator Fiscal Service, the right to issue guidance to enforcement authorities about how they exercise their functions with regards to fixed penalty notices and compliance notices. The content of the guidance will be a matter for the Lord Advocate, but it may, for example, set conditions for certain offences to be treated administratively. Enforcement authorities must comply with this guidance.

#### **Section 51: Interpretation of Part**

57. Part 3 introduces administrative sanctions; this section describes the key terms used. This section includes a power to make regulations to specify what "relevant offences" are in respect of fixed penalty and compliance notices. Determining what constitutes a relevant offence by regulation rather than on the face of the Bill allows greater flexibility to amend the list of offences over time and following further consultation. This means not having to amend primary legislation if another type of offence is identified or where particular offences are to be treated differently, as may be the case following Lord Advocate's guidance being issued from time to time under section 50 of the Bill.

### **PART 4: INTERPRETATION**

58. Part 4 sets out interpretation provisions, definitions and meanings of key terms used in the Bill. In particular, section 52 gives the Scottish Ministers, by order, the power to modify the definition of "food". Section 54 makes it clear that the term "other interests of consumers in relation to food" which is found in section 2 regarding FSS' functions, includes the labelling and advertisement of food.

## **PART 5: FINAL PROVISIONS**

### **Section 58: Modification of enactments**

59. Section 58 introduces the schedule which makes various amendments to Acts including the Food Safety Act 1990 and Food Standards Act 1999. In particular, it sets out the maximum penalty for those found guilty of an offence under food information law, failing to report non-compliance of food information and failing to give an enforcement authority further information with regards to non-compliant food information.

### **Section 59: Subordinate legislation**

60. The Scottish Ministers are given powers under this Bill to make regulations and orders. Section 59(2) lists which of these will be subject to the affirmative procedure. Section 59(3) provides for all other regulations and orders under the Bill are to be made by the negative procedure. The powers inserted into the 1990 Act by sections 32 and 33 of the Bill are also subject to negative procedure. Those subject to affirmative procedure must get approval from the Scottish Parliament before becoming law and those subject to negative procedure mean they will become law when they are made unless there is an objection from the Scottish Parliament.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Financial Memorandum relates to the Food (Scotland) Bill (“the Bill”). It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and it has not been endorsed by the Scottish Parliament. The Memorandum summarises the cost implications of the Bill.
2. The Scottish Government has an overarching ambition to help people in Scotland live longer, healthier lives. The Scottish Ministers are committed to improving public health and have taken decisive action to tackle smoking and reduce alcohol consumption. Ensuring people are eating safe, healthy food and improving diet offers similar potential to improve public health.
3. The purpose of the Bill is to improve and protect public health and other interests of consumers, in respect of food. The Bill seeks to achieve this by creating Food Standards Scotland (FSS) and establishing new food law provisions and administrative sanction options for dealing with breaches of specific aspects of food law.
4. Food Standards Scotland is being established to carry out functions in relation to food and feed safety and standards. These functions will include all functions currently carried out by the UK-wide Food Standards Agency (FSA) in Scotland. It includes provisions to enable FSS to work with and on behalf of the public to provide clear and accessible evidence-based advice and guidance. FSS will be empowered to develop and implement policies on food and animal feeding stuffs safety, standards and other food and feed matters.

### **OVERVIEW OF THE BILL**

5. The provisions in the Bill are set out in five Parts. The following provides a brief overview of these Parts.
  - **Part 1** establishes Food Standards Scotland as a body corporate and sets out its core objective to improve and protect public health, and other interests of consumers, in Scotland in respect of food. Part 1 also sets out key aspects of the relationship between the Scottish Ministers and Food Standards Scotland. The Scottish Ministers may request advice and assistance from Food Standards Scotland in relation to particular matters and may give Food Standards Scotland directions in certain circumstances.
  - **Part 2** introduces specific provisions in relation to food law. These include provision for a food hygiene information scheme, the power to regulate animal feeding stuffs, an offence of failing to report suspicion of food not being compliant with food information law and powers for authorised officers to detain or seize and remove such food and for a sheriff to determine the treatment of such food.
  - **Part 3** provides for administrative sanctions for non-compliance with food safety and standards law. These sanctions will be compliance notices and fixed penalties.
  - **Part 4** sets out interpretation provisions for the Bill.

- **Part 5** sets out general provisions such as the arrangements for the Bill coming into force and modification of enactments.

6. The following sections of the Memorandum consider the cost implications of Parts 1 to 3 and of secondary legislation. Parts 4 and 5 do not have specific cost implications so they are not discussed here.

## **PART 1: FOOD STANDARDS SCOTLAND**

### **Background**

7. The FSA is a UK-wide body with three devolved offices. Those devolved offices are largely funded by the relevant devolved administration (in the case of Scotland, directly through payments out of the Scottish Consolidated Fund under authorisation in the annual Budget Acts). However, the central FSA retains the bulk of direction, expertise and decision-making as well as all responsibility for official controls of meat hygiene inspections across Great Britain.

8. 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), the Scottish Ministers asked Professor Jim Scudamore to lead an independent review to assess the feasibility of establishing a stand-alone Scottish Food Standards body<sup>2</sup>, including a Scottish meat inspection delivery body, and maintaining the FSA's existing statutory objective to protect consumers.

9. The Scudamore Review adopted two principles. Firstly, as Scotland has unique and complex problems in relation to diet, obesity and certain food borne diseases, food safety should not be divorced from nutrition, labelling and standards. Secondly, advice on food safety, nutrition and labelling should be independent and transparent and should be provided by an organisation at arm's length from Ministers. The Scottish Ministers announced their decision to accept recommendations in the Scudamore report on 27 June 2012.

### **Costs on the Scottish Administration**

10. The figures at Table A show the most robust estimate for the FSS's budget over the first year of its operation.<sup>3</sup> Costs have been provided for one year only based on the assumption that once the new body is functioning as a public body it will develop new ways of working distinct from those currently operated by the FSA. Therefore the proposed budget is based on existing

---

<sup>2</sup> *Future arrangements to secure food standards and safety in Scotland*, April 2012, <http://www.scotland.gov.uk/Publications/2012/04/6141/0>

<sup>3</sup> These have been based on a number of figures and assumptions: (a) existing FSA in Scotland costs; (b) calculated shares of the cost of those centralised functions which will transfer to FSS and which are currently funded through the Westminster Budget; (c) additional staff salary and costs where we have been able to estimate the number of likely additional staff required for the new body; (d) increases of certain of those costs attached to staff, where we have been able to estimate the number of likely additional staff; (e) estimates of the costs for shared services which are anticipated will be available from the Scottish Government; and (f) assumptions which have been made, in consultation with FSA in Scotland, as to where efficiencies can be made and where costs may marginally increase. These costs do not take account of any additional functions (not currently performed by the FSA anywhere in GB/UK) and which may transfer to Food Standards Scotland. None of the potential transfers would require further primary legislation.

functions and practices, which will naturally evolve and seek to produce greater efficiencies as FSS moves to a Scotland-only remit.

**Table A: Estimated Food Standards Scotland Budget 2015/16**

<b>Description</b>		<b>Including</b>	<b>(£000s)</b>
<b>Administration</b>	Staff and Board	Remuneration of 8 members and staff costs for 75 HQ staff	4,000
	Non-Staff Cash	Corporate services: HR, IT, legal and financial etc.; and Accommodation and utilities	1,650
<b>Programme</b>	HQ Based	Monitoring enforcement by food authorities Research Training and education	7,000
	Field Operations	FSS field inspections (e.g. meat processing plants etc.) 65 staff and equipment costs	5,600
<b>Annually Managed Expenditure</b>			900
<b>Capital</b>			50
<b>Total Budget</b>			<b>19,200</b>
<b>Income</b>	Industry	Charges for services (e.g. meat charging)	3,300
	Government Depts.	Fees paid for work done on behalf of UK Government Departments (e.g. Defra)	200
<b>Total Income</b>			<b>3,500</b>
<b>Net Running Cost</b>			<b>15,700</b>

### *Staffing*

11. The skills, knowledge and professionalism of the FSA in Scotland's (FSAS) employees are highly valued by the Scottish Government. FSAS employees, including the staff operating in the field in Scotland, will be transferred directly into the employment of Food Standards Scotland. Cabinet Office Statement of Policy (COSOP) provisions will apply to that transfer. This means that the rights and existing terms and conditions of FSAS staff will be protected on transfer to FSS.

12. The Scottish Government aims to ensure that the creation of FSS is achieved with minimal additional cost to the Scottish Government and with minimal disruption to the staff working with the existing FSA in Scotland.

13. The staff numbers are around 140. These staff, including field-based staff in Scotland, will transfer to become Scottish civil servants working in the FSS. During the consultation some stakeholders expressed concern about the need to maintain the independence of the new body.

14. The intention is to make Food Standards Scotland a non-Ministerial office in the Scottish Administration<sup>4</sup>. This will allow FSS staff to remain as civil servants without compromising the

<sup>4</sup> The status of non-Ministerial office of the Scottish Administration is not conferred in this Bill. Such status is a matter for the UK Parliament as it requires an amendment by order to the Scotland Act 1998. The amending order will be sought at the conclusion of the Bill's passage.

body's independence. The direct transfer of existing staff will also ensure business continuity and reduce the risk to food safety and standards during the transition. There is a programme of work in the Scottish Government taking forward the transition.

#### *Senior management*

15. The existing post of Director for Scotland will transfer to the new body as FSS Chief Executive. The appointment will be at Senior Civil Service Grade 2 level with a pay range of £82,900 to £162,500.<sup>5</sup>

16. It is likely that other members of the current senior management team will also transfer to equivalent roles in the new body. Further senior management team posts will be recruited for, to include functions related to strategy, corporate services and including a member of the team to act as Deputy Chief Executive.

#### *Recruitment of new staff*

17. FSS will require additional staff to oversee roles currently performed corporately across the UK from London and York. This will require an increased Private Office to service the Chief Executive and the Board, corporate functions including finance and business planning, communications and organisation of delivery of field operations.

18. The appointment of such staff may be made through redeployment or internal advertising within the Scottish Government, but recruitment costs of £20,000 have been included in the estimated transition costs<sup>6</sup>. On-going recruitment costs beyond vesting day will be met from the FSS's budget from 2015/16 onwards.

19. As a non-Ministerial office in the Scottish Administration, FSS will have the option of accessing specialist services through the Scottish Government's shared services arrangements for HR, IT, purchasing and accounts system and procurement expertise. This will mean that although FSS will be losing those services currently provided centrally by the FSA it may opt to buy into existing streamlined corporate services as part of the Scottish Administration rather than employ new staff to fulfil those roles.

20. Drawing on these shared services will incur a cost, the details of which are subject to negotiation with the relevant shared services. Estimates for these costs are included in the overall administration budget – assumed to be around 10% of the FSS budget – reflected in the Administration “non-staff cash” line at Table A.

#### *Appointments to the FSS Board*

21. The Bill provides for four to eight non-executive members, one of whom will chair FSS. The members will make up the Board. Appointments to the Board will be regulated according to the code of the Commission for Ethical Standards in Public Life. The cost of advertising,

---

<sup>5</sup> Cabinet Office, SCS Pay Scales, [www.gov.uk/government/organisations/cabinet-office/about/recruitment](http://www.gov.uk/government/organisations/cabinet-office/about/recruitment)

<sup>6</sup> Based on information from SG HR with regard to the approximate cost of advertising and recruitment in similar exercises.

interviewing and making the appointments, based on recent similar exercises, is estimated at £30,000.<sup>7</sup>

22. The Scottish Government will meet the costs of subsequent appointments when they fall due. Members will serve for terms of three and four years, with their appointment terms staggered to ensure business continuity.

*Remuneration of Board members*

23. The continuing costs of payments to Board members will be met from FSS’s budget. Estimates for this cost assume that there will be one Chair, one Deputy Chair, and six Board members. The members will attend six Board meetings and six committees during the financial year. Financial estimates assumed are based on Board members and Chair being remunerated at the lowest, medium and highest ranges of the relevant scale (£161 to £241 per day for members including the Deputy Chair, and £193 to £337 per day for Chair).<sup>8</sup>

24. Members will also be remunerated for any preparatory work they do prior to board meetings at the daily rate. The estimates assume an approximate total of 52 days’ work per year for Members, 78 days’ work per year for the Deputy Chair and 104 days’ work per year for the Chair.<sup>9</sup>

**Table B: Annual costs of FSS Board remuneration**

Role	Low	Medium	High	Total
Chair	£20,072	£27,560	£35,048	£27,560
Deputy Chair	£12,558	£15,678	£18,798	£15,678
Member	£8,372	£10,452	£12,532	£62,712
Total				£105,950

25. It will be for the Scottish Ministers to determine the most appropriate range for members, taking account of the range of responsibilities FSS will have following the passage of the Bill. It is most likely that the place on the range will be in the “medium” category, as the number of staff and the budget is relatively low for a public body but as public health is being protected there is a high level of responsibility attached.

26. Assuming that the medium range is conferred, with a Chair, Deputy and six further members, the annual cost will be around £105,950.

*Delivery of official controls*

27. Official controls are arrangements put in place in regulations by Ministers to ensure that food business operators and enforcement authorities are complying with European Union food and feed regulations and complying with specified, related national measures. Official controls

<sup>7</sup> Based on information from SG HR with regard to the approximate cost of advertising and recruitment in similar exercises, including the Scottish Housing Regulator.

<sup>8</sup> Based on the current Board costs of the UK Food Standards Agency.

<sup>9</sup> Based on the number of days work on average of current Board members of the UK Food Standards Agency.

are currently delivered by the FSA in abattoirs and cutting plants. These will now be delivered by FSS. Businesses are charged an hourly rate for delivery of these controls but do receive a discount as set out in separate meat charging regulations<sup>10</sup>.

28. The Scottish Ministers intend to continue to offer a discount and work is currently underway to determine a model which will incentivise more efficient use of resources and a more equitable distribution of the discount.

29. The forecast gross cost of delivering official controls in Scotland is approximately £5.2 million plus the cost of central operational support currently provided by FSA UK. Estimates are that the gross running cost of operations in Scotland will be approximately £6 million.<sup>11</sup> Based on the current charging mechanism income from industry is forecast to be approximately £3.3 million and from other government departments around £0.2 million,<sup>12</sup> resulting in a net running cost for Field Operations of around £2.5 million.

#### *Pension arrangements for transferring staff*

30. The majority of staff in FSA in Scotland are existing members of the Principal Civil Service Pension Scheme (PCSPS). Liability for future employer contributions for those members will transfer to the FSS. No additional costs will be incurred as a result of the transfer.

31. Fifty one staff employed to deliver official controls in Scotland are members of a Local Government Pension Scheme (LGPS) operated by the London Pension Fund Authority (LPFA). This arrangement is as a result of those members historically being local government employees who became part of the Meat Hygiene Service, which itself later merged into the FSA in 2010. In 2010 the FSA avoided crystallising the deficit that fund was running by joining the Local Government Pension Scheme as an “admission member” and retaining those employees within their existing pension scheme.

32. Crystallisation is the amount required by a new scheme to which employees are transferring, in order to accept accrued rights from a different scheme as fully funded.

33. Actuarial valuations place the potential crystallisation and cessation costs for all active Scottish members at £13.4 million were they all to be given an option, and take it, to transfer their accrued rights into the PCSPS. Given the high cost of this transfer, and the resultant requirement that an exception would have to be made to allow relevant staff to be admitted to the PCSPS on a final salary scheme equivalent to their current scheme, the Scottish Government has sought an alternative arrangement to allow staff to remain in their LGPS scheme as active members.

34. The Scottish Ministers will request that the Secretary of State for Communities and Local Government certify FSS as an admission body under the Local Government Pension Scheme

---

<sup>10</sup> The Meat (Official Controls Charges) (Scotland) Regulations 2009

<sup>11</sup> Based on known current costs of the Scottish Operations Branch of the GB-wide operations, and a calculated addition of the costs of centralised support – based on a proportionate share of the existing GB operations central support.

<sup>12</sup> Current 2014/15 forecast for income relevant to Scotland in GB-wide FSA Operations.

Regulations pursuant to provision 5(2)(a)(ii) of those regulations by which “a body.....provides a public service in the United Kingdom otherwise for the purposes of gain” may be so approved by the Secretary of State.

35. Current FSA members of the LGPS pension scheme working in Scotland will therefore continue to be members of the LGPS pension scheme. The FSS will acquire liability for the 51 active Scottish members of the scheme and, subject to negotiation, the 83 deferred and pensioner members.

36. Separating these members from the remainder of the FSA fund, but keeping them within the LPFA, will also avoid incurring a crystallisation and cessation cost of between £12.5 million and £13.4 million. The Scottish portion of the FSA fund can be shown to currently running a deficit of £1.8 million; that liability will transfer to FSS and appear on the balance sheet as an on-going liability calculated in accordance with IAS19 standards; as at March 2014 that figure would be £9.5 million.

37. Given the closed nature of the fund, it is foreseeable that a cessation payment, either a one off or structured with a Government Guarantee over a number of years, would have to be made within 15 years when the number of active members diminishes. That payment will likely be between £1.8 million and £12.5 million, dependent upon the demographic profile of the members and the market conditions at the time.

#### *Assets and liabilities transferred from the FSA to Food Standards Scotland*

##### Assets to be transferred

38. All assets held by FSA in Scotland, or within the Scottish Operations Branch, will transfer to Food Standards Scotland. The impact of this transfer on depreciation and amortisation costs is taken account of in the figures used above at Table A.

##### Liabilities to be transferred

39. These liabilities include balance sheet liabilities as at point of transfer which are associated with annual leave and flexi payable for staff who are transferring. These liabilities also include the transfer of Early Departure Provision associated with the FSAS staff (including operations staff). The impact of this transfer on costs is taken account of in the figures used above at Table A.

#### **Costs on the Scottish Administration – summary**

40. It is anticipated that the budget for Food Standards Scotland will be met from existing resources: the Scottish Consolidated Fund, industry charges and through a budget transfer arrangement with the FSA in respect of central costs associated with running the FSA in Scotland.

41. In 2013/14 the Scottish allocation to the Food Standards Agency was £10.9 million.<sup>13</sup> The budget for the new Food Standards Scotland in 2015/16 is expected to be £19.2 million

---

<sup>13</sup> Food Standards Agency in Scotland provision 2013/14 and 2014/15, Scottish Government Health Finance.

gross, taking account of the projected income from Field Operations the net running costs fall to approximately £15.7 million.

42. The financial grant provided to FSS will exceed that currently provided to the FSA in Scotland by approximately £5 million, as FSS will have to fill roles previously delivered from York and London. The intention is to have this increase offset through a financial transfer from the FSA UK-wide budget to the Scottish Government to represent the activities which will now be delivered in Scotland rather than on a UK-wide basis. The level of that financial transfer is the subject of on-going negotiations.

### **Costs on local authorities**

43. The provisions in Part 1 of the Bill have no direct, immediate, financial implications for local authorities. No significant net impact on costs is therefore anticipated for local authorities.

### **Costs on other bodies, individuals and businesses**

#### *Other bodies*

44. Currently, 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 provisions of this Bill will make no direct changes to that arrangement and will therefore have no direct financial implications for those other bodies.

#### *Business*

45. The provisions in Part 1 of the Bill have no direct financial implications for businesses.

#### *Individuals*

46. The provisions in Part 1 of the Bill have no direct financial implications for individuals.

## **PART 2: FOOD AND FEEDING STUFFS**

### **Contravention of food information law: seizure of food (section 32 (inserted section 15B))**

47. Part 2 of the Bill includes new food law provisions. The first new provision will allow enforcement officers from FSS or from local authorities to detain or seize and remove food which does not comply with food information law. This provision will help guard against mislabelling and formulation issues which have come to light in particular through the horsemeat DNA scandal in 2013. Officers currently have powers to detain or seize and remove food deemed unsafe, but have no such powers for food which is safe but which does not meet food information requirements.

### **Duty to report non-compliance with food information law (section 32 (inserted section 15C))**

48. The second new food law provision in the Bill creates an offence of failing to report suspicions of where food may not comply with food information law and an offence to fail to

comply with a request for information. There are currently matching offences of failing to notify authorities where food may not meet food safety requirements, but nothing for food information requirements. There are very few prosecutions for the existing food safety arrangements and so costs for enforcing the new food information offences are likely to be very low.

49. Part 2 also contains provisions for introducing food hygiene information scheme (section 33) and provisions for regulating animal feeding stuffs. These provisions provide enabling powers for these to be introduced by regulations. The costs associated with these are considered below, in the Secondary Legislation section.

### **Costs on the Scottish Administration**

50. The only significant costs on the Scottish Administration from these provisions will be in respect of raising awareness of the implications with food businesses and in providing authorised officers with training. The notification will be through food law guidance, and the cost of this is estimated to be around £50,000, based on the costs of raising awareness of other changes the FSA has recently handled. The cost for training will be included within the current on-going training programme currently provided for authorised officers. These costs will be met from within the FSS budget.

### **Costs on local authorities**

51. There will be very little additional cost on local authorities associated with the detention or removal of food which does not comply with food information law. The cost of seizing and removing food may be on average around £700 per incident and the cost of detaining it could be £300 per incident. Detention has a lower cost as the food remains with the business operator. These are the averages reported by local authorities and the FSA which are currently used to estimate costs for the removal or detention of food which is unsafe.

52. However, in practice there is unlikely to be any significant cost. There were 24 seizures for food safety reasons in 2012/13 by local authorities. Almost all resulted in voluntary surrender at no cost. There were 20 incidents of food standards breaches in the same period and these also resulted in voluntary surrender.<sup>14</sup>

53. There is no anticipated significant additional cost to local authorities associated with the new duty to report non-compliance with food information.

### **Costs on other bodies, individuals and businesses**

#### *Other bodies*

54. The provisions in Part 2 of the Bill have no direct financial implications for other bodies.

---

<sup>14</sup> Figures based on joint FSA and local authority estimates.

### *Business*

55. Costs to business associated with the new power of seizure etc. and the duty to report non-compliance will only fall to businesses which contravene food information law. There will be no costs for compliant businesses.

### *Individuals*

56. The provisions in Part 2 of the Bill have no direct financial implications for individuals.

## **PART 3: ADMINISTRATIVE SANCTIONS**

57. Part 3 of the Bill contains provisions for administrative sanctions as an alternative to seeking prosecution for relevant offences. The administrative sanctions are fixed penalty notices and compliance notices. These are intended to simplify and streamline the food regulation process. The compliance notice is intended for minor transgressions as a less severe level of sanction. For more serious offences the option is created here to apply fixed monetary penalties as an alternative to prosecution for breaches of food law.

58. This will reduce the effort and costs of seeking prosecution through the courts, relieving the burden on courts and offering speedier resolution.

### **Costs on the Scottish Administration**

59. Fixed monetary penalties would cost around £50,000 to implement as a one-off expense for training and forms. This estimate is based on experience at the FSA of introducing other changes to practice. This would be made up of spending on a small number of awareness events (could cost around £30,000) and developing notices for administrative sanctions (could cost around £20,000). This cost will be off-set over time by consequential savings that will be made by avoiding prosecution (see below).

60. There are around 15 reports made to the Procurator Fiscal on food hygiene or food standards each year<sup>15</sup>. Almost all result in a guilty verdict. The costs to the Scottish Court Service and to the Crown Office and Procurator Fiscal Service are around £1,200 and £600 per case respectively. Assuming these average costs and that there are around 15 reports and prosecution per year, applying the new sanctions instead could save the Scottish Administration around £10,200 each year.

61. There will be little by way of on-going costs, other than the production of notices. Administration for the sanctions scheme will largely be covered by local authorities. Income which arises from any monetary penalties imposed will be paid to FSS who will transfer the money annually to the Scottish Ministers.

62. The level of penalty and the offences to which penalties will be deemed appropriate will be set by regulations and not in the Bill. So any estimate of income from penalties must be regarded as speculative at this stage.

---

<sup>15</sup> Based on recent figures from FSA

63. However, for the purposes of illustration, assuming the average penalty was to be £250 and assuming that there were even just 15 offences found per year (although it is very unlikely the number would be anywhere as low as that) the income would be £3,750 per year. However, if the average penalty set as high as £2,500 (which would be within the range set in the Bill) the income could be £37,500 per year.

### **Cost on local authorities**

64. The current cost to local authorities for bringing each report is around £1,700. Again assuming there are 15 reports and prosecutions per year, it is estimated that the new sanctions will save local authorities £25,500 per year.

65. The introduction of administrative sanctions will cost local government a one off sum of around £25,000 for familiarisation and forms. It is anticipated this will be absorbed into existing work streams. The complexity of the reporting and prosecution process for the 15 reports made per year at the moment is a significant cost to local authorities. It would not be unreasonable to assume that transferring that resource to the administration of a relatively seldom used administrative sanction option could be achieved without any significant additional overall cost.

66. No significant net impact on costs is therefore anticipated for local authorities.

### **Costs on other bodies, individuals and businesses**

#### *Other bodies*

67. The provisions in Part 3 of the Bill have no direct financial implications for other bodies.

#### *Business*

68. The introduction of administrative sanctions to take the place of criminal prosecutions will reduce the costs on businesses associated with court proceedings. As long as food business operators comply with existing food safety, hygiene and standards they should not incur penalty costs.

#### *Individuals*

69. The provisions in Part 3 of the Bill have no direct financial implications for individuals.

## **SECONDARY LEGISLATION**

### **Food hygiene information scheme**

70. Section 33 in Part 2 of the Bill includes an enabling power for the Scottish Ministers to create a mandatory food hygiene information scheme in Scotland by regulations made under the Food Safety Act 1990.

71. The scheme will include a requirement that Scottish food authorities issue a certificate on food hygiene to food businesses, which in turn will be required by existing powers to display the certificate. It is intended that the regulations will impose a requirement on food authorities to

inspect food businesses for the purposes of issuing and re-issuing a certificate in accordance with a procedure to be set out in the regulations.

72. The power will also provide the opportunity for consultation on providing the option to require re-inspections where requested by a food business and under what conditions such a request may be fulfilled.

73. Consultation will include thorough cost analysis. It would not be possible to give accurate costs for the scheme without consultation and further development. However, for the purposes of this Financial Memorandum the following costs could be indicative estimates. Costs are likely to fall to:

- (a) local authorities
- (b) food business operators
- (c) the Scottish Administration.

#### *Costs on local authorities*

74. The costs associated with informing businesses will fall to local authorities. Using experience from other mailshots it is estimated that there will be around £20,000 of mailing and £5,000 cost for administration of the scheme in the first year spread across all local authorities.

75. On-going running costs, taking account of the number of new food businesses that start up each year in Scotland are likely to be also around £25,000. However, almost all local authorities already operate the voluntary scheme and so will have been spending sufficient level to maintain that. Therefore it is thought that there should be very little running cost required – recurrent costs should be met from local authorities' existing resources.

#### *Costs on food business operators*

76. Food business operators must already comply with the existing legislation relating to hygiene standards and a rating is already provided as part of the existing process. As this option proposes creating a similar (but mandatory) scheme it is considered that there will be no additional costs to food business operators associated with the rating of the business. Similarly, the additional costs to businesses associated with the physical process of displaying the rating is expected to be minimal.

#### *Costs on the Scottish Administration – including Food Standards Scotland (FSS)*

77. The most significant cost is likely to relate to marketing. The costs for marketing the scheme could be as high as £100,000. This would be a matter for FSS and would have to be met from existing resources. The next most significant cost would be training for local authority staff. Early estimates suggest this could be around £50,000, based on the costs of training for introducing other recent changes.

78. Food hygiene stickers will have to be issued to businesses at a cost of around £3,000 (including postage and administration costs). The cost of the sticker will fall to FSS.

### **Regulation of animal feeding stuffs**

79. Section 34 in Part 2 of the Bill also includes an enabling power for the Scottish Ministers to make provision for the regulation of animal feeding stuffs. This power is a fall-back power only, and it is only included in the Bill to guard against any unforeseen circumstances in which other existing animal feeding stuffs regulations based on European requirements are insufficient for Scotland's needs. This power has been in place since 1999 but has never been used and so no costs have ever arisen as a result. So it is unlikely there will be financial costs associated with this power.

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

On 13 March 2014, the Cabinet Secretary for Health and Wellbeing (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Food (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

---

## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

On 13 March 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Food (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Food (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 13 March 2014*

# **FOOD (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -  
[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS  
Group Scotland.

ISBN 978-1-78392-992-4