



# POLICY BRIEF

No. 10, April 2019

## Response to the Public Consultation on 'Good Food Nation Proposals for Legislation'

Miranda Geelhoed

The integrated and inter-disciplinary research conducted by the **Strathclyde Centre for Environmental Law and Governance (SCELG)** seeks to address real-world knowledge gaps in partnership with government institutions, NGOs, private institutions and local communities. Our researchers hold considerable expertise in the fields of comparative, EU and international environmental law, with regard to, among others, biodiversity, land, food and agriculture, climate change and energy, water and oceans, as well as corporate accountability, environmental justice, human rights and sustainable development.

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## **Public Consultation: *Good Food Nation Proposals for Legislation***

**Response from the Strathclyde Centre for Environmental Law and Governance**

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Submission date: 18 April 2019**

### **Questions**

- 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?**

Answer: Neither agree nor disagree

### **Please explain your answer:**

In summary we urge for:

- A move beyond procedural obligations for Ministers and public authorities only, to include clear, substantive objectives to guide and integrate actions.
- Explicit links with a potential Scottish instrument on human rights, and a move beyond a duty of due regard towards an obligation of result.
- Integration of efforts on future food and agricultural policies, taking inspiration from legislative frameworks in other countries and principles of agroecology.

The Strathclyde Centre for Environmental Law and Governance (SCELG) welcomes the Good Food Nation Proposals. In a time where many efforts are focused on maintaining EU standards, it is crucial that the Scottish Government explores potential for leadership. We agree that a supportive legal framework is key to progress towards sustainable food production. However, although the proposals for statements of policy on food could contribute to this, we believe that ambitions could be bolder.

The proposals are focusing on procedural obligations for Ministers and public authorities, yet they lack substantive objectives and principles to guide and align actions. Reference to international instruments is important but not enough without a clear strategy

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This submission has greatly benefited from the inputs of our SCELG members and represents the views of the centre. In particular, the author would like to thank Prof Elisa Morgera and Dr Stephanie Switzer for their helpful suggestions.

on Scotland's priorities. In this regard inspiration can be drawn from the work that has been done by the International Panel of Experts on Sustainable Food Systems (IPES Food) led by former UN Special Rapporteur on the Right to Food, Olivier de Schutter, which recognised in the European context that a food policy needs to address conflicting objectives to reconcile trade-offs and better integrate policies across the board (Report: Toward a Common Food Policy for the European Union, IPES Food 2019).

The proposal provides an important opportunity for a discussion in Scotland on the future of our food system, and the balancing of economic, social and environmental objectives. In this regard an explicit reference to the right to food is important, but food production also touches upon other economic, social and environmental human rights. Explicit links will need to be made with the work done by the First Minister's Advisory Group on Human Rights Leadership, and the future Scottish instrument on human rights, to avoid fragmentation of efforts. The proposal should move beyond a duty of due regard, as the work of the FM Advisory Group has shown that have had little impact in improving the actual outcomes for those persons that they aim to protect (e.g. under the Equality Act). An obligation of result (duty to comply) allows for the testing of policies against real life impacts. Efforts can then focus on capacity development for public authorities.

Lastly, the proposal should make clear connections with Scotland's future agricultural policy, in light of Brexit and the potential loss of the Common Agricultural Policy. Agroecology has been highlighted by Scottish civil society as a potential framework to better integrate agricultural and food policy and inspiration can be drawn from efforts in other countries, like the French Law for the Future of Agriculture, Food and the Forest. Without substantive commitments, however, we fear that the Good Food Nation legislation may become a missed opportunity for a comprehensive reform.

**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?**

Answer: Strongly agree

**Please explain your answer:**

In summary we urge for:

- Recognition of the dual role of legislative reform and action on private-business: an enabling role to reduce legal/policy barriers to ambition and an encouraging role to put in place incentives and standards to bring about behavioural change.

- Recognition that although statements of policy on food could help Government to support sustainable transitions at business level, that clear objectives are necessary against which proposals and actions can be assessed (Q1).
- Inclusion of obligations on private businesses in accordance with EU and international obligations for stronger corporate responsibility, including respect for human rights.
- Dialogue between government and businesses and the creation of partnerships.

Private businesses play an essential part in the achievement of a sustainable future for Scottish food production in line with the overarching objectives of the Good Food Nation legislation. Distinctions should be made between legislation and policy as enabling factors (passive) and as factors of encouragement (active).

Current and future legislative and policy initiatives should be reviewed to ensure that these instruments do not inhibit private ambitions (e.g. strategic assessment). At the same time, policies should be enacted to stimulate change by creating positive incentives (e.g. financial or recognition) or prescribe desired actions through standards.

Whereas statements of policy on food could help governments to enable and encourage businesses, there is a need for clear objectives in the framework legislation against which the content of the statements and underlying indicators can be assessed (Q1), to ensure synergies and strong ambition. Moreover, to ensure real impacts they should be the result of wide stakeholder engagement.

The Scottish Government should evaluate how small farmers and businesses could best inform the government about its progress and struggles. However, exempting private business completely from reporting requirements is not in line with international, EU and national ambitions and obligations for stronger corporate accountability, including respect for human rights in corporate operations. It follows from the work of the FM Advisory Group that businesses already have responsibilities and duties in international human rights law terms. Moreover, businesses that carry out public functions already have duties of compliance under the Human Rights Act and the Scottish Government is developing a national action plan to implement the UN Guiding Principles on Business and Human Rights (UNGPs) (Report: Recommendations for a new human rights framework to improve people's lives 2018, p 40-41). Other frameworks that are worth highlighting are the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the European Commission's Corporate Social Responsibility Strategy, and the Sustainable Development Goals.

If obligations for businesses are recognised, efforts can focus on human rights-related capacity-building in the private sector. The positive aspects of reporting opportunities for businesses should be emphasised, allowing for reflection and dialogue to work towards a Good Food Nation in partnership with government.

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

Answer: Disagree

**Please explain your answer:**

In summary we urge for:

- An independent body that reviews the impact, legality and effectiveness of the actions set out in policy statements on food, in line with legal obligations, the
- objectives of the framework legislation and overall policy coherence.
- Recognition of discussions at European level that increasingly acknowledge the importance of institutional reform to assure an integrated approach to food.

Food is a complex topic that touches upon many cross-sectoral and sectoral laws, policies and institutional frameworks. It also concerns all levels of governance, from the international to the local. Reporting to Parliament and Scottish Ministers is likely to be insufficient to ensure that policy statements meet all legal obligations, as well as the objectives of the framework legislation (Q1) and that they form an integrated (non-conflicting) whole. In this regard it is important to note that after Brexit Scotland is likely to lose the enforcement edge of the European Commission and the CJEU.

An independent body, for example a Scottish Food Commission that follows the structure of the Scottish Land Commission, could more effectively review the impact, legality and effectiveness of the actions set out in policy statements on food.

More broadly, Scotland could take inspiration in this regard from discussions at European level on the creation of a Common Food Policy (IPES Food 2019), which recognise the crucial role of institutional reform in delivering bold ambitions on food and the need for coordinating mechanisms to assure that the design and implementation of policies meet overarching objectives.

**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?**

Answer: Disagree

**Please explain your answer:**

In summary we urge for:

- Framework legislation and targeted legislation to be recognised as complimentary instruments to achieve Scotland’s common objectives for sustainable food and agriculture.

See Q1. The objective of the framework legislation should be to better align objectives of different food and agricultural policies. Although it will be necessary to enact specific legislation to flesh out details for various topics and sectors, it is crucial that the framework legislation determines the overarching priorities and principles of Scottish actions on sustainable food and agriculture.

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### SCELG Working papers

C Wambua, Promoting Public Acceptance of Wind Energy Projects in Kenya: Towards a Wind-Wind Solution, SCELG Working Paper 10/2017

LS Lynes, Climate Change Law and Colonialism: Legal Standing of Three Rivers and a Hypothetical Case of Bison Personhood in Canada, SCELG Working Paper 9/2017

### SCELG Policy Briefs

M Geelhoed, Response to the Public Consultation 'Environmental Principles and Governance in Scotland', SCELG Policy Brief 11/2019

M Geelhoed, Response to the Public Consultation 'Good Food Nation Proposals for Legislation', SCELG Dialogue 10/2019

### SCELG Dialogues

F Sindico and K McKenzie, Human Rights Thresholds in the Context of Climate Change: A Litigation Perspective in the Wake of the IPCC Special Report on 1.5°C or the Week in which Everything Changed..., SCELG Dialogue 7/2018

F Sindico and S Switzer, The Transformation of Environmental Law and Governance: Risk, Innovation and Resilience, SCELG Dialogue 6/2018

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