

Consultation on Good Food Nation Proposals for Legislation

December 2018



Scottish Government
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FOREWORD



In September 2018, we published our “Good Food Nation Programme of Measures” which highlights the many different activities we are doing, or plan to do, across Government to further our vision and aims as a Good Food Nation.

The Programme of Measures is a document which confirms this Government’s continuing commitment to Scotland becoming a Good Food Nation where the people of Scotland have improved access to, and understanding of, the benefits of healthy local foods; our progressive food industry is clearly operating in a sustainable way; and our reputation as a Good Food Nation is widely understood and used as an example from which other countries can learn. In other words, we build on our already world-renowned reputation of our food and drink industry and ensure that the people of Scotland also benefit from, and understand, the quality produce on their doorsteps.

We are well on our way to becoming a Good Food Nation and as the Programme of Measures demonstrates, legislation is not essential in order to deliver action. We acknowledge, however, that there is value in having legislation to underpin the considerable work that is already being done to realise our Good Food Nation goals. During a parliamentary debate in September 2018, we undertook to introduce legislation. This consultation takes forward that promise.

This consultation sets out our proposals for legislation around the Good Food Nation ambition. I am keen to hear your views on our proposals and invite you to respond to this consultation.

Fergus Ewing

Cabinet Secretary for the Rural Economy

December 2018

PART 1 – GOOD FOOD NATION POLICY

The National Food and Drink Policy – Becoming a Good Food Nation was published in 2014. The policy set a new and exciting vision for Scotland, by 2025, to be a Good Food Nation where people from every walk of life take pride and pleasure in, and benefit from, the food they produce, buy, cook, serve, and eat each day.

The Good Food Nation vision recognised that change is required to achieve this ambitious aim. The aim was to work to ensure that:

- It is the norm for Scots to take a keen interest in their food, knowing what constitutes good food, valuing it and seeking it out whenever they can.
- People who serve and sell food – from schools to hospitals, retailers, cafes and restaurants – are committed to serving and selling good food.
- Everyone in Scotland has ready access to the healthy, nutritious food they need.
- Dietary-related diseases are in decline, as is the environmental impact of our food consumption.
- Scottish producers ensure that what they produce is increasingly healthy and environmentally sound.
- Food companies are a thriving feature of the economy and places where people want to work.
- Other countries look to Scotland to learn how to become a Good Food Nation.

To help develop this policy, a non-statutory Scottish Food Commission was established in 2015 to provide advice to the Cabinet Secretary on the existing and future challenges facing Scotland's food culture and how these might be addressed. The Food Commission was also tasked with advocating the importance of good food to our health and wellbeing, environment and quality of life.

The Food Commission worked hard over three years to deliver on its remit.

It was recognised that legislation might be one way to achieve the culture shift required to help Scotland become a Good Food Nation. The Scottish Government's Programme for Government 2017-18 therefore included a commitment to "consult on proposals for the Good Food Nation Bill". Scottish Government is grateful to members of the Food Commission who worked hard to deliver on their objectives, culminating in the Good Food Nation Summit in September 2017, which brought together representatives from different sectors to discuss the potential scope and nature of legislation and inform the public consultation.

The Food Commission used the considerable output from the Summit, together with knowledge from deliberations of the Food Commission over its lifetime, to develop recommendations for a Good Food Nation Bill. These recommendations were submitted to Scottish Government in December 2017.

PART 2 – PROGRAMME OF MEASURES AND COMMITMENT TO LEGISLATION INCLUDING ON THE RIGHT TO FOOD

Programme of Measures

Scottish Ministers remain committed to the concept and reality of Scotland as a Good Food Nation. As work on the Good Food Nation policy has progressed, it has become increasingly clear that Ministers have already driven and overseen the development of a wide range of policies across Government that are contributing to the delivery of the Good Food Nation ambition.

A great deal of work is already happening now to make a real and positive difference to the lives of the people of Scotland: helping to improve their access to, and understanding of, the benefits of healthy local foods; ensuring sustainability of our food industry; and looking to grow Scotland's reputation as a Good Food Nation from which other countries can learn.

Scottish Ministers published the "Good Food Nation Programme of Measures"¹ on 11 September 2018. This highlights the significant range of work that is already being done – or is planned - to develop the Good Food Nation ambition in Scotland across the five key areas identified by the Food Commission, i.e. Health, Social Justice, Knowledge, Environmental Sustainability and Prosperity.

Commitment to legislation

The Good Food Nation Programme of Measures is evidence that the delivery of policy actions can often mean quicker and more tangible results than are possible through legislation. There is more to be done and so we will continue to take forward work that does not require legislation but is making a real difference to the lives of people in Scotland.

Whilst legislation is not the **only** way to make progress, Scottish Ministers recognise that there is a clear place for legislation to underpin the significant work already being done. Ministers made this point strongly during a debate in the Scottish Parliament on 13 September 2018 to celebrate Scotland's food and drink success story. The nature of the debate underlined the importance of food and drink in Scotland to the economy, to the environment and to all of us.

This consultation invites your views on the means to achieve the outcomes we are seeking in relation to the Good Food Nation ambition, including through legislation. The consultation will inform our further development of policy in this important and cross-cutting policy area.

Right to food

There has been long-standing interest amongst human rights campaigners and civil society organisations regarding the possibility of "incorporating" the right to food into domestic law.

¹ <https://beta.gov.scot/publications/good-food-nation-programme-of-measures/>

The UK, on becoming a Party to the International Covenant on Economic, Social and Cultural Rights² in 1976, agreed to recognise the right of everyone to an adequate standard of living for themselves and their families, including adequate food.

Scottish Ministers undertook, in response to recommendations from the Short Life Working Group on Food Poverty in 2016, to explore whether a right to food might potentially be reflected in domestic legislation.

This consultation proposes that the legislation which establishes the Good Food Nation framework will have regard to the international human rights framework, in line with Scotland's well-established human rights obligations. Rather than seeking to incorporate a right to food in isolation from any larger package of human rights measures, the Good Food Nation framework will focus on embedding processes for ensuring that the substance of the right to food has effect as a matter of everyday good practice.

The option of exploring a right to food which is directly enforceable as a matter of Scots law has not been ruled out. It is best considered, however, as part of the wider work on incorporation currently being done by the First Minister's Advisory Group on Human Rights Leadership. The Group reported in December 2018 and full account will be taken of its recommendations, including in relation to incorporation of the right to food.

We are, of course, fully committed to ensuring that Scotland respects, protects and fulfils the human rights set out in United Nations and other international treaties. This includes practical action which tackles both the symptoms and the causes of food insecurity.

Scottish Ministers have already sought to embed food rights at the heart of public policy by continuing to challenge directly the causes of food insecurity. This includes mitigating the impact of UK welfare reform policies such as the bedroom tax, promoting the living wage, and by embedding a rights-based approach in the design and delivery of our new Scottish social security system. Through the Fair Food Transformation Fund, we are supporting communities to put dignity at the forefront of responses to food insecurity. Our approach is further informed by our vision for a Fairer Scotland.

In addition, human rights and the UN Sustainable Development Goals have now been integrated within Scotland's new National Performance Framework. This ensures that human rights, equality and specific rights such as the right to food will be increasingly located at the centre of policy-making and delivery, not only for the Scottish Government but also for the wider public sector.

² Article 11, International Covenant on Economic, Social and Cultural Rights (ICESCR): <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

PART 3 – PROPOSALS FOR LEGISLATION

Framework legislation - background

The first recommendation of the Scottish Food Commission in their report to Scottish Ministers, was that framework legislation should be the basis of Good Food Nation legislation. Scottish Ministers agree.

Scottish Ministers believe that legislation to underpin work on the Good Food Nation ambition should be simple and clear. The focus should be on a straightforward framework placing responsibilities on Scottish Ministers and selected public bodies with regard to food, in line with the principles and practices of the Good Food Nation policy.

The Food Commission also suggested placing similar requirements on private food-related businesses. We have considered this proposal carefully and we are concerned that it would place significant additional costs on businesses operating in Scotland and unfairly disadvantage them compared to their competitors. The conclusion is that the requirement to set out a statement on food policy should not be imposed on private companies but should be limited to Scottish Ministers and specified public bodies. While Scottish Ministers and specified public bodies would provide a public lead on the delivery of the Good Food Nation policy, in doing so they would provide an example for other organisations, including private businesses, to follow.

Framework legislation - outline

The proposal is that whilst the general framework principles would be set out in primary legislation, the detailed provisions would be contained in secondary legislation, making it easier to amend and update. The statutory duties would operate along the following lines (with much of this detail being for secondary legislation):

Scottish Ministers

- Requirement for Scottish Ministers to set out a statement of policy on food.
- The statement of policy would be required to cover food production and consumption issues relating to, for example and where applicable, the growing, harvesting, processing, marketing, sale, preparation and consumption of food, and disposal of waste arising from this; and access to affordable, local, nutritious and culturally appropriate food, and food in the public sector. Compatibility with relevant EU obligations would be essential. Particular account would need to be taken of the implications of Brexit, not just in relation to anticipated impacts on producers but in relation to the rights, well-being and food security of the general public.
- Scottish Ministers would be required, in setting out their statement of policy, to include indicators or measures of success. This could draw on the work of the

Scottish Food Commission and Scottish Government.³ A number of food-related national indicators already form part of the refreshed National Performance Framework and could be further strengthened in this context.

- Scottish Ministers would be required, in the exercise of their functions, to have regard to the statement of policy on food.
- Scottish Ministers would be required to consult on a draft statement and to have regard to the consultation responses.
- Scottish Ministers would be required to publish the statement of policy and to lay it before the Scottish Parliament, for information rather than approval.
- Scottish Ministers would be required to review the statement of policy every 5 years and any revision would be subject to the same requirements as the initial statement.
- Scottish Ministers would be required to report every two years on implementation of the policy and to set out information on the indicators or measures of success. This would include actions taken to give effect to international obligations and implement good practice, and should address measures of availability; stability (of food supply); accessibility; sustainability; and adequacy.⁴ This report would be published and laid before the Scottish Parliament in order to ensure transparency and accountability.
- There would be a statutory requirement to have regard to relevant international obligations and guidance. This should apply when developing the statement of policy, when exercising relevant functions and in reporting on implementation of the policy. Relevant instruments and guidance would be specified in secondary legislation but would include, where appropriate, relevant aspects of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵.
- It would also be possible to specify guidance such as the *Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* published by the Food & Agriculture Organization of the United Nations in 2004.

Specified public authorities

- Similar requirements would be placed on specified public authorities with relevant food-related functions, possibly including local authorities and Health Boards.
- Specified public authorities would be required to set out a statement of food policy (including indicators or measures of success); have regard to specified

³ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/06/indicators-good-food-nation/documents/13972aef-bfa7-431a-8d7a-c9fe18050b62/13972aef-bfa7-431a-8d7a-c9fe18050b62/govscot%3Adocument>

⁴ Food and Agriculture Organization of the United Nations <http://www.fao.org/3/a-i3448e.pdf>

⁵ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>. The UK, on becoming a Party to the International Covenant on Economic, Social and Cultural Rights in 1976, agreed to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food.

international instruments in doing so; have regard to that statement of policy in the exercise of certain functions; and report on progress to Scottish Ministers. The statement of policy might include the origin and sourcing of food by the public authority; food waste; the emphasis on balanced and healthy food; access to affordable food; training in food preparation and purchase etc.; the specific approach taken in e.g. schools (including food education) and nursery schools, hospitals and public buildings.

Scottish Ministers and public authorities

- Scottish Ministers and specified public bodies would be required to collaborate to ensure a joined up approach to delivery of a Good Food Nation in Scotland.

The aim is to ensure an open and, where necessary, joined up approach to delivery of a Good Food Nation in Scotland.

Consultation question 1:

To what extent do you agree with the framework proposals for Ministers and public authorities to prepare statements of policy, have regard to them in the exercise of relevant functions, and report on implementation, with regard to international obligations and guidance?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer.

Consultation question 2:

Whilst we do not plan to require all sectors to prepare statements of policy on food, they do all have a role to play in achieving our Good Food Nation ambition. To what extent do you agree that Government should encourage and enable businesses in particular to play their part?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer.

Oversight of the Good Food Nation policy area

Good Government requires strong accountability and therefore it is important to ensure appropriate accountability for the performance of statutory functions that might be placed on Scottish Ministers and specified public authorities. This is the reason for proposing a requirement for regular reports to be made to the Scottish Parliament, and to Scottish Ministers in the case of specified public authorities.

The proposal is that Scottish Ministers and specified public authorities would be required to publish a statement of policy. Scottish Ministers would lay their statement before the Scottish Parliament and specified public authorities would submit their statements to Scottish Ministers. Scottish Ministers and specified public authorities would also be required to report every two years on implementation of the policy, including setting out information on the indicators or measures of success. This report would be published and laid before the Scottish Parliament, or submitted to Scottish Ministers in the case of specified public authorities.

We do not see value in establishing an independent statutory body for the purpose of overseeing the Good Food Nation policy. Scottish Ministers have a presumption against the establishment of new statutory bodies in all but exceptional cases. This is not such a case. We consider that the establishment of a new body is unnecessary given the arrangements explained above and it would bring additional cost and bureaucracy.

Consultation question 3:

To what extent do you agree with the proposed approach to accountability of Scottish Ministers and specified public authorities?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer.

Other provisions

Scottish Ministers were grateful to the Scottish Food Commission for their work and their recommendations for legislation. Full consideration has been given to the recommendations, many of which are already being taken forward through policy developments across Government. The Good Food Nation Programme of Measures confirmed the extent of that cross Government work.

Where legislation is potentially required to deliver policy intentions in areas which could be seen to contribute to the Good Food Nation ambition, for example in relation to health, diet or food waste, then Scottish Ministers believe this should be taken forward through targeted legislation rather than the framework legislation proposed in this consultation. The detail of any targeted legislation would be subject to full consultation at the appropriate time.

This approach recognises the wide range of policy developments and legislation that can be said to deliver results that impact on the Good Food Nation vision. This does not diminish the value of legislative provisions and it provides a flexibility that would not be possible through the development of a single piece of legislation.

Consultation question 4:

To what extent do you agree with the proposal for targeted legislation relevant to specific policy areas as an alternative to a single piece of legislation?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your answer.

Evidence base

The Good Food Nation Programme of Measures published in September acknowledged the importance of understanding what works in terms of achieving our Good Food Nation ambition. Separately, therefore, we will be considering how best to build an appropriate evidence base.

PART 4 – NEXT STEPS

Once we have received responses to this consultation, the results will be analysed and will inform the further development of our plans for policy action and legislation. The intention then will be to prepare draft provisions for inclusion in legislation.

Responding to this Consultation

We are inviting responses to this consultation by 29th March 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/food-and-drink/good-food-nation/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 29th March 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Good Food Nation
Scottish Government
Food and Drink Division
Saughton House
Broomhouse Drive
Edinburgh, EH11 3XD

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. 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 is 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.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

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 at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at goodfoodnation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. 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

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.



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