****

**Response to Scottish Government Consultation on Good Food Nation Proposals**

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

Contents

[1. Introduction and Executive Summary 4](#_Toc5277646)

[2. The right to food in international law 8](#_Toc5277647)

[States’ obligations in relation to the right to food 11](#_Toc5277648)

[The obligation to respect the right to food 11](#_Toc5277649)

[The obligation to protect the right to food 11](#_Toc5277650)

[The obligation to fulfil the right to food 12](#_Toc5277651)

[General obligations conferred by ICESCR 12](#_Toc5277652)

[3. The right to food in Scotland today 15](#_Toc5277653)

[Accessibility of food 15](#_Toc5277654)

[Financial accessibility 15](#_Toc5277655)

[Physical/ Geographical accessibility 17](#_Toc5277656)

[Adequacy of food 18](#_Toc5277657)

[Dietary need 18](#_Toc5277658)

[Free from adverse substances 20](#_Toc5277659)

[Culturally appropriate - dignity and choice 20](#_Toc5277660)

[Availability of food 21](#_Toc5277661)

[Processing, distribution & markets 21](#_Toc5277662)

[Sustainability, climate change and the right to food 21](#_Toc5277663)

[Land use 21](#_Toc5277664)

[Brexit and food availability 22](#_Toc5277665)

[Access to information and advice 23](#_Toc5277666)

[Case Study on the Right to Food 24](#_Toc5277667)

[Emily and Callum’s story 24](#_Toc5277668)

[What does Emily’s story show? 25](#_Toc5277669)

[4. Consultation Questions 26](#_Toc5277670)

[4.1 The Framework Proposals (Q1) 26](#_Toc5277671)

[Wider accountability framework 27](#_Toc5277672)

[International obligations 29](#_Toc5277673)

[Sustainable Development Goals 30](#_Toc5277674)

[National Performance Framework and Sustainable Development Goals 31](#_Toc5277675)

[New Human Rights Act of the Scottish Parliament 33](#_Toc5277676)

[Good Food Nation framework legislation 34](#_Toc5277677)

[Good Food Nation strategy 38](#_Toc5277678)

[Sectoral measures 39](#_Toc5277679)

[4.2 Private actors and the right to food (Q2) 40](#_Toc5277680)

[Human rights and business 42](#_Toc5277681)

[The State responsibility to protect rights 42](#_Toc5277682)

[The corporate responsibility to respect rights 43](#_Toc5277683)

[Wider dimensions of business and human rights and the right to food 44](#_Toc5277684)

[Showing Human Rights Leadership on business and human rights 45](#_Toc5277685)

[4.3 Accountability and incorporation (Q3) 45](#_Toc5277686)

[Increased realisation of people’s rights 47](#_Toc5277687)

[Legal and policy coherence 47](#_Toc5277688)

[Securing progress towards National Performance Framework outcomes and SDG commitments 48](#_Toc5277689)

[Enhanced accountability and justice 48](#_Toc5277690)

[Advancing realisation of broader range of rights 48](#_Toc5277691)

[Showing leadership 50](#_Toc5277692)

[4.4 Targeted legislation v overarching (Q4) 51](#_Toc5277693)

# 1. Introduction and Executive Summary

Food is critical to each and every one us, both as individuals and as a society. It is an essential component of the human right to an adequate standard of living, which allows each of us to live a life of dignity. The production, distribution and consumption of food have profound impacts on communities and on the environment. Meanwhile, the food sector takes a prominent position in Scotland’s economy, worth around £14 billion each year, accounting for one in five manufacturing jobs and is considered a growth area.[[1]](#footnote-1)

The case for developing a food system which upholds human rights and environmental rights has never been so strong. Food insecurity is chronically high in Scotland with in excess of 480,583 food parcels distributed by both independent and Trussell Trust foodbanks between April 2017 – September 2018.[[2]](#footnote-2) Health inequalities are persistent with many people, including children, unable to afford or access a healthy and nutritious diet. Diet related illnesses in Scotland heavily impact individuals’ quality of life and are costly to the health service[[3]](#footnote-3). Alongside this the environmental impacts of the food system are significant, and climate change threatens the security of our food system in the longer term. The UK leaving the European Union will bring significant challenges to the food system across the UK as trading arrangements, the economy, and food-related regulations are impacted. Responses to these issues will require to be coordinated, coherent, targeted, and in the view of the Commission, rights-based.

In the preparation of this response, the Commission spoke with volunteers and representatives from Community Food projects, a foodbank, a parenting charity and one of the individuals they support. We found that their experiences highlighted a range of issues in relation to the right to food, emphasising the urgency in Scotland of taking progressive steps to address the serious issues they raised. The [full report of our participation event](http://www.scottishhumanrights.com/media/1843/good-food-nation-and-human-rights-workshop-event-report.docx) has been published on our website.

The right to food is protected in international human rights law signed up to by the UK. The right to food was first laid down in the Universal Declaration of Human Rights (UDHR) and subsequently in treaties such as the United Nations (UN) Convention on the Rights of the Child, and in the most detail in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

It has since been elaborated by the Committee on Economic, Social and Cultural Rights (the Committee) that the right to food can be broken down into different elements, namely food must be available, accessible (economically and physically), adequate (satisfying dietary needs, safe and culturally acceptable) and sustainable.[[4]](#footnote-4)

Under the terms of devolution the Scottish Parliament has the competence to observe and implement international obligations in devolved areas.[[5]](#footnote-5) However, the right to food is not incorporated into domestic law, meaning the right to food is not justiciable or enforceable in Scotland and nor is there any formal mechanism by which it should be systematically taken into account by government or parliament.

The Scottish Human Rights Commission (the Commission) believes that legislative proposals to build a Good Food Nation provide an excellent opportunity to take a rights based approach to the food system and incorporate the right to food in Scotland.

The Commission believes that a legislative underpinning to the work being done as part of the “Good Food Nation Programme of Measures” should be put in place as part of a wider accountability framework in relation to the implementation and measurement of the right to food, reflecting international best practice guidance.[[6]](#footnote-6) In a Scottish context, the Commission envisages that the protection and implementation of the right to food should be considered and reflected throughout each of the following frameworks:

* National Performance Framework and SDG reporting
* New Act of the Scottish Parliament as set out in FM Advisory Group recommendations
* Good Food Nation Act (including private sector obligations)
* Good Food Nation Strategy
* Specific sectoral measures (including aimed at private sector)

A detailed consideration and reflection of the components of the right to food throughout each of these areas will assist in providing policy coherence in the implementation of the right to food across a diverse range of portfolios in health, the environment, social justice, education and the economy. It will also be consistent with government commitments and ambitions with regard to the National Outcomes, Sustainable Development Goals and in relation to demonstrating human rights leadership.

The 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 human rights obligations, but will not seek to incorporate a justiciable right to food. The UN Committee ESCR has made clear that the preferred approach is to incorporate the right to food, and other economic, social and cultural rights into domestic legal frameworks.[[7]](#footnote-7)

The Commission supports the full incorporation of the right to food into Scots law as consistent with international best practice and in alignment with the recommendations of the First Minister’s Advisory Group on Human Rights Leadership, which reported in December 2018, and of which the Commission was a member.[[8]](#footnote-8) By incorporating the right to food into a framework law the Scottish Government would be showing leadership within a UK context in line with its ambition[[9]](#footnote-9) and building on work done internationally in this regard.[[10]](#footnote-10)

The Commission believes there are strong legal and policy drivers for the incorporation of the right to food in Scots law. As well as being a driver for improved outcomes for people, providing access to justice as required, the incorporation of the right to food through this legislation will be a driver for the implementation and progressive realisation of other rights, such as the right to social security or right to health. A right to food framework will assist in providing the needed cohesion across multiple policy areas from health, education, social security, agriculture. Ultimately, it would act as a catalyst and driver of change towards a stronger human rights culture in Scotland.

# 2. The right to food in international law

**Governments have a range of legal obligations in relation to the right to food, which are set out below. The Commission is of the view that the best way for the Scottish Government to discharge its duties in relation to the right to food is by taking the opportunity to incorporate the right into Scots law in the Good Food Nation Bill.**

The right to food in international law is part of the right to an adequate standard of living, first laid down in the Universal Declaration of Human Rights (UDHR), article 25, and in treaties such as the United Nations (UN) Convention on the Rights of the Child, article 27. The key international provision on the right to food is article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 11(1) of ICESCR stipulates that state parties recognise the ‘right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right.’

In addition, article 11(2) provides that States Parties recognise the ‘fundamental right of everyone to be free from hunger.’ Moreover, it sets out that States shall take measures to improve methods of food production, conservation and distribution.

|  |
| --- |
| **International Covenant on Economic, Social and Cultural Rights** **Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966** **entry into force 3 January 1976, in accordance with article 27****Article 11**  1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.  2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:  (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;  (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.  |

The first UN Special Rapporteur on the right to food gave further substance and meaning to article 11 by identifying the nature of States’ obligations; positive and negative obligations to respect, protect and fulfil.[[11]](#footnote-11)

In addition, the UN Committee on Economic, Social and Cultural Rights (the Committee), which monitors the implementation of ICESCR by States Parties, has given an authoritative interpretation of article 11 in its General Comment on the right to adequate food.[[12]](#footnote-12) According to the Committee:

‘the right to food is realised when every man, woman and child, alone or in community with others, has physical and economic access to adequate food or means for its procurement’.

The right to food can be broken down into the following different elements; namely food must be available, accessible and adequate:

- **Availability** requires food should be available to purchase or from natural resources, either through the production of food, by cultivating land or animals, or through other ways of obtaining food, such as fishing, hunting or gathering.

- **Accessibility** requires economic and physical access to food to be guaranteed.

**Economic accessibility** means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as adequate housing. For example, the affordability of food can be guaranteed by ensuring that the minimum wage or social security payments are sufficient to meet the cost of nutritious food and other basic needs.

**Physical accessibility** means that food should be accessible to all, including to the physically vulnerable, such as children, people with illnesses, disabled people or older people. Access to food must also be guaranteed to people in remote areas and to victims of natural disasters such as floods, as well as to prisoners.

**- Adequacy**means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc. This means food must contain nutrients necessary for physical and mental development in children. Food which contributes to obesity and other illnesses would also be deemed inadequate.

Food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs.

Adequate food should also be culturally acceptable.

## States’ obligations in relation to the right to food

In general, the obligations of States with regard to international human rights fall into three categories, namely the obligations to **respect**, **protect** and **fulfil**.

## The obligation to respect the right to food

States must respect people’s existing access to food and means of obtaining food. This means States must not interfere with, prohibit or prevent access to food. States should also regularly review their national policies and programmes related to food to ensure that they effectively respect the equal right of everyone to food.

## The obligation to protect the right to food

States have to protect individuals’ enjoyment of the right to food against violations by third parties (e.g. other individuals, groups, private enterprises and other entities). For example, States should prevent third parties from destroying sources of food by, for instance, polluting land, water and air with hazardous industrial or agricultural products. The obligation to protect also includes ensuring that food put on the market is safe and nutritious. States must therefore establish and enforce food quality and safety standards, and ensure fair and equal market practices.

Furthermore, States should take any legislative and other measures needed to protect people, especially children, from advertising and promotion of unhealthy food so as to support the efforts of parents and health professionals to encourage healthier patterns of eating and physical exercise.

A State must also take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organisations.

## The obligation to fulfil the right to food

The obligation to fulfil incorporates both an obligation to **facilitate** and an obligation to **provide**. The obligation to fulfil (facilitate) means that States must be **proactive** in strengthening people’s access to and use of resources and means of ensuring their livelihoods, including food security. Other possible measures could be implementing and improving food and nutrition programmes.

Facilitating the full realisation of the right to food also requires States to inform people about their human rights and strengthen their ability to participate in development processes and decision-making in connection to food.

Whenever individuals or groups are unable, for reasons beyond their control, to enjoy the right to food by the means at their disposal, States have the obligation to provide it (‘fulfil’ duty), for example by providing food assistance or ensuring social safety nets for the most deprived people.

## General obligations conferred by ICESCR

Alongside the specific obligations set out in the General Comment on the right to food, States Parties also have a number of **general obligations** with respect to economic, social and cultural rights.

Article 2 (1) of ICESCR provides:

‘Each State Party to the present Covenant undertakes to take steps…… to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’

This confers both **immediate** obligations ‘to take steps’ as well as **progressive** obligations to realise the right over time within maximum available resources. Resources can be existing resources within a country, as well as those potentially available through reasonable measures (e.g. from international cooperation and assistance). Resources are not only financial, but also human, natural, technological, etc.

Immediate obligations include:

* The elimination of discrimination: States must immediately prohibit discrimination in access to food and to the related resources on the basis of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, disability or other status, and adopt measures to eradicate discrimination on these grounds.
* Obligation to ‘take steps’: While the full realisation of the right to food may be achieved progressively, steps must be taken towards that goal which are deliberate, concrete and targeted as clearly as possible, using all appropriate means and resources. Examples of such steps are:
	+ Assessing the state of enjoyment of the right to food, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
	+ Formulating strategies and plans, incorporating indicators, benchmarks and time-bound targets, which are achievable and designed to assess progress in the realisation of the right to food;
	+ Adopting the laws and policies necessary for the realisation of the right to food or revising the laws and policies which may negatively affect it;
	+ Establishing the institutional mechanisms necessary for coordinating multi-sectoral efforts to realise the right to food;
	+ Regularly monitoring the progress made in the realisation of the right to food;
	+ Establishing recourse mechanisms which can provide remedies for violations of the right to food.
* Prohibition of retrogressive measures: States cannot allow the existing level of fulfilment of the right to food to deteriorate unless there are strong justifications for it.
* Protection of a minimum essential level of the right to food: Under the ICESCR, there are obligations considered to be of immediate effect to meet the minimum essential levels of each of the rights, including the right to food. They are called minimum core obligations. For the right to food, States have to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. Even where resources are constrained, the Government must still introduce low-cost and targeted programmes to assist those most in need so that its limited resources are used efficiently and effectively.

The Commission believes that the right to food as set out above provides a strong framework through which to realise a Good Food Nation. The Commission also believes that the Good Food Nation Framework Law should explicitly incorporate the right to food into law.

# 3. The right to food in Scotland today

The right to food is not realised for everyone in Scotland today. Household food insecurity is unacceptably high and a large number of the people who are food insecure are children.[[13]](#footnote-13) Additionally, none of the dietary goals in Scotland have been met[[14]](#footnote-14) and health inequalities are stark.[[15]](#footnote-15) Moreover, the prospect of the UK exiting the European Union brings further challenges to food production, supply chains, regulation and costs for both producers and consumers.

In the preparation of this response the Commission spoke with volunteers, staff and people with lived experience of food insecurity connected to community health and food projects, a foodbank and a parenting charity. We found that their experiences highlighted a range of issues in relation to the right to food[[16]](#footnote-16) emphasising the urgency of taking progressive steps to ensure the right to food is realised for everyone in Scotland. The full report of our session with these participants can be found on the Commission’s website.

The Commission highlights key right to food issues in Scotland below. We believe the breadth of the issues demonstrates the need for a joined-up and comprehensive strategy and framework law incorporating the right to food.

## Accessibility of food

### Financial accessibility

Reforms of social security, alongside increases in insecure, low-paid work, taken together with increasing costs in food prices have led to more people in Scotland experiencing financial hardship. This has had the effect of increasing food insecurity for many people across Scotland. Between 1st April 2017 and 31st March 2018, The Trussell Trust’s foodbank network distributed 170,625 three day emergency food supplies to people in crisis in Scotland, a 17% increase on the previous year. In just the 6 month period between April and September 2018 87,981 food parcels were distributed by the Trussell Trust in Scotland, suggesting a further increase in numbers on 17/18.[[17]](#footnote-17) In the 5 year period 2012-2017, there has been an eleven fold increase in the number of food parcels distributed by the Trust. Taken together with recently published figures by A Menu for Change and the Independent Food Aid Network,[[18]](#footnote-18) there is evidence that a significant proportion of the population is regularly not having the right to food realised on the basis of affordability/financial accessibility.

It is widely recognised the social security system in the UK and its reform since 2018 in areas such as the household benefit cap, under-occupancy charge, changes to unemployment support and the roll-out of Universal Credit have a had a negative impact, particularly on women, children, and disabled people.[[19]](#footnote-19)

The statistics bear out that there is a causal link between the implementation of social security and the food insecurity. The Trussell Trust cite that the top four reasons for referral to a food bank in were ‘low income, ‘benefit delay’, ‘benefit change’ and ‘debt’[[20]](#footnote-20).

Where positive steps have been taken in Scotland to increase the financial accessibility of food for those who need to it most, for example through the Healthy Start programme, it is essential people are given the information required for uptake and access to their full entitlement under such schemes.

The economic and physical accessibility of good food was a core focus of discussions the Commission had with people in preparation of this response. Participants in our discussions were concerned about the quality and nutritional value of food which was most commonly available and cheapest. Participants in our discussions also noted that there were particular times of year when food insecurity became more likely or more acute, in particular school holidays and also in January following longer periods between pay and social security.

It was noted that there were particular groups of people who faced barriers to realizing their right to food, including single parent families, people with mental health needs, people with learning disabilities and asylum seekers and refugees. [[21]](#footnote-21)

### Physical/ Geographical accessibility

Concerns have been expressed that people living independently and in receipt of home care services may not have sufficient access to food. “Meals on wheels” services have been reduced in Scotland and home care services may be inadequate to support people to eat.[[22]](#footnote-22) 50% of older people admitted to hospital in the UK are undernourished, significantly increasing the length, cost and probability of recovery.[[23]](#footnote-23)

It has also been found that in geographical areas of low income there is an underrepresentation of shops selling fresh produce meaning people lack access to nutritious, healthy food.[[24]](#footnote-24)

People whom the Commission spoke to about the right to food raised the issue of transport as a key barrier to accessing affordable food. It was felt that the costs of travelling to a low-cost supermarket, allotment or community group were often prohibitive when making choices about how to allocate very small amounts of resource.[[25]](#footnote-25) Recent research by the Kellogg’s Foundation showed that 41% of people living in deprived food deserts – deprived areas where there are two or fewer supermarkets/convenience stores - do not have access to a car, compared with 23% of the wider population.[[26]](#footnote-26)

## Adequacy of food

### Dietary need

In 2016, the Scottish Government agreed a revised set of dietary goals for the Scottish population.[[27]](#footnote-27) Food Standards Scotland, the agency responsible for monitoring progress on the dietary goals, reported in 2018 that there continues to be a lack of progress towards achieving these and improving obesity and diet-related poor health.[[28]](#footnote-28) 65% of Scots are either overweight or obese. Levels of type II diabetes, heart disease and other illnesses including many types of cancer associated with obesity are high in Scotland.[[29]](#footnote-29)

While all income deciles fail to meet all the dietary recommendations, around 32% of adults living in the most deprived areas are obese, compared to just 20% of those living in the least deprived areas. Diet-related health inequalities significantly affect both quality of life and life expectancy.

Studies have shown that price is the most important actor in food choices but healthier food and raw ingredients are on average 3 times more expensive than processed foods high in salt, sugar and fat.[[30]](#footnote-30)

In discussions the Commission held with people about responses to food insecurity, it was recognised that the food provided through food banks, food redistribution networks or other mechanisms was unable to meet cultural and dietary needs, as by its nature it is required to be stored without spoiling.

“Food banks provide dry food only. There is a need for fresh stuff e.g. milk, cheese, bread, fruit and veg. Food banks are having to find their own funding to provide this.”[[31]](#footnote-31)

Additionally in geographical areas of low income there is more likely to be an abundance of fast food outlets and fewer opportunities to access healthier food. For example, the Kellogg Foundation recently found that nearly 10% of deprived areas are ‘food deserts’, in which there are two or fewer supermarkets/convenience stores. In Scotland, many of the most deprived areas of Glasgow and Edinburgh were found to be food deserts.[[32]](#footnote-32) In essence the environmental drivers of poor diets are significant.

Meeting the dietary needs of children is of particular importance as food insecurity and poor nutrition can impact significantly on children’s educational attainment, social development and long-term health and well -being. It is currently found that 29% of children in Scotland are at risk of being overweight/obese and with around 22% of children living in households with an income below the relative poverty line, food insecurity for children is high.[[33]](#footnote-33)

Meeting the dietary needs of people with long-term conditions, such as Type 1 diabetes is also crucial. For example, if individuals with Type 1 diabetes are not able to access or afford the appropriate balance of foods to support stable blood sugar levels, there is a risk of serious health harm or even death.

It is clear that in Scotland the realisation of the right to food is not being met with respect to adequacy and nutrition. Due to the interdependent nature of rights, this in turn will affect the realisation of the right to health, and will impact more on communities who live in areas of multiple deprivation.

### Free from adverse substances

Food safety standards in the UK are high although the adulteration of alcohol, theft and sale of livestock not fit for consumption and online sale of food supplements containing harmful substances present health challenges.[[34]](#footnote-34)

Pesticide residues are found in 46% of fresh foods sold in the UK.[[35]](#footnote-35) EU monitoring and license frameworks have historically governed pesticide use and other food standards and it is unclear how standards will be maintained following Brexit, subject to new trading arrangements.

### Culturally appropriate - dignity and choice

It was notable that in discussions we had with volunteers in community health and food projects that even following discussions of governmental responsibilities under the right to food, few participants questioned the provision of these services by civil society rather than by government. One person noted that if government were to accept this role but fail to implement it effectively, it may make it more difficult for civil society to attract funding which would respond to need.[[36]](#footnote-36)

Nevertheless, the Commission believes that reliance on charitable food provision is not a culturally appropriate means of accessing food in the UK. Nor is it an appropriate way to deal with issues of food waste. Individuals are deprived of food choice, fresh produce or culturally of religiously appropriate food, especially people from minority ethnic communities. Additionally for many there is considered to be a stigma and loss of dignity associated with food bank usage.

## Availability of food

### Processing, distribution & markets

Four supermarket chains account for around 70% of food purchased for consumption in the home, with only 5% of the remainder attributable to independent shops.[[37]](#footnote-37) This drives down farming incomes, drives up cost for consumers and can restrict availability and accessibility of healthy food for many families.

### Sustainability, climate change and the right to food

The availability of food both now and in the future is affected by the significant environmental damage caused by the intensification of farming and issues of water use, soil erosion, biodiversity loss and the impact of climate change.

Food contributes significantly to Scotland’s carbon emissions with agriculture and related land use contributing to 26.1% of total emissions.[[38]](#footnote-38)

Food production is endangered as a result of climate change due to the impacts of extreme weather, sea level rises, warming waters and distribution challenges. High-impact fishing and climate change are affecting Scotland’s inshore and territorial waters likely to affect fish availability in the future.

### Land use

A lack of access to land has meant an overall decrease in agricultural holdings and increase in both size of holdings and mechanised and intensified farming. Short and insecure tenancies reduce farmers’ ability to buy equipment and diversify. Land reform legislation is not understood to have significantly challenged inequitable patterns of land ownership.[[39]](#footnote-39)

The Community Empowerment (Scotland) Act 2015 requiring local authorities to increase allotment provision and to develop food growing strategies, with a focus on the realisation of economic, social and cultural rights is an example of where a rights based approach has been taken in law and policy to support access to food.

In our workshop, people were able to share some good examples of joint working between communities and public authorities to release land for community growing, although it was acknowledged that this was a far from straightforward process. However, many participants in discussions were positive about local growing initiatives; barriers to success included the need for upfront capital and equipment plus someone more knowledgeable to support the process.

“We need to make use of space that is available. It’s about knowing what space is communal space and can be used. Also that you can grow things on quite a small scale, for example growing potatoes in a bag. However, people do need a bit of upfront financial support for tools etc and also someone who knows what they are doing during the process.”[[40]](#footnote-40)

### Brexit and food availability

At least 30% of the UK's food imports come from the EU. It is has been made clear that in the event of the UK leaving the European Union without a deal with the European Union the distribution and cost of food will be significantly impacted.[[41]](#footnote-41)

### Access to information and advice

In discussions with the Commission, people we spoke to recognised that there was a role for government not just in providing food, but also providing sound and timely advice and information about relevant benefits, diet, health and food preparation.

“There are more and more parents who cannot cook. They are making choices on a limited budget. There needs to be some education, knowledge about what can be frozen.”

“I didn’t know I had to resubscribe to Healthy Start Vouchers after my baby was born. It would have meant that I could buy milk and fresh and frozen fruit. It wasn’t much per week but it would have helped.”

Participants described how the people who were most in need of information and support on diet, health and access to food were often not the ones to benefit from this:

“There is support and information to eat well - but only for those who can afford it. We need to target resources at those who need them most.”[[42]](#footnote-42)

|  |
| --- |
| Case Study on the Right to FoodEmily and Callum’s story[[43]](#footnote-43)Emily attended a [right to food workshop](http://www.scottishhumanrights.com/media/1843/good-food-nation-and-human-rights-workshop-event-report.docx) at the Commission. She gave us her permission to relate her story as part of our consultation response.Emily has a one year old son, Callum. They live together in local authority housing in a rural area away from town. Emily spoke about how much she loves her house and the possibilities she sees in growing food in her garden, which she says is large and well-suited to a vegetable plot. Emily gets support from a parenting charity, who hold a local group where single parents can come and spend time together, as well as learning to prepare and cook food. They go home with a food parcel to practice their new skills. Emily says that participating in this project has hugely increased her confidence in cooking, built skills appropriate for the workplace and reduced her sense of isolation.On the day of the workshop, Emily told us that her Universal Credit had not come through. She had £0.82 in her bank account. She had run out of nappies and wipes and was concerned that if her Universal Credit didn’t arrive by 8 pm, she would have no money for milk, food or nappies for Callum. She recently had a food parcel delivered to her by the parenting organisation and told us that she would need another that week.One of the barriers Emily faced related to transport. To reach a low cost supermarket on foot would be a 3 mile walk, making a 6 mile round trip with a baby in a buggy. To get the bus would cost £5 which would take a significant chunk out of her weekly budget.Emily described how public services had not provided her with support and information at the right time. One example of this was access to Healthy Start Vouchers. She had had these while pregnant but had not been aware that she would need to resubscribe to these after her baby was born. They would have enabled her to buy milk and/or fresh or frozen fruit at a rate of £3.10 a week, but she missed out on these for a while because she didn’t have the right information. She only found out because she started to get support from the parenting charity. Emily was concerned that there may be many mothers missing out on this financial help because they did not have a link into support organisations.Emily spoke about her concerns for the physical health of people with mental health needs. She described how Callum’s father, who has bipolar disorder, would struggle to make healthy choices around food and recognised how much a healthy diet could do to support better mental health for him.Emily wants to return to work but is concerned about the cost of childcare for her son.What does Emily’s story show? We all want to live in a society where we, and our children, have enough to eat. Emily’s story demonstrates that every day in Scotland, people are struggling to stay afloat. This means that children and families are often not getting the nutrition they need to grow, develop and thrive. In turn this affects people’s health, their ability to work or attend college and to fulfil their potential. As in Emily’s case, much of the time civil society is stepping in to make sure that people are not going hungry, responding to need by redistributing unsold or out-of-date food from supermarkets or other sources, and often developing highly-tailored local solutions to issues of food insecurity. The Scottish Human Rights Commission believes that Good Food Nation is an opportunity to change our law so that it includes the right to food. The right to food sets out what is expected of governments in supporting people to get nutritious, safe, good quality and affordable food. This would mean that families like Emily and Callum would not be caught in the grip of food insecurity. The right to food is clear that governments have a dutyto provide food whenever an individual or group is unable, for reasons beyond their control, to access this themselves.Both the Scottish Government and public bodies like councils would have to take the right to food into account, not just when they think about food policy, but also when making decisions on social security, health, childcare, employment and the environment. |

# 4. Consultation Questions

# 4.1 The Framework Proposals (Q1)

**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?**

The Commission welcomes the recognition of Scottish Ministers that there is a clear place for legislation to underpin the work already being done as part of the Good Food Nation Programme of Measures published on 11 September 2018.

The Commission strongly supports a framework law for good food governance in Scotland. As part of a broader accountability framework, as outlined below, we support statements of policy by public authorities and Ministers which have regard to international obligations, specifically the right to food as defined in international law.

The Commission considers that for such statements of policy to be effective in securing policy coherence in the implementation of the right to food, there must be sufficient knowledge and understanding of the right to food across all actors. This need for capacity building to increase knowledge and understanding is recognised in both the Equalities and Human Rights Committee’s Report on the Parliament as a Human Rights Guarantor[[44]](#footnote-44) and the First Minister’s Advisory Group on Human Rights Leadership recommendations[[45]](#footnote-45).

In considering both the role of statements of policy and also parliamentary scrutiny of these statements, participants in discussion with the Commission saw this as valuable. However, as is acknowledged within much of the work on Parliamentary Reform and the Equalities and Human Rights Committee Inquiry Report into the Parliament as Human Rights Guarantor[[46]](#footnote-46), there needed to be a connection between elected members and people experiencing human rights issues.

“It would be good for the Government to have to talk to MSPs about what’s happening. But also people with lived experience should get to go to Parliament”[[47]](#footnote-47)

## Wider accountability framework

The wider accountability framework in relation to the right to food should be strengthened, in particular through the creation of a justiciable right to food within the framework law.

The Food and Agriculture Organisation (FAO) is the specialised agency of the United Nations responsible for food and agriculture. FAO outlines seven practical steps to implement the right to food[[48]](#footnote-48):

1. Identify people whose right to food is not realised;

2. Assess existing policies and programmes;

3. Develop strategies for an enabling environment;

4. Improve institutional coordination and functioning;

5. Review and strengthen the legal framework;

6. Monitor progress over time with a human rights focus; and

7. Ensure effective recourse for violations of the right to food

The Commission envisages that the protection and realisation of the right to food in Scotland could engage each of these best practice steps, for example, as below:

* National Performance Framework (step 6 &7)
* New Act of the Scottish Parliament as set out in FM Advisory Group recommendations (step 7)
* Good Food Nation Act (steps 4,5,6)
* Good Food Nation Strategy (steps 2, 3 & 4)
* Sectoral measures (steps 1-3):

This envisaged overarching framework for the protection and implementation of the right to food and the rationale for each is set out on the following page:



## International obligations

As detailed above, the right to food is enshrined in international treaties such as the United Nations (UN) Convention on the Rights of the Child, article 27. The key international provision on the right to food is article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

However, as the UK has a dualist system with regards to international obligations, the right to food is not part of the domestic legal order without further legislative incorporation. Nevertheless, it is important to recognise that under the Scotland Act it is within devolved competence to observe and implement international obligations. The Scottish Government should therefore take steps to realise the right to food and progressively realise the right to food in line with their obligations.

The Commission has long advocated for a strengthened human rights framework in Scotland and that the right to food, and other rights, should be incorporated into Scots Law. As a member of the First Minister’s Advisory Group on Human Rights Leadership the Commission supports a new Act of the Scottish Parliament which enshrines a range of economic, social, cultural and environmental rights into Scots law (see below).

## Sustainable Development Goals

In July 2015, Scotland became one of the first countries in the world to adopt the Global Goals for Sustainable Development. Whilst goal 2 is explicitly about food security, all 17 goals relate to elements of the right to food. Robust monitoring and implementation of the right to food will contribute to progress towards all of the below:

* Goal 1. End poverty in all its forms everywhere;
* Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture;
* Goal 3. Ensure healthy lives and promote well-being for all at all ages;
* Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all;
* Goal 5. Achieve gender equality and empower all women and girls;
* Goal 6. Ensure availability and sustainable management of water and sanitation for all;
* Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all;
* Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;
* Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation;
* Goal 10. Reduce inequality within and among countries;
* Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable;
* Goal 12. Ensure sustainable consumption and production patterns;
* Goal 13. Take urgent action to combat climate change and its impacts;
* Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development;
* Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss;
* Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; and
* Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development.

## National Performance Framework and Sustainable Development Goals

The National Performance Framework provides a welcome overarching vision for Scotland and itself has the potential to create increased policy coherence in relation to the right to food. The National Outcomes for Scotland in the revised National Performance Framework (NPF) are that people:

* grow up loved, safe and respected so that they realise their full potential;
* live in communities that are inclusive, empowered, resilient and safe;
* are creative and their vibrant and diverse cultures are expressed and enjoyed widely;
* have a globally competitive, entrepreneurial, inclusive and sustainable economy;
* are well educated, skilled and able to contribute to society;
* value, enjoy, protect and enhance their environment;
* have thriving and innovative businesses, with quality jobs and fair work for everyone;
* are healthy and active;
* respect, protect and fulfil human rights and live free from discrimination;
* are open, connected and make a positive contribution internationally; and
* tackle poverty by sharing opportunities, wealth and power more equally.[[49]](#footnote-49)

Like the Sustainable Development Goals, it can be seen how nearly all the Outcomes relate to different elements of the right to food (not solely the human rights outcome).

The NPF aims to monitor progress towards SDG commitments. However, a gap analysis shows that there are significant gaps in relation to the SDGs. For example, the principle SDG in relation to the right to food is Goal 2 to “End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.” SDG Indicator 2.1.2 measures food insecurity through use of the Food Insecurity Experience Scale (FIES) which comprises of 8 questions. The NPF measure uses 3 of these questions providing a partially matched indicator, leaving gaps in relation to undernourishment, malnutrition, stunting of growth / underweight children, sustainable food production (structural and policy concerns), income of food producers. Likewise the NPF indicators also leave substantial gaps when it comes to measuring the progressive realisation of the right to food. For example:

* Accessibility: Geographically accessibility: No indicator in relation to rural inequality of access to infrastructure;
* Availability: Land and other resources: No indicators in relation to land consumption, local development strategies, local participation structures;
* Availability and sustainability: No indicators in relation to sustainable consumption national action plan (or mainstreamed target through national policy), domestic consumption, food loss (Global food loss index).

Therefore whilst the NPF is an important overarching framework containing critical proxy measures which relate to food, it does not in itself provide a comprehensive monitoring and accountability framework with the appropriate degree of specificity required to secure the right to food.

## New Human Rights Act of the Scottish Parliament

In December 2018 the First Minister’s Advisory Group on Human Rights Leadership published recommendations for a new human rights framework in Scotland.[[50]](#footnote-50) The primary recommendation of the Advisory Group was that there should be an Act of the Scottish Parliament which sets out a new framework of rights, restating rights already provided for in the Human Rights Act 1998 and providing for “further rights drawn from UN human rights treaties ratified by the UK but not yet incorporated, including economic, social and cultural as well as environmental rights”. The recommendations specifically references the right to adequate food as a right to be included within this new Act.

The recommendations also state that “following this Act, the Scottish Parliament would give further effect to these rights through subsequent primary legislation”.Furthermore the report states that “Nothing in the recommendation for this Act should supersede, undermine or otherwise negatively impact any more comprehensive proposals for the protection of human rights by the Scottish Government.”

An essential feature of such an Act of the Scottish Parliament is that there are obligations on courts and tribunals to interpret the rights with regard to international law and to give effect to primary and subordinate legislation in a way which is compatible with the rights given effect to in the Act. This means that all subsequent legislation, for example sectoral measures which relate to the right to food, would have to be interpreted consistently with the right to food.

In terms of duties the recommendations set out that there must be an initial duty to “pay due regard” to the rights provided for in the Act. This duty will apply to all public bodies, including the Scottish Government. However, there is then recommended a further “duty to comply” which will be triggered within 5 years of the passage of the legislation. The rationale for this is that it would give public bodies time in preparation for compliance.

It is the Commission’s view that the incorporation of the right to food within a framework law is complementary and mutually supportive of an overarching human rights framework incorporating the right to food. A framework law will add necessary further normative elaboration of the right to food and also provide for bespoke governance arrangements with regard to the right to food consistent with best practice principles.

## Good Food Nation framework legislation

The concept of a framework for the implementation of the right to food is grounded in international human rights law and recommendations.

Although a state party to ICESCR must decide for itself which means are most appropriate to implement each of the substantive rights of the Covenant, it is emphasised that national legislation may be desirable and sometimes indispensable.[[51]](#footnote-51) Article 2(1) of ICESCR explicitly mentions legislative measures as suitable means to realise the rights listed in the Covenant. Measures taken should produce results that are consistent with the discharge of a State Party’s obligations under the Covenant.[[52]](#footnote-52)

Guidance from the Office of the High Commissioner for Human Rights states that framework laws can be “useful for fleshing out any constitutional provisions, clarifying rights and obligations, as well as elaborating on institutional roles and coordination for the realisation of the right to food. It can also provide for remedies for violations of the right to food…The legal framework for institutional coordination is particularly important for the right to food, responsibilities for which typically go well beyond the mandate of any one sectoral ministry*.”[[53]](#footnote-53)*

The former UN Special Rapporteur on the right to food has also given attention to the adoption of domestic legislation on the right to food.[[54]](#footnote-54) He is of the view that every government should develop a national framework law conforming to the need to respect, protect and fulfil the right to food, thereby recognising obligations under international human rights law.

The UN Committee on Economic, Social and Cultural Rights is of the view that States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. According to General Comment 12 of the Committee, the framework law should include the following:[[55]](#footnote-55)

* Provisions on its purpose;
* Time-bound targets or goals;
* The means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society, the private sector and with international organisations;
* Institutional responsibility for the process;
* National mechanisms for its monitoring; and
* Recourse procedures.

A national framework law on the right to food is essentially intended to translate the international provision on the right to food into concrete targets, concepts and definitions, guidelines, powers and policies for implementation in terms of food availability and accessibility. From a general legal perspective, a framework law is meant to cover the whole spectrum of cross-sectoral issues related to food and to facilitate a more cohesive, co-ordinated and holistic approach to a specific issue, such as food insecurity.

Such a framework law would start by reaffirming the commitment to the right to food as a human right. It would make the right to food operational by, for example, identifying target groups, relevant sectoral issues, relevant governmental and non-governmental actors, and potentially minimum levels of nutrition and minimum income levels.

As a basic requirement, a framework law should give effect to the core content of the right to food. According to the UN Committee on Economic, Social and Cultural Rights, the core content of the right to food includes the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other rights.

The normative content of the right to food should be translated into concrete targets and related benchmarks to be achieved on the national and local level. Time-frames for achieving targets should be set in the law. In addition, the law should give an overview of the measures to be used (subsidiary legislation, administrative decisions, income policy, agricultural policy, financial grants, tax policy, etc).[[56]](#footnote-56)

A framework law would be expected to create a legal basis for the allocation of legal powers to central and local authorities. The law should identify duty bearers at the central and local level. It could provide for co-ordination of responsibility for the implementation of the law by assigning responsibility to the different government agencies involved, and define overall responsibility for one particular organ that could perform an overarching function.[[57]](#footnote-57) Political monitoring mechanisms (by Parliament), to hold these duty holders accountable, and legal mechanisms (by administrative and/or judicial bodies) for review of their decisions, should be provided for.[[58]](#footnote-58)

It is suggested a framework law should take stock of existing sectoral legislation and policy on food related issues. This may be a very broad spectrum of sectoral areas, such as land reform legislation, land tenure regulations, agricultural policy, housing policy, environmental policy, regulations on food production, food marketing, food quality and food safety, food prices, wage policy and social safety nets. These regulations and policies should be scrutinised from a rights-based perspective. Possible conflicts and gaps should be identified with a view to harmonisation and filling these gaps. Such a stocktaking exercise should ideally identify the major structural obstacles, such as unequal access to land, an uneven income distribution, high food prices, marginalisation and vulnerability of specific social groups.[[59]](#footnote-59)

Finally, the Committee on Economic, Social and Cultural Rights makes clear the desirability of the legal incorporation of the right to food. General Comment 12 states that there should be effective judicial or other appropriate remedies and that the incorporation of the right to food can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. It is important that the framework law provides for a reference to effective recourse procedures in cases of alleged violations and specifies those aspects of the right to food that are actionable under the law.

The Commission recognises that the incorporation and justiciability of the right to food can only apply to areas of devolved competence and so will be inherently limited in scope. Nevertheless, we believe that the incorporation of the right to food into law in Scotland would be a driver for positive change and backstop of protection.

|  |
| --- |
| **General Comment 12, Committee on Economic, Social and Cultural Rights**Remedies and accountability 32. Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National Ombudsmen and human rights commissions should address violations of the right to food. 33. The incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant. 34. Judges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions. |

The Commission considers a strong Good Food framework law to be mutually supportive of an overarching framework for the full incorporation and justiciability of economic, social, cultural and environmental rights as set out in the recommendations of the First Ministers Advisory Group on Human Rights. (see more at Q 3 below.)

The Commission refers the Scottish Government to international best practice guidance on food framework legislation as provided by the FAO, Guide on Legislating for the right to food.[[60]](#footnote-60)

## Good Food Nation strategy

As part of the process of strengthening the implementation of the right to food, the UN Committee on Economic Social and Cultural Rights recommends in General Comment 12 on the right to adequate food that States Parties to ICESCR should adopt a national strategy to ensure food and nutrition security for all, based on human rights principles, that defines the objectives, the formulation of policies and corresponding benchmarks.[[61]](#footnote-61)

The process of drawing up such a strategy ought to ensure compliance with the principles of accountability, transparency, people’s participation, decentralisation of decision-making[[62]](#footnote-62) and implementation and the protection of vulnerable groups.

## Sectoral measures

Finally, framework legislation should be considered as the foundation for more specific implementation measures, such as measures targeted at, for example, reductions in household food insecurity, reductions in adult and childhood obesity, reductions in greenhouse gas emissions from the food system, increase in food and drink business paying the living wage, reduction in routine antibiotic use in livestock etc.[[63]](#footnote-63)

This is addressed further at Q4.

# 4.2 Private actors and the right to food (Q2)

**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?**

The Government should encourage, enable **and furthermore ensure**, that businesses play their part in creating a Good Food Nation, and indeed Good Food world, as part of its implementation of international obligations.

The Commission believes that it would be entirely appropriate and in accordance with international human rights obligations to protect, respect and fulfil rights for requirements to be placed on private food-related businesses in relation to the realisation of the right to food both in Scotland and globally.

The activities of private businesses have a substantial impact on people’s enjoyment of the right to food. Most food is produced, processed, distributed and traded across borders by private entities. At the same time, private companies can negatively affect people’s enjoyment of the right to food. For example, if large businesses enjoy a disproportionate competitive advantage in relation to land, resources or market access, this may marginalise small-scale food producers and vendors, and as a result undermine food security. Also by selling unsafe or excessively unhealthy food or marketing food with misleading information, food businesses may undermine people’s access to adequate food.

The Scottish Food Commission gives a range of examples and recommendations as to where the activities of private actors could be further regulated to better secure the relation to the right to food. For example:[[64]](#footnote-64)

* a statutory duty on all publicly funded bodies and private food businesses operating in Scotland that are substantially food-oriented to have in place “A Good Food Nation Policy” in line with the principles and practises of the Good Food Nation, and to report on this through its normal business processes such as an Annual Report or other suitable mechanisms;
* All food businesses, including restaurants, cafes and other outlets, should be licensed with the condition that, food preparation, purchasing and serving staff are trained in the impacts of food and health and sustainability matters commensurate with their work activity;
* All organisations providing food, including public bodies such as schools, hospitals, and homes for the elderly, and all private food businesses, should be required to report on amounts of food waste; and
* All outlets selling food out of home (including takeaways) should label dishes with calorie content.

Other measures could be:

* Maintaining (in particular in a post-Brexit situation) and strengthening current hygiene and safety laws in relation to consumer rights: for example on better/simpler/clearer labelling by supermarkets; also in relation to protection of the environment and pollution.
* Strengthening regulatory agencies responsible for the oversight of food standards (to improve accountability and remedy) to monitor and to investigate complaints and to provide and enforce remedies
* Training administrative officials as well as lawyers and legal aid providers to ensure the correct application of the Act and principles in relation to business and human rights standards to promote the development of national policy
* Providing effective remedy through judicial or non-judicial mechanisms and effective access to justice as there are particular difficulties in obtaining remedy for abuses that occur in the context of businesses’ global operations

The regulation of business through measures such as these is consistent with human rights principles as set out below.

## Human rights and business

The UN “Protect, Respect, Remedy” framework[[65]](#footnote-65) and the Guiding Principles on Business and Human Rights[[66]](#footnote-66) based on this framework are the authoritative global standards on business and human rights. The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011. The 31 principles set expectations of states and companies about how to prevent and address negative impacts on human rights by business.

## The State responsibility to protect rights

A foundational UN Guiding Principle is that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”

The Operational Principles in relation to General State Regulatory and Policy Functions state that:

“In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and **periodically to assess the adequacy of such laws and address any gaps;**

(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) **Provide effective guidance to business enterprises on how to respect human rights throughout their operations**;

(d) **Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.**[[67]](#footnote-67)

It would therefore be entirely consistent with these Guiding Foundational and Operational principles to give further consideration to the regulation of private actors to meet the specific right to food and right to health needs of Scotland.

## The corporate responsibility to respect rights

While international treaties do not refer directly to human rights obligations of the private sector, there is now recognition, including by the Human Rights Council, and in regional and international soft-law instruments, that corporations have a responsibility to respect human rights, including the right to food. The Guiding Principles state that:

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

It is made clear in the Guiding Principles that this applies to all rights in the International Bill of Rights, including economic, social and cultural rights, such as the right to food.

## Wider dimensions of business and human rights and the right to food

It is important to recognise that the food processing sector is increasingly globalised and also dominated by large corporations and transnational corporations. In this context, Scotland must consider these wider dimensions which relate to right to food both in Scotland and the protection of rights and attainment of the Post 2015 Sustainable Development Goals.

In a report of the former UN Special Rapporteur in the Right to Food, Olivier de Schutter, it was highlighted that within current market structures, “buyers and retailers can continue to pay relatively low prices for crops even when the prices increase on regional or international markets and they can continue to charge high prices to consumers even though prices fall on these markets”.[[68]](#footnote-68) This can have severe implications for the rights of farmers and producers and consumers also. The former UN Special Rapporteur then makes a number of recommendations which relate to the private sector and are of relevance for Scotland, such as supporting smallholders to sell their products on local or global markets at a decent price, using public procurement systems and other means to support small farmers and local producers, and promoting and scaling up Fair Trade systems.

The context of the UK leaving the European Union also raises issues relating to the realisation of the right to food and the ongoing regulation of the private sector. The First Ministers Independent Standing Council on Europe established the guiding principles in relation to rights that :

1. Scotland should explore ways to ensure non-regression from existing guaranteed rights;

2. Scotland should explore how not to be left behind and to keep pace with future progressive developments in the EU; and

3. Scotland should explore how to continue to provide leadership across all human rights.

In following these principles in the context of Brexit, consideration must be given as to how current food standards and regulation relating to upholding the right to food are maintained and keep pace with progressive developments at an EU level.

## Showing Human Rights Leadership on business and human rights

The Scottish Government has already taken some steps and indicated ambition towards showing leadership in a number of ways with regard to business and human rights.

Scotland’s National Action Plan for Human Rights (2013-17) contained a commitment to develop a coordinated plan of action to implement the UN Guiding Principles by Scotland, building on the UK’s Action Plan. There is now a process underway to develop such an action plan. Steps taken under the auspices of Good Food Nation with regard to private actors could contribute to this agenda.

Furthermore the recommendations of the First Minister’s Advisory Group on Human Rights Leadership make clear that future obligations relating to economic, social, cultural and environmental rights should equally apply to business carrying out public functions, similarly to under the Human Rights Act 1998. Therefore it would be in line with international obligations and Scotland’s evolving human rights framework to consider the role of private actors in securing the realisation of the right to food.

# 4.3 Accountability and incorporation (Q3)

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

The Commission believes that the proposed approach to accountability for the right to food could be further enhanced through considering the legislation as part of a broader range of measures such as explicitly mapping the right to food elements in the National Performance Framework, Good Food Nation Strategy and sectoral measures as outlined above. In relation to the Good Food Nation legislative proposals, it is considered that accountability proposals could be significantly strengthened by creating a justiciable and enforceable right to food.

The 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 human rights obligations, and will not seek to incorporate a justiciable right to food. The UN Committee on Economic, Social and Cultural Rights has made clear that the preferred approach is to incorporate the right to food, and other economic, social and cultural rights into domestic legal frameworks. For example, in its Concluding Observations on the UK in 2016 it stated:

“the Committee regrets that the Covenant rights cannot be applied directly by domestic courts, which may restrict access to effective legal remedies for violations of Covenant rights.

The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 13) and urges the State party to fully incorporate the Covenant rights into its domestic legal order and ensure that victims of violations of economic, social and cultural rights have full access to effective legal remedies. The Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.”[[69]](#footnote-69)

The Commission supports the full incorporation of the right to food into Scots law. Such an approach is consistent with international best practice and is in alignment with the recommendations of the First Minister’s Advisory Group on Human Rights Leadership reporting in December 2019.[[70]](#footnote-70)

In 2018 the Commission published a report on models of incorporation and justiciability for Scotland, authored by Dr Katie Boyle. That report sets out more fully the case for doing so and provides a range of international comparators.[[71]](#footnote-71)

The Commission believes there are strong legal and policy drivers for the incorporation of the right to food in Scots law, as outlined in brief below.

## Increased realisation of people’s rights

As outlined in section 2 above there are many ways in which people’s right to food is not being fully realised in Scotland today. High levels of food insecurity, dietary and health inequalities issues and the long term sustainability of our food system are significant challenges to be addressed for Scotland. The right to food provides both a framework for strong policy making and a means of accountability for decision making.

## Legal and policy coherence

A framework law enshrining the right to food would seek to harmonise existing national regulations, policy and administrative measures on food availability and accessibility from an overall perspective in order to achieve coherence and transparency. A framework law could also serve as a formal safeguard against any future retrogressive changes in governmental policy, because the law would stipulate the basic principles of the national food policy that may only be amended with the legislature’s approval.

## Securing progress towards National Performance Framework outcomes and SDG commitments

The further incorporation of the right to food in law would assist in securing progress towards the NPF and SDG outcomes. The consultation document sets out how: “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.”

## Enhanced accountability and justice

Ultimately a framework law will help to contribute to the entrenchment of the right to food in the domestic legal order and help to clarify the content of the right in a Scottish context, as well as strengthening the justiciability of the right to food in individual cases.

As the FAO points out:

“By clarifying the normative content of the right to food, a framework law would also provide individuals with a legal entitlement that they can enforce before the competent administrative and judicial authorities. In this way, it can also be the basis for strengthening the role of the judiciary in implementing the right to food”[[72]](#footnote-72)

## Advancing realisation of broader range of rights

Human rights are interdependent, indivisible and interrelated. There is a strong interconnection between the right to food and a number of other rights, for example the right to an adequate standard of living, the right to health and the right to work and to social security, the right to life, the right to education etc. Incorporating the right to food through this legislation will be a driver for the implementation and progressive realisation of these other rights, as well as a driver of change towards a stronger human rights culture. For example, if the right to food is taken into consideration in the development of policy in areas such as health policy, social security and education not only will the rights to health, social security and education respectively be better met but also the right to food will be better realised.

This interdependence of rights therefore creates a case for the incorporation of the right to food in complementarity to other rights. Put another way-

“providing for the right to food at the national legal level could serve the purpose of establishing and accentuating relationships between rights, such as the right to life, the right to water, the right to health, to work, land, social security and the right to food. It could show that guaranteeing access to food is a complex matter, underscoring the need for an integrated nutritional and health care-based approach that is mutually supportive. In other words, it would highlight the interdependence of rights and reflect a holistic human rights-based approach to food availability and accessibility issues.”[[73]](#footnote-73)

Participants in discussions with the Commission on the right to food easily recognised this interdependence and need to take a holistic approach to tackling right to food issues.

“We need to understand food as connected to other things – health, education. We need to tackle the bigger picture.”[[74]](#footnote-74)

##

## Showing leadership

By incorporating the right to food into a framework law on good food the Scottish Government would be showing leadership in a UK context[[75]](#footnote-75) and building on work done internationally in this regard.[[76]](#footnote-76)

The Scottish Government has already made several high level commitments to the Sustainable Development Goals and to a NPF outcome to ensure rights are respected, protected and fulfilled. The incorporation of the right to food would be in furtherance of these aims.

The Brexit context provides a strong impetus for leadership in addressing challenges in relation to the right to food. As it is anticipated that Brexit will impact on many of the right to food components around availability, accessibility, quality and sustainability, a joined up and coherent response will be required to address these challenges. Strong legal obligations in relation to the right to food will assist the Scottish Government and other actors to navigate the changing landscape in relation to trade, regulation and economic circumstances.

# 4.4 Targeted legislation v overarching (Q4)

**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?**

The Commission believes there is a place for sectoral measures which sit alongside framework legislation and deals with the specificities of particular issues.

Sectoral legislation is important in order to regulate the economic & physical environment in which people are, or are not, able to feed themselves in dignity, the adequacy of the food marketed and sold, regulation of the market, access to natural resources, and to provide for entitlements to State support.

It has been stated by academic commentators that:

“the adoption of a framework law should not be abused for window-dressing purposes: It should not be an excuse for a lack of more specific implementation measures. On the contrary, the law should inspire and stimulate the drawing up of implementation policies and measures.”[[77]](#footnote-77)

**Scottish Human Rights Commission, March 2019**

1. Scotland's Economic Strategy, May 2015 [↑](#footnote-ref-1)
2. A Menu for Change and Independent Food Aid Network, Emergency Food Parcel Provision in Scotland April 2017 to September 2018, March 2019, <https://menuforchange.org.uk/wp-content/uploads/2019/03/Emergency-Food-Parcel-Provision-in-Scotland-Apr-2017-to-Sep-2018.pdf> [↑](#footnote-ref-2)
3. Food Standards Scotland, Why Scotland is tipping the scales in the wrong direction, 2018, <https://www.foodstandards.gov.scot/downloads/Situation_report_-_the_Scottish_diet_-_it_needs_to_change_-_2018_update_FINAL.pdf> [↑](#footnote-ref-3)
4. General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5. [↑](#footnote-ref-4)
5. Scotland Act 1998, para7(2)(a) Schedule 5 [↑](#footnote-ref-5)
6. See <http://www.fao.org/right-to-food/resources/rtf-methodological-toolbox> and FAO: The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security [↑](#footnote-ref-6)
7. Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland; Committee on Economic, Social and Cultural Rights, 14 July 2016, (E/C.12/GBR/6) [↑](#footnote-ref-7)
8. Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-8)
9. See Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-9)
10. See examples provided at Guide on Legislating for the right to food, Food And Agriculture Organization Of The United Nations Rome, 2009, <http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/1_toolbox_Guide_on_Legislating.pdf> [↑](#footnote-ref-10)
11. The right to adequate food as a human right, UN Doc E/CN4/ Sub2/1987/23, and an update study on the right to food, UN Doc E/CN4/Sub2/ 1999/12. [↑](#footnote-ref-11)
12. [General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5.](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en) [↑](#footnote-ref-12)
13. The Trussell Trust provided 55,038 three day emergency food parcels to children in the year 2017/2018. <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/#fy-2017-2018> [↑](#footnote-ref-13)
14. Food Standards Scotland, Why Scotland is tipping the scales in the wrong direction, 2018, <https://www.foodstandards.gov.scot/downloads/Situation_report_-_the_Scottish_diet_-_it_needs_to_change_-_2018_update_FINAL.pdf> [↑](#footnote-ref-14)
15. Scottish Public Health Observatory, The Scottish Burden of Disease Study, 2016

https://www.scotpho.org.uk/media/1656/sbod2016-deprivation-report-aug18.pdf [↑](#footnote-ref-15)
16. The full report of our workshop and discussion can be found on the SHRC website. [↑](#footnote-ref-16)
17. See ‘End of Year Stats’ by the Trussell Trust, available online at <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/> [↑](#footnote-ref-17)
18. See 2 above. [↑](#footnote-ref-18)
19. See for example, *The Cumulative Impact of Tax and Welfare Reforms* (2018) Equality and Human Rights Commission https://www.equalityhumanrights.com/sites/default/files/cumulative-impact-assessment-report.pdf> [↑](#footnote-ref-19)
20. Trussell Trust 2018 at <https://www.trusselltrust.org/news-and-blog/latest-stats/mid-year-stats/> [↑](#footnote-ref-20)
21. See full participation event report on the SHRC website [↑](#footnote-ref-21)
22. Third Force News, 3rd April 2018, ‘Meals on Wheels withdraws from Scotland’ <http://thirdforcenews.org.uk/tfn-news/meals-on-wheels-withdraws-from-scotland>, [↑](#footnote-ref-22)
23. Care Quality Commission, Dignity and nutrition inspection programme 2012 (CQC, 2013) [↑](#footnote-ref-23)
24. Fraser et al, The geography of fast food outlets: A review 2010 7(5) International Journal of Environmental Research and Public Health 229 [↑](#footnote-ref-24)
25. See full participation event report on the SHRC website [↑](#footnote-ref-25)
26. The Kellogg’s Foundation, 2018, ‘Can everyone access affordable, nutritious food?’ <https://www.kelloggs.co.uk/content/dam/europe/kelloggs_gb/pdf/Kelloggs_Food_Desert_Brochure.pdf> [↑](#footnote-ref-26)
27. Scottish Government, Revised Dietary Goals for Scotland - March 2016, 2016, available at https://www2.gov.scot/Resource/0049/00497558.pdf [↑](#footnote-ref-27)
28. Food Standards Scotland, Why Scotland is tipping the scales in the wrong direction, 2018, <https://www.foodstandards.gov.scot/downloads/Situation_report_-_the_Scottish_diet_-_it_needs_to_change_-_2018_update_FINAL.pdf> [↑](#footnote-ref-28)
29. Ibid [↑](#footnote-ref-29)
30. Jones et al, The growing price gap between more and less healthy foods: Analysis of a novel longitudinal UK dataset (2014) 9(10); and  DEFRA, Food Statistics Pocketbook 2015(DEFRA, 2016) [↑](#footnote-ref-30)
31. See full participation event report on the SHRC website [↑](#footnote-ref-31)
32. The Kellogg’s Foundation, 2018, ‘Can everyone access affordable, nutritious food?’ <https://www.kelloggs.co.uk/content/dam/europe/kelloggs_gb/pdf/Kelloggs_Food_Desert_Brochure.pdf> [↑](#footnote-ref-32)
33. Scottish Government, Poverty and Income Inequality in Scotland 2014-15, <https://www.gov.scot/publications/poverty-income-inequality-scotland-2014-15/> [↑](#footnote-ref-33)
34. Food Standards Scotland & Food Standards Agency, ‘Food crime annual strategic assessment: A 2016 Baseline’ (FSS & FSA, 2016) [↑](#footnote-ref-34)
35. Pesticide Action Network UK, ‘Pesticides on a plate’ (PAN, 2013) [↑](#footnote-ref-35)
36. See full participation event report on the SHRC website [↑](#footnote-ref-36)
37. The Food Foundation,  Force‐Fed: Does the food system constrict healthy choices for typical British families? (Food Foundation, 2015) [↑](#footnote-ref-37)
38. #  Scottish greenhouse gas emissions 2016, <https://www.gov.scot/publications/scottish-greenhouse-gas-emissions-2016/pages/3/>

 [↑](#footnote-ref-38)
39. Nourish Scotland, Report to the UN Committee on Economic, Social and Cultural Rights (May, 2016) [↑](#footnote-ref-39)
40. See full participation event report on the SHRC website [↑](#footnote-ref-40)
41. UK Government, Implications for business and trade of a no deal exit on 29 March 2019, February 2019, <https://www.gov.uk/government/publications/implications-for-business-and-trade-of-a-no-deal-exit-on-29-march-2019> [↑](#footnote-ref-41)
42. See full participation event report on the SHRC website [↑](#footnote-ref-42)
43. Names have been changed to protect privacy. [↑](#footnote-ref-43)
44. Getting Rights Right: Human Rights at the Scottish Parliament, Nov 2018, <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2018/11/26/Getting-Rights-Right--Human-Rights-and-the-Scottish-Parliament-3> [↑](#footnote-ref-44)
45. Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-45)
46. Getting Rights Right: Human Rights at the Scottish Parliament, Nov 2018, <https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2018/11/26/Getting-Rights-Right--Human-Rights-and-the-Scottish-Parliament-3> [↑](#footnote-ref-46)
47. See full participation event report on the SHRC website [↑](#footnote-ref-47)
48. See <http://www.fao.org/right-to-food/resources/rtf-methodological-toolbox> and FAO: The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security [↑](#footnote-ref-48)
49. National Performance Framework , <https://nationalperformance.gov.scot/what-it> [↑](#footnote-ref-49)
50. Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-50)
51. General Comment No 3 on the Nature of States Parties Obligations (1990), UN Doc E/1991/23 para 3. [↑](#footnote-ref-51)
52. General Comment No 9 on the Domestic Application of the Covenant (1998), UN

Doc E/C12/1998/24 para 5. [↑](#footnote-ref-52)
53. The Right to Adequate Food Factsheet, Office of the High Commissioner for Human Rights, <https://www.ohchr.org/documents/publications/factsheet34en.pdf> [↑](#footnote-ref-53)
54. Report of the Special Rapporteur of the UN Commission on Human Rights on the right to food UN Doc A/56/210 (2001) para 22. [↑](#footnote-ref-54)
55. General Comment 12, CESCR, The right to adequate food (Art.11) 12/05/99. E/C.12/1999/5. (General Comments) [↑](#footnote-ref-55)
56. K Yakpo Framework Law on the Right to Food: An International and South African Perspective, (2004) 4 AHRLJ [↑](#footnote-ref-56)
57. See M Vidar (Legal Officer FAO) ‘Implementing the right to food achievements, shortcomings and challenges: Advantages of framework law’ (February 2003) [↑](#footnote-ref-57)
58. See M Vidar (Legal Officer FAO) ‘Implementing the right to food achievements, shortcomings and challenges: Advantages of framework law’ (February 2003) [↑](#footnote-ref-58)
59. K Yakpo Framework Law on the Right to Food: An International and South African Perspective, (2004) 4 AHRLJ [↑](#footnote-ref-59)
60. Guide on Legislating for the right to food, Food And Agriculture Organization Of The United Nations Rome, 2009,<http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/1_toolbox_Guide_on_Legislating.pdf> [↑](#footnote-ref-60)
61. General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5, para 6 [↑](#footnote-ref-61)
62. Decentralisation means allocation of responsibility and budgets for the delivery of services and reaching food-insecure population groups to local authorities. See Report on the Third Expert Consultation on the Right to Food UN Doc E/CN4/

2001/148 para 28. [↑](#footnote-ref-62)
63. Scottish Food Coalition recommendations, May 2018. [↑](#footnote-ref-63)
64. Recommendations from the Scottish Food Commission for the implementation of, and content for, the Scottish Good Food Nation Bill, December 2017, <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2019/01/scottish-food-commission-final-report/documents/food-commission-final-report-december-2017/food-commission-final-report-december-2017/govscot%3Adocument> [↑](#footnote-ref-64)
65. Protect, Respect and Remedy: a Framework for Business and Human Rights, April 2008, A/HRC/8/5

<http://www.undocs.org/A/HRC/8/5> [↑](#footnote-ref-65)
66. UN Guiding Principles on Business and Human Rights, <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> [↑](#footnote-ref-66)
67. Ibid [↑](#footnote-ref-67)
68. Report of the Special Rapporteur on the right to food, Olivier De Schutter, Agribusiness and the right to food, December 2009, A/HRC/13/33, <http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33_agribusiness_en.pdf> [↑](#footnote-ref-68)
69. Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland; Committee on Economic, Social and Cultural Rights, 14 July 2016, (E/C.12/GBR/6) [↑](#footnote-ref-69)
70. Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-70)
71. Models of Incorporation and Justiciability for Economic, Social and Cultural Rights

Authored by Dr Katie Boyle for the Scottish Human Rights Commission November 2018, <http://www.scottishhumanrights.com/media/1809/models_of_incorporation_escr_vfinal_nov18.pdf> [↑](#footnote-ref-71)
72. Guide on Legislating for the right to food, Food And Agriculture Organization Of The United Nations Rome, 2009,<http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/1_toolbox_Guide_on_Legislating.pdf> [↑](#footnote-ref-72)
73. K Yakpo Framework Law on the Right to Food: An International and South African Perspective, (2004) 4 AHRLJ [↑](#footnote-ref-73)
74. See full participation event report on the SHRC website [↑](#footnote-ref-74)
75. See Recommendations for a new human rights framework to improve people’s lives Report to the First Minister, December 2018, <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-75)
76. See examples provided at Guide on Legislating for the right to food, Food And Agriculture Organization Of The United Nations Rome, 2009,<http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/1_toolbox_Guide_on_Legislating.pdf> [↑](#footnote-ref-76)
77. K Yakpo Framework Law on the Right to Food: An International and South African Perspective, (2004) 4 AHRLJ [↑](#footnote-ref-77)