

George Eustice
Secretary of State
DEFRA Westminster
Seacole Building
2 Marsham Street
LONDON
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5 November 2020

Dear Secretary of State

The UK Government announcement at the weekend, which placed the Trade and Agriculture Commission (TAC) on a full statutory footing, has been welcomed, nevertheless I am writing to you on behalf of the Food Standards Scotland (FSS) to raise concerns on both the TAC announcement and the Agriculture Bill amendment on reports relating to free trade agreements.

The main issue is that both proposals appear to cut across the statutory responsibilities of FSS. The basis of the statutory footing of the TAC - even taking account of your proposed amendment - remains unclear and the public announcement by the Secretary of State for International Trade does not recognise the devolved nature of food and food safety. Currently, standards applied in Scotland on food safety, food production, animal welfare and the environment are set by Scottish Ministers as they are fully devolved. Despite that position, the proposed amendment is silent on the role and prior engagement of Devolved Administrations and relevant public bodies in this process. They are simply to receive a report when it is laid before the UK Parliament.

The Food Scotland Act 2015 provides for Scottish Ministers to seek advice from FSS on any issue deemed relevant to our remit. I understand Food Standards Agency legislation has the same provisions. Trade negotiations are reserved matters but, given our statutory obligations in relation to maintaining or advising on enhancements to food standards, it cannot be right, nor indeed appropriate nor reasonable that in consequence of a trade negotiation responsibility for providing a report to Ministers in UKG on compliance or otherwise with the standards enshrined in the body of food law should be delegated to an unspecified third party with no involvement by the statutory bodies within the UK responsible for enforcing standards

of food and feed law. There needs to be far greater clarity on how any implications that arise from trade deals that directly impact on devolved administration responsibilities are addressed, and how the responsibilities for food standards and animal feed that are to be conferred on the TAC are to be reconciled with the powers vested in the food standards agencies.

Our legislation specifically states *“The objectives of Food Standards Scotland are...to protect the other interests of consumers in relation to food.”* In other words, we are not limited in our remit to matters of food safety alone and it certainly seems to us that the *“other interests of consumers”* in relation to food can indeed cover issues regarding standards, animal welfare, the environment and trade deals in so far as they impact on consumers either positively or negatively. On that basis it seems to us that any new legislation cannot change the status of devolved matters by subsuming them under a Commission, even one that is now going to be on a statutory footing. I am therefore asking for assurance that either the revised amendment which enables you to seek advice from *“...any person... considered to be independent...”* will be amended further to specify the independent UK food bodies instead of *“any person... considered...”*. Alternatively, you could make a *Pepper v Hart* Statement during the passage of the Bill to the effect that *“any person”* includes the independent UK food bodies that are here to protect consumer interests.

Finally, we believe it is important to recognise that commercial interests and consumer interests do not always align and that there needs to be urgent discussion on the broader aspects of consumer interest that FSS and the FSA have statutory obligations to represent. Given these obligations, it seems to us that any reporting to the UK and Scottish Parliament, as envisaged under the proposal, needs to ensure that there is the right balance between commercial and consumer interests. We know from history what happens when they are not appropriately balanced: the long-running consequences of BSE should not be forgotten in particular their impact on consumer confidence and particularly international trade. While there was some re-assurance in terms of reference to consumers, a trade and agriculture focus doesn't guarantee ongoing alignment of interests.

A copy of this letter goes to Fergus Ewing Cabinet Secretary for the Rural Economy and Tourism, Mike Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, Alistair Jack, Secretary of State for Scotland, Liz Truss, Secretary of State for International Trade, Heather Hancock Chair FSA, and Geoff Ogle and Emily Miles CEOs for FSS and FSA.

Yours sincerely



Ross Finnie
Chair
Food Standards Scotland