

EXPLANATORY MEMORANDUM TO
THE FOOD (SCOTLAND) ACT 2015 (CONSEQUENTIAL PROVISIONS) ORDER 2015

2015 No. 444

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This Order is made in consequence of the Food (Scotland) Act 2015 (“the 2015 Act”). The 2015 Act establishes Food Standards Scotland (“FSS”) as a new, independent body which will replace the UK-wide Food Standards Agency (“FSA”) in Scotland. This Order establishes FSS as part of the Scottish Administration.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The 2015 Act received Royal Assent on 13th January 2015. The Food (Scotland) Act 2015 (Consequential Provisions) Order 2015 will be made in exercise of the powers conferred by sections 104, 112(1), 113(5) and 114(1) of the Scotland Act 1998. The instrument is subject to the negative resolution procedure in the UK Parliament.

4.2 As mentioned above, the 2015 Act establishes FSS as the new food safety body to protect consumers in Scotland. The 2015 Act removes the functions of the UK-wide FSA in or as regards Scotland and provides for FSS to assume responsibility for food safety, diet and other interests of consumers in Scotland.

4.3 This section 104 Order is necessary and expedient in consequence of the 2015 Act as the Scottish Parliament does not have the legislative competence to make provisions concerning the membership of the Scottish Administration.

4.4 The Scottish Government is making administrative arrangements to effect the transfer of staff from FSA staff in Scotland to FSS. An important effect of establishing FSS as part of the Scottish Administration is that its staff (including those who were civil servants as staff of the FSA) will be civil servants.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The FSA is a non-ministerial government department of the Government of the United Kingdom. It is responsible for protecting public health in relation to food throughout the United Kingdom and is led by a board appointed to act in the public interest. Its headquarters are in London with national offices in Scotland, Wales and Northern Ireland.

7.2 In 2010, certain aspects of food labelling policy in England were transferred from the FSA to the UK Government's Department for Environment, Food and Rural Affairs (Defra). However, the devolved FSA offices in Scotland, Wales and Northern Ireland continued to be responsible for all labelling and standards policy.

7.3 Similarly in 2010, nutrition policy, including nutrition labelling, in England and Wales was transferred from the FSA to Defra and to the Assembly Government in Wales. The FSA offices in Scotland and Northern Ireland have retained their responsibilities for nutrition policy.

7.4 Following these changes, an independent expert group was convened by Scottish Ministers to consider the need to make further changes to food safety and standards in Scotland. Based on recommendations made by this group, Scottish Ministers took the decision in 2012 to establish a new food safety body for Scotland which will take on the roles and responsibilities of the UK-wide FSA as exercised in Scotland.

7.5 To ensure that the new food safety body is operationally independent of the Scottish Ministers, this Order establishes FSS as part of the Scottish Administration. Ensuring FSS is part the Scottish Administration but not the Scottish Government means that FSS will be independent of the Scottish Government, but accountable to the Scottish Parliament.

7.6 The Crown Suits (Scotland) Act 1857 which provides that the Lord Advocate may raise or defend an action on behalf of any public department is disapplied as regards FSS. This means that the Lord Advocate cannot be sued in place of FSS. This is desirable as it reflects the policy that FSS is part of the Scottish Administration but operates independently from the Scottish Ministers and does not form part of the Scottish Government.

8. Consultation outcome

8.1 Although there has been no public consultation specific to the terms of this Order, the UK Government departments with responsibility for the legislation which this Order

affects have been consulted during the drafting of this Order. All provisions contained in this Order have the approval of the relevant departments.

8.2 With regard to wider consultation, following the changes made at UK level (outlined in section 7 above), an independent expert panel, chaired by the UK's former chief vet, Jim Scudamore, was set up by Scottish Ministers to consider the future delivery of the food standards regime in Scotland. The panel considered the feasibility of establishing a dedicated Scottish food standards agency, and also the merits of establishing a standalone meat inspection delivery service in Scotland. The panel's report, Future arrangements to secure food standards and safety in Scotland, was published in April 2012 and can be viewed here:

<http://www.scotland.gov.uk/Publications/2012/04/6141/0>

8.3 The Scottish Government ran a public consultation on creating a new food body for Scotland from 28th February 2013 to 22nd May 2013. This consultation received 127 written responses. An independent analysis of those responses was published by the Scottish Government and can be viewed here: <http://www.scotland.gov.uk/Publications/2013/08/7854>. Additionally, the Scottish Government held events and had discussions with a range of stakeholders including food industry representatives, public health professionals, consumer representative bodies and third sector bodies whose work touches on food and health. The Scottish Government published its response to that consultation in December 2013. That response can be viewed here: <http://www.scotland.gov.uk/Topics/Health/Healthy-Living/Food-Health/NewFoodBody/SGResponsetoConsultation>

8.4 A second public consultation on proposed enabling primary food and feed legislation provisions was carried out by the FSA. This can be viewed here: <http://www.food.gov.uk/news-updates/consultations/consultations-scotland/2013/foodandfeed-consult-scot>

A summary of the responses to this consultation can be viewed here:

<http://www.food.gov.uk/sites/default/files/multimedia/pdfs/consultationresponse/foodandfeed-responses.pdf>

Following all of the above noted consultations, the Food (Scotland) Bill was introduced to the Scottish Parliament in March 2014.

9. Guidance

This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There will be no impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

11. Regulating small business

This Order does not apply to small business.

12. Monitoring & review

Monitoring and review of this Order is not considered necessary.

13. Contact

Emma Lopinska at the Scotland Office (tel: 0131 244 9016 or email: emmalopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.