

## Health, Social Care and Sport Committee, 24 January 2023

### Follow-up Information from Food Standards Scotland

At the Hearing on 24<sup>th</sup> January, Food Standards Scotland said it would provide the Committee with further information on a number of issues. This information is provided below.

#### 1. **How the discrimination provisions of the UK Internal Market Bill might make it difficult or impossible to enforce divergence in food standards between the different nations of the UK.**

Part One of the Internal Market Act 2020 introduces a new market access regime for goods in the UK. The regime is based on what are known as the market access principles which comprise:

1. **mutual recognition** – any good that meets regulatory requirements in one part of the UK can be sold in any other part of the UK, without having to adhere to a corresponding relevant regulatory requirement in that other part, including where there are differences between relevant requirements within the UK
2. **non-discrimination** - a prohibition on direct or indirect discrimination based on treating local and incoming goods differently

Taken together these principles mean that unless an exclusion is agreed to by the UK Government, or a specific exclusion as set out in the Act already applies, then, where Scottish policy diverges from other parts of the UK, it would not be possible to enforce a regulatory requirement in Scotland for food, or indeed any other products sold in Scotland were they to have been produced or imported into another part of the UK first where regulations are different.

The **mutual recognition principle** provides that if a good is produced or imported into one part of the UK and can be lawfully sold in that part, it can be sold across the UK regardless of any differences between UK nations in regulations relating to that good.

If a good has not been wholly produced or made within one part of the UK, it is deemed to have been produced in a relevant nation where the most recent significant, regulated production step occurred. A step is considered by the Act to be “significant” if it is significant in terms of character and purpose of the goods. For example, processing and harvesting, but not packaging and labelling.

A good is deemed to be “imported into” the geographic location where the good first enters the UK.

There are certain conditions that dis-apply the mutual recognition principle to goods and these are listed at [Schedule 1](#) of the Act. There is an exclusion where

a serious food safety risk has been identified and certain conditions have been met.

The **non-discrimination principle** is that the sale of goods in one part of the UK should not be affected by relevant requirements that directly or indirectly discriminate against goods that have a relevant connection with that part of the UK. The mutual recognition principle trumps the non-discrimination principle (so if the mutual recognition principle applies, then the non-discrimination principle will not).

Like goods, if it applies, this principle means relevant requirements have no effect on the sale of the goods.

### **Direct discrimination**

Direct discrimination is defined as a relevant requirement that applies differently to goods coming from other parts of the UK to the goods coming from the receiving part of the UK, and in a way that puts incoming goods at a disadvantage compared to local goods. A disadvantage is identified if the requirement makes it more difficult or less attractive to sell or buy the goods or do anything in connection with their sale.

### **Indirect discrimination**

The Act states that a relevant requirement discriminates against incoming goods *indirectly* if the requirement does not directly discriminate, but does apply to incoming goods in a way that puts those goods at a competitive disadvantage to goods originating in the receiving part, has an adverse market effect, and cannot reasonably be considered a necessary means of achieving a legitimate aim.

### **Legitimate Aim and exclusions**

Relevant requirements that are “reasonably” considered to be necessary to achieve “a legitimate aim” are not in scope of the non-discrimination principle.

A legitimate aim, for non-discrimination (this does not apply to the mutual recognition principle) is defined as:

- the protection of the life or health of humans, animals or plants
- the protection of public safety or security

It is our view that an evidenced food safety or standards intervention would, in certain cases, be considered a “legitimate aim” thus disapplying the non-discrimination principle in the Act. However, the market access principles taken together mean that there is less legal certainty as to the standards that apply to specific products and at worst there is the potential for standards agreed in law by the Scottish Parliament to be set aside altogether if lower standards are agreed in the rest of the UK. Should Scottish standards be unenforceable in practice for incoming goods, an exclusion to the Act would be required to enable policy set in Scotland to operate as intended. However, introducing new exclusions is a matter for UK Ministers: only UK Ministers have the power to alter what is in and out of scope of the market access principles of the Act.

**2. What is Food Standards Scotland doing or what could it do in the future to promote digital applications that help consumers with carb-counting and, with respect to those with diabetes, dose adjustment for normal eating.**

Food Standards Scotland has a statutory duty to improve the extent to which members of the public have diets which are conducive to good health. To achieve this, we use our expertise, influence and data to work with partners and drive preventative measures to improve the Scottish diet. We do not have a role in treating the impact of poor diet, including conditions such as type 2 diabetes. We would advise consumers who are living with type 2 diabetes (or other chronic conditions) to seek advice and support from their GP or appropriate health professional.

Our Eat Well, Your Way resource also signposts consumers to where they can find additional advice and support around diabetes, cancer and heart health here: [Additional support | Eat well, your way \(eatwellyourway.scot\)](https://eatwellyourway.scot)

**3. Food Standards Scotland's Sustainability Plan.**

The Committee asked to see our plan which is available in the link below.

[FSS Sustainability Plan.pdf \(foodstandards.gov.scot\)](https://foodstandards.gov.scot/FSS_Sustainability_Plan.pdf)

**4. What is Food Standard Scotland's most up-to-date advice on red meat consumption?**

The Scottish Dietary Goals (SDGs) for red and red processed meat states:

- Average intake of red and processed meat to be pegged at around 70g per person per day.
- Average intake of the highest consumers of red and processed meat (90g per person per day) not to increase.

The Scottish dietary goal for red and red processed meat is underpinned by evidence from the Scientific Advisory Committee on Nutrition (SACN), published in 2010, to limit intakes of these foods to 70g per day, with the purpose of reducing the risk of colorectal cancer.

More recent evidence from the World Cancer Research Fund further strengthened the link with colorectal cancer and found strong evidence that both red meat and processed meat increases the risk of colorectal cancer.

The 2021 Scottish Health Survey (SHeS) included Intake24 to measure dietary intake in over 3000 adults aged 16+. Based on data from 2021, when a measure

of total diet (Intake24) was included in the Scottish Health Survey, total population intakes of red and red processed meat are around 49g/day.

**5. What is the current situation with respect to different breakfast cereal brands being fortified with certain nutrients – and certain brands failing to meet relevant recommendations in this regard.**

There are no specific requirements for breakfast cereals to be fortified with vitamins and minerals. However, many manufacturers fortify on a voluntary basis and this can vary by product in terms of which vitamins or minerals have been added and how much.

To protect consumers' interests, manufacturers who choose to fortify their breakfast cereal products must follow the requirements set out within Regulation 1925/2006 on the addition of vitamins and minerals and of certain other substances to food. This states that the addition of a vitamin or a mineral to a food shall result in the presence of that vitamin or mineral in the food in at least a significant amount. A "significant amount" is defined as:

- 15 % of the nutrient reference values supplied by 100 g or 100 ml in the case of products other than beverages;
- 7.5 % of the nutrient reference values supplied by 100 ml in the case of beverages; or
- 15 % of the nutrient reference values per portion if the package contains only a single portion.

The nutrient reference values are laid out in Part A of Annex XIII in Regulation 1169/2011 on the provision of food information to consumers.

Consumers can find information on which vitamins or minerals have been added and how much using the information provided on the back of the pack.

**6. What is the position in relation to Gene Editing and its application in Scotland.**

Emma Harper raised a query in relation to Gene Editing and Food Standards Scotland agreed to confirm the position in relation to seeds and agriculture.

The policy responsibility for plants, crops and cultivation sits with Scottish Government (SG). However, retained Regulation (EC) No 1829/2003 on genetically modified (GM) food and animal feed sits with Food Standards Scotland and applies the same definition of genetic modification.

Since leaving the EU, the decision to authorise GM products lies with the respective Ministers in Scotland, England and Wales. In Scotland, these decisions are supported by advice prepared by Food Standards Scotland following a robust risk analysis process.

Currently, products classed as GM would still require to undergo a safety assessment as outlined above before it could be placed on the market in GB. However, as genome editing would be removed from the scope of the current GM regulations in England, SG and Food Standards Scotland are still considering the impacts of the Bill on Scotland, including as a result of the UK Internal Market Act. We have few details from Defra on their plans for implementing the Bill and are yet to fully understand the regulatory regime being developed by the Food Standards Agency, for the authorisation of precision bred food and feed products.

However, there are clearly possible direct impacts on Scotland – such as the potential for genome edited products such as seed, food or animal feed to be sold in Scotland, unlabelled and unauthorised by Scottish ministers. There are also potential indirect impacts, such as additional burdens and risks for Scottish exporters as a result of introducing a different regulatory definition from that of key trading partners such as the EU (who are currently considering their policy position on the use of new genomic techniques).