

GOOD FOOD NATION (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Good Food Nation (Scotland) Bill introduced in the Scottish Parliament on 7 October 2021.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 4-FM);
 - a Policy Memorandum (SP Bill 4-PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 4-LC);
 - a Delegated Powers Memorandum (SP Bill 4-DPM).
3. 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.
4. 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

5. The purpose of the Bill is to provide for the Scottish Ministers and certain public bodies (in the first instance, local authorities and health boards) to produce good food nation plans and to make provision as to the effect of those plans, namely that the Scottish Ministers and specified public bodies must have regard to the plans when exercising certain functions. These plans will set out main outcomes, indicators and policies in relation to food-related issues. A definition of “food-related issue” is provided in section 13 of the Bill and it may therefore be useful to read that section (and paragraphs 28 to 30 of these Notes) at this stage. There will be duties on the Scottish Ministers and the public bodies to have regard to the plans when carrying out certain functions, as well as duties to report on progress in relation to the plans.

NATIONAL GOOD FOOD NATION PLAN

Section 1: Requirement to produce plan

6. Section 1 imposes a duty on the Scottish Ministers to publish and lay before the Scottish Parliament a national good food nation plan, within 12 months of the section coming into force.

7. Subsections (3) and (4) set out what the plan must and may contain. Subsection (5) requires the Scottish Ministers, in determining the content of the plan, to have regard to the scope for food-related issues to affect outcomes in relation to social and economic wellbeing, the environment, health and economic development.

Section 2: Preparation of plan: consultation

8. Section 2 imposes a duty on the Scottish Ministers to consult those who the Scottish Ministers consider appropriate on a draft of the national good food nation plan and have regard to any consultation responses.

Section 3: Preparation of plan: consideration of international instruments

9. Section 3 imposes a duty on the Scottish Ministers to have regard, to the extent specified, to certain international instruments in preparing the national good food nation plan:

- Article 11 of the International Covenant on Economic, Social and Cultural Rights provides that a right to an adequate standard of living includes, among other things, adequate food;
- Article 24(2)(c) of the United Nations Convention on the Rights of the Child (the “UNCRC”) sets out the right of a child to the enjoyment of the highest attainable standard of health which requires those bound by the UNCRC to combat disease and malnutrition, including through the provision of adequate nutritious foods;
- Articles 27(1) and (3) of the UNCRC require those bound by the UNCRC to recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and to take appropriate measures to assist parents and others responsible for the child to implement this right and, in case of need, provide material assistance and support programmes, particularly with regard to, for example, nutrition;
- Article 12(2) of the Convention on the Elimination of All Forms of Discrimination Against Women requires those bound by the Convention to ensure women are provided with, among other things, adequate nutrition during pregnancy and lactation.

For further reference, the full titles of those instruments are set out in section 14.

10. The Scottish Ministers may by regulations modify the list of international instruments so as to add, remove or vary a reference to an international instrument. Provisions which may be made by such regulations include provisions to limit the extent of an international instrument (similar to the way in which, for example, the instrument referred to in subsection (2)(a) is limited to the extent that it concerns adequate food) and to make clear the version of the

international instrument referred to (if, for example, an earlier version of an international instrument did not cover the food-related issue in the terms intended to be had regard to in preparing the national good food nation plan, the version intended to be referred to, which was in operation at a specific date, could be specified in regulations).

11. A definition of “international instrument” is contained in section 14 and includes any treaty, convention, international legislative instrument or guidance issued by an organisation governed by international law. It includes any provision of such an instrument, so for example it would be possible to specify one article of an international treaty to which the Scottish Ministers must have regard.

Section 4: Effect of plan

12. The Scottish Ministers must have regard to the national good food nation plan when exercising certain functions. Those functions, or the description within which they fall, will be specified in regulations. For example, a description might be the “provision of food in schools” or “all functions of the Scottish Ministers relevant to the provision of food in schools in the Education (Scotland) Act 1980”. This would mean that when exercising any function in relation to the provision of food in schools, or any function of the Scottish Ministers relevant to the provision of food in schools in the Education (Scotland) Act 1980, the Scottish Ministers would have to have regard to the national good food nation plan.

Section 5: Reporting

13. The Scottish Ministers must publish a report on progress against the indicators set out in the national good food nation plan as soon as practicable after each period of 2 years, beginning on the date the first plan is published and laid before the Scottish Parliament. The timing of the reporting requirement runs independently from the timing of the requirement to review and revise the plan provided for in section 6.

Section 6: Review and revision of plan

14. The Scottish Ministers must review the national good food nation plan every 5 years, beginning on the date the first plan is published and laid before the Scottish Parliament. The plan may be revised following a review (but does not have to be).

15. The provisions of section 1 on the content of the plan, section 2 on consultation and section 3 on the regard to be given to international instruments when preparing the plans apply to the revision of the plan in the same way as they do to preparation of the initial plan.

16. The timing of the review requirement runs independently from the timing of the requirement to report on progress provided for in section 5.

17. For example, the Scottish Ministers must review the plan before the end of year 5. The Scottish Ministers will have to report on progress against the indicators set out in the plan (as revised following that review) as soon as practicable after the end of year 6, and again as soon as practicable after the end of year 8. A further review of the plan must be undertaken before the

end of year 10 with the report on progress on that plan (as revised) due as soon as practicable after the end of year 10.

GOOD FOOD NATION PLANS OF PUBLIC BODIES

Section 7: Requirements to produce plans

18. Section 7 imposes a duty on each relevant authority to publish a good food nation plan. A “relevant authority” is a health board, a local authority or a public authority specified by the Scottish Ministers in regulations.

19. Section 14 defines a health board in terms of section 2(1)(a) of the National Health Service (Scotland) Act 1978, under which the area health boards were constituted for the purpose of exercising functions relating to the health service and making arrangements for the provision of healthcare services. The definition does not include special health boards constituted under section 2(1)(b) of the 1978 Act.

20. The term “local authority” is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (which applies to the Bill) as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

21. The Scottish Ministers may by regulations specify other public authorities to which the duty will apply. Section 14 defines “public authority” for this purpose. Any person who is a part of the Scottish Administration would constitute a public authority for the purposes of the Bill. The definition also extends to include any public body (except the Scottish Parliamentary Corporate Body), public office or holder of such an office with functions (in each case) which relates only to matters which are not reserved under the Scotland Act to the UK Parliament or which has mixed functions (i.e. some which relate to reserved matters and some which relate to matters which are not reserved).

22. The relevant authority must publish its good food nation plan within 12 months of this section coming into force. In the case of a public authority specified by the Scottish Ministers in regulations, the regulations which impose the duty for that authority to publish a good food nation plan will also specify the period by the end of which the plan must be published.

23. Subsections (4) to (6) set out what the plan must and may contain, and require the relevant authority, in determining the content of its plan, to have regard to the scope for food-related issues to affect outcomes in relation to social and economic wellbeing, the environment, health and economic development.

Section 8: Preparation of plans: consultation

24. Section 8 imposes a duty on relevant authorities to consult those the relevant authority considers appropriate on a draft of their good food nation plan and have regard to the consultation responses.

Section 9: Preparation of plans: consideration of national plan

25. Each relevant authority must have regard to the national good food nation plan when preparing their good food nation plan. This will mean that the relevant authorities have to have regard to the most recent national good food nation plan.

Section 10: Effect of plans

26. Each relevant authority must have regard to its good food nation plan when exercising certain functions. Those functions, or the description within which they fall, will be specified in regulations. For example, a description might be the “provision of food in schools” or “all functions of the local authority relevant to the provision of food in schools in the Education (Scotland) Act 1980”. This would mean that when exercising any function in relation to the provision of food in schools, or any function of the local authority relevant to the provision of food in schools in the Education (Scotland) Act 1980, the local authority would have to have regard to its good food nation plan.

Sections 11 and 12: Reporting, review and revision of plans

27. These sections mirror the reporting and review requirements in relation to the national good food nation plan set out in sections 5 and 6 for relevant authorities’ good food nation plans.

Section 13: Meaning of “food-related issue”

28. This section defines “food-related issue” with reference to the definitions of “food” and “food matter” in sections 53(1) and 54 respectively of the Food (Scotland) Act 2015.

29. Section 53(1) refers to the definition of “food” in [Regulation \(EC\) No. 178/2002](#) as at 7 December 2004¹. This means that the definition is consistent with European legislation and with the interpretation of “food” set out in various sections of schedule 5 of the Scotland Act 1998.

¹ “food”...means any substance or product, whether processed or partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

“Food” includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

“Food” shall not include:

- (a) feed;
- (b) live animals unless they are prepared for placing on the market for human consumption;
- (c) plants prior to harvesting;
- (d) medicinal products within the meaning of Council Directives 65/65/EEC and 92/73/EEC;
- (e) cosmetics within the meaning of Council Directive 76/768/EEC;
- (f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC;
- (g) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;
- (h) residues and contaminants.

30. Section 54 defines “food matter” as any matter connected with health which may arise in relation to the consumption of food, or other interests of consumers in relation to food.

Section 15: Ancillary provision

31. Section 15 provides for the Scottish Ministers to be able to make by regulations any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it. Such regulations may modify any legislation, including this Act once enacted.

Section 16: Regulations

32. Section 16 provides for the powers of the Scottish Ministers in the Bill to make regulations to include the power to make incidental, supplementary, consequential, transitional, transitory or saving provision, and to make different provision for different purposes. Subsections (2) to (5) make provision about the parliamentary procedure which applies to different sets of regulations. Further information on the regulation-making powers contained in the Bill can be found in the Delegated Powers Memorandum published with these Explanatory Notes.

Section 17: Commencement

33. Section 17 provides for sections 13, 14, 16, 17 and 18 to come into force the day after Royal Assent. The Scottish Ministers may commence the other provisions of the Bill by regulations. The power to make commencement regulations includes a power to make different provision for different purposes, and to make transitional, transitory or saving provision.

Section 18: Short title

34. Section 18 provides for the short title of the Bill, by which it may be cited.

This document relates to the Good Food Nation (Scotland) Bill (SP Bill 4) as introduced in the Scottish Parliament on 7 October 2021

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