

Good Food Nation (Scotland) Bill - call for views

December 2021

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.

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1. Introduction and Executive Summary

We note that the Rural Affairs, Islands and Natural Environment (RAINE) Committee is scrutinising the [Good Food Nation \(Scotland\) Bill](#) and welcome the opportunity to offer views on the draft legislation.

Over the past decade, discussion of food policy and legislation has increasingly been cast in the language of human rights. In 2021, the case for developing a food system which upholds human and environmental rights has never been so strong.

Work towards Scotland becoming a Good Food Nation goes back to at least [2014](#) and the Commission welcomes the Scottish Government returning to this important work. The ambition of a good food nation is for a just transition to a fair, healthy and sustainable food system. This is critical for the realisation of the right to food, as well as fulfilment of other aspects of the right to an adequate standard of living, the right to health, the right to a healthy environment and equality.

Currently, interdependent and intersecting issues that relate to food are dealt with in policy silos, for example: agriculture; health; waste; the environment; planning; transport; poverty; public subsidies; access to land; education; nutrition; inequality; affordability; adequate food preparation facilities and fuel. Framework legislation could help to address this, encouraging and requiring that policies be set taking full account of all relevant issues and that those responsible for particular areas of policy work together. The Bill as introduced will not achieve this.

The Commission has already contributed to this discussion, including through a [detailed response to the 2019 consultation on the Good Food Nation proposals](#), which should be read along with this submission. The 2019 consultation followed extensive public participation facilitated by organisations such as Nourish Scotland, and the Commission held a workshop with people with lived experience of food insecurity, the results of which were documented

in [a report](#). The Commission's submission was therefore underpinned by engagement with people who experienced barriers accessing their right to food. It set out the international legal framework and outlined some of the key reasons the right to food is not realised for everyone in Scotland today.

It is disappointing that the Bill is not framed in terms of the ambition to achieve a just transition to a fair, healthy and sustainable food system, and does not require that food plans set out the steps that will be taken to eradicate hunger and progressively realise the rights to food, health, equality, and a healthy environment. The Bill requires only that the Scottish Ministers' and public bodies' plans are prepared *having regard to*, among other things, "the scope for food-related issues to affect outcomes in relation to (a) social and economic wellbeing, (b) the environment (c) health and (d) economic development."

While they are to have regard to Article 11 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), in so far as it concerns adequate food¹, there is no express acknowledgment that Article 11 is a binding right that must be fulfilled, nor any requirement that the food plans are intended to constitute one way in which we work towards fulfilment of that right. Limiting the relevance of Article 11 to the right to adequate food also belies the interconnectedness of the elements of the right to an adequate standard of living, and the aim of taking a holistic approach to the food system. There is also no mention of the right to a healthy environment, recently recognised as a standalone right by the UN Human Rights Council, and which the Scottish Government has committed to [enshrining in national law](#).

In 2019 the Commission called for the incorporation of the right to food into Scots law in the Good Food Nation framework legislation, as consistent with international best practice. Since then Scotland's [National Taskforce on Human Rights Leadership](#) has [recommended](#) that a number of international human rights be incorporated into national law, including the right to food, which the Scottish Government has [committed](#) to doing. Legislation passed now should therefore be drafted

in recognition of the binding requirements of ICESCR and in anticipation of that incorporation.

The [Scottish Food Commission](#) was established in 2015 by the Scottish Government to advise it in this area. In its final [report](#) it recommended the introduction of framework legislation with a cross-cutting, holistic approach and the establishment of an independent statutory body to ensure the delivery of those plans. Disappointingly, the draft Bill does not reflect that recommendation and, combined with the Bill's other weaknesses (discussed below), it is not clear how bodies with duties under the proposed legislation can be held accountable.

The Scottish Food Commission also recommended that the legislation place statutory duties on all publicly funded bodies and private food businesses that are substantially food oriented. That too is disappointingly absent from this Bill. The Commission set out in detail in its 2019 submission the importance of including private entities.

In the following response, we have used the PANEL principles to assess the proposed legislation and identify ways in which it should be considerably strengthened so as to represent a meaningful step towards the duty to respect, protect and fulfil everyone's right to food, health, equality and a healthy environment.

Although this response is framed in terms of PANEL principles, the issues raised reflect some of the specific questions posed by the Committee. We have reproduced the relevant questions in italics under our headings where this is the case.

For ease of reference, Annex 1 comprises a table with the Committee's questions cross-referenced with our headings.

2. Human Rights Based Approach

In taking a [Human Rights Based Approach](#) (HRBA), the Commission recommends employing the PANEL principles (Participation, Accountability, Non-discrimination and equality, Empowerment and Legality).

Participation	Everyone has the right to participate in decisions which affect them. Participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.
Accountability	Accountability requires effective monitoring of human rights standards. For accountability to be effective there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights.
Non-discrimination and equality	A human rights based approach means that all forms of discrimination must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most vulnerable situations who face the biggest barriers to realising their rights
Empowerment	People should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives. People should be able to claim their rights where necessary.

Legality	The defining characteristic of a HRBA is that it engages with human rights standards and works to embed them in all structures and processes from the outset. This means engaging with the requirements of the human rights framework and applying it consistently, evidently and intentionally to each proposal.
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3. Participation

[Does the Bill provide for opportunities to participate in the production of national and local good food nation plans?]

The Bill requires that in preparing their good food nation plans, both Scottish Ministers and relevant authorities must “publish, and consult on, a draft of the plan, and have regard to any responses to the consultation.”²

While this represents a degree of participation in the production of plans, it is questionable how meaningful this participation will be in practice. In our view, a human-rights based approach requires a much greater breadth and depth of participation with people most affected than can be achieved by the consultation requirements in the Bill.

To illustrate this point, we note that the 2018 consultation on the Good Food Nation proposals for legislation generated a total of 802 valid responses, of which 627 were from individuals³. As an approximate indicator of the numbers of people affected by food insecurity, we note that in the 6 month period between April and September 2018, the Trussell Trust distributed 87,981 food parcels in Scotland.⁴

Even allowing for the fact that households will usually receive multiple parcels over a period of crisis, this points towards a mismatch between the numbers of people affected by food insecurity and numbers of people who engage in standard consultative processes.

In framing this consultation, the Committee rightly asks “how the views of vulnerable people or those whose voices are seldom heard would be sought” in relation to the development of Good Food Nation Plans. This highlights a further concern about **who** participates in consultative processes in which those consulting take a purely passive role, and whether the views of those most affected can be heard.

There may be a range of barriers to the level of engagement required. The British Institute of Human Rights has suggested that inaccessible documents, short response periods, and ‘consultation fatigue’ are just some of the factors which undermine the effectiveness of typical consultation exercises⁵.

Even assuming such barriers are overcome, the structure of the Bill is such that key decisions relating to the content of the plans, the outcomes sought and how success is measured will be made by those in power (the duty bearers) before any input from those affected is sought.

The duty merely to ‘have regard’ to views expressed in the course of a subsequent consultation⁶ means that the contributions of those affected inevitably carry less weight than the prior decisions of the duty bearers. The absolute discretion afforded duty-bearers as to how and who they consult⁷ means that participation may be determined by timing and resources rather than the needs of a human-rights based approach.

To be truly participative, processes for developing Food Plans should be widely publicised and understood so that a meaningful number of people can choose whether to participate. This may need to be supported by targeted engagement with those most affected. Finally, the engagement needs to take place at a stage (or stages) in the process where the views can be given appropriate weight in the development of the Plans.

We note that some of these approaches were applied positively in developing the [Scottish Social Security Charter](#) and in the [Engagement Programme](#) which supported the Independent Review of Adult Social Care.

Much like Social Security and Social Care, Good Food is an area of policy where a human rights based approach requires the fullest participation possible and it is not clear that the measures in the Bill support or enable that.

The history of this Bill is perhaps the best illustration of this point. Civil society organisations such as Nourish Scotland and the Scottish Food Coalition have devoted significant time and resources to facilitating participation in the good food nation discussion⁸, in the absence of a government facilitated process of participation. The Commission also held a workshop and documented the views expressed by those with relevant lived experience. The Commission, and many others, participated in the 2019 consultation, setting out in detail some of the key human rights requirements and measures that should be included in the Bill.

Meaningful participation requires at least that the contributions of experts and those with lived experience are taken into account. The content of the Bill that has been introduced calls into question whether this has been done, and therefore raises doubt about the extent to which people's voices will be truly heard in relation to draft food plans.

Recommendation 1

The consultative provisions in Sections 2 and 8 should be strengthened so as to support the fullest possible participation in the development of Good Food plans, securing meaningful input from those most affected and ensuring seldom heard voices are included; consideration should be given to the use of Citizens' Assemblies, at national and local levels, building on learning from Scotland's Climate Assembly.

4. Accountability

[What outcomes, indicators and policies should Scottish Ministers and 'relevant authorities' include in their Good Food Nation plans? Please explain your reasons.]

[How should the Bill and/or the Good Food Nation plans link to other food policy initiatives]

[How should 'specified function be defined?]

[The Bill does not provide for a body to oversee how the Scottish Government and 'relevant authorities' are implementing the Bill; what is your view on this?]

It is not clear how those with duties under the proposed legislation will be held accountable, beyond the general democratic accountability of elected representatives. Even this very limited form of accountability does not apply to health boards or specified public authorities.

Accountability measures in the Bill

To be effective, accountability measures must be specific and quantifiable, which are disappointingly lacking in the Bill as introduced.

We have previously argued that framework legislation of this nature should be 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 businesses paying the living wage, reduction in routine antibiotic use in livestock etc.

However, the present Bill does not set out to ensure that cross-cutting policies are adopted addressing intersecting food-related issues, and the matters to which duty bearers are to have regard in determining the content of plans are framed in the broadest possible terms.⁹ Beyond the situation where they fail to produce a plan at all, it is difficult to see how

duty-bearers might be challenged as to their compliance with the new duties.

For example, a plan which promoted exports of Scottish whisky would likely meet the requirement of section 1(5) in terms of 'economic development' but would do little to realise the right to food, reduce food insecurity, or eradicate hunger, outcomes which we consider should be the core components of Good Food Nation framework legislation.

The wording of the Bill could also be read as referring only to national impacts. Whereas, Scotland's food system currently involves a huge amount of importation, of food and feed, from other countries¹⁰, where people also have the rights to food, health, equality and the right to a healthy environment. Addressing the impact our consumption here has on people in other countries should be part of our overall approach to food. Similarly, we must include consideration of the impact of our exports. As with climate change, addressing rights issues connected with food will require an international response as well as national responses.

Ensuring resulting policies take account of global impacts would also align the Bill with the [Sustainable Development Goals](#) which Scotland adopted in July 2015. Whilst goal 2 is explicitly about food security, all 17 goals relate to elements of the right to food.

We note that in terms of Section 10, relevant authorities need only have regard to the plans when "exercising a specified function or a function falling within a specified description", and that these will be defined in secondary legislation. If the Bill is to encourage a holistic approach, taking into account all areas of policy that affect food or are affected by the food system, then it is crucial that the functions concerned are drawn widely.

Finally, such accountability measures as the Bill contains are undermined because duty-bearers themselves set the outcomes, indicators and progress measures they are to report against.¹¹ This means there is little incentive to set themselves ambitious outcomes and challenging progress measures which carry a risk of failure. Without an

incentive to act boldly, take risks and engage with the deep-seated and systemic problems in Scotland's current food system there is little likelihood that the resulting food plans will change it.

Accountability measures not in the Bill – Oversight body

Accountability would be strengthened considerably by the creation of an oversight body, as was recommended by the Scottish Government's Scottish Food Commission.

We note that the absence of an oversight body was discussed in the Rural Affairs, Islands and Natural Environment Committee's session on 9 November 2021, including the possibility that an existing public body could absorb this role.

Such an approach is likely to underestimate the scale of work involved and the specialisms required to deliver it. Besides scrutinising relevant policies, reporting on the state of the food system, ensuring coherence across Government and private sector, and monitoring the implementation of the plans and the degree to which they were achieving key objectives, in our view an oversight body should facilitate the necessary public participation in food policy and oversee a rights-based approach to food. This should include consideration of the use of Citizens' Assemblies.

An oversight body could also help ensure Scotland's food system as a whole fully reflects its international legal obligations, for example, by assessing compliance with international legal obligations when entering into agreements with other States or with international organisations related to food (see further discussion at Annex 2), and assessing the impact of our imports and exports.

Fulfilling such a remit would require a multi-disciplinary body and detailed consideration should be given to its composition, powers and resources. Achieving this is highly unlikely to be as straightforward as asking an existing public body to take on this role.

Recommendation 2

The Bill should include clear objectives, reflecting the rights to food, health, a healthy environment and equality, with specific and quantifiable outcomes, targets, indicators and progress measures.

Recommendation 3

The Bill should provide for the establishment of an independent Food Commission, adequately resourced and empowered to monitor progress in the implementation of the Bill, as well as carrying out research, providing advice, and reporting to Parliament. There should be a duty on the Scottish Ministers to respond to its recommendations.

5. Non-Discrimination

The right to food must be realized without discrimination “of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2, ICESCR).

We note that the Bill as introduced makes no reference to the need to eliminate discrimination and to avoid discriminatory outcomes in the Good Food plans.

We appreciate that the duty-bearers will already be subject to measures prohibiting discrimination and promoting equality of opportunity, including the Public Sector Equality Duty per s.149 of the Equality Act 2010. However, this does not cover all relevant characteristics in relation to non-discrimination under human rights law, such as poverty. The Fairer Scotland Duty is also potentially relevant to food policy, but only applies to the ‘major strategic decisions’ of public bodies.

We consider that framework legislation of this sort should contain a general clause to underline the importance of the principle of non-discrimination, to ensure that it is continually at the forefront of duty-bearer’s minds and to ensure obligations arising from different pieces of legislation can be interpreted consistently.

Recommendation 4

The Bill should include a general non-discrimination clause, prohibiting any distinction, exclusion or restriction made on the basis of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the effect or purpose of impairing or limiting the capacity of an individual to exercise his or her right to food.

6. Empowerment

The Bill does little to support empowerment. If the consultation elements of the Bill (sections 2 and 8) supported people to participate in the development of policy and practices which affect their lives, that would support empowerment. However, the limitations of these provisions are outlined above.

Recommendation 5

The independent Scottish Food Commission should be given the remit and resourcing to facilitate participation in the development of policy and practices in this area, and to support people in understanding their rights.

7. Legality

[What is your view about the scope of the Bill? What else, if anything, would you have liked to see included in the Bill? Please explain your reasons.]

[What is your view of the decision not to incorporate the 'right to food' into Scots law through the Good Food Nation Bill?]

The Human Rights legal framework intersects with food policy in a number of important ways. Governments have a range of legal obligations in relation to the right to food, which are set out in instruments such as the Universal Declaration of Human Rights (UDHR) at article 25, the United Nations Convention on the Rights of the Child (UNCRC) at article 27 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) at article 11.

These obligations are explained in full in our [previous consultation response](#) and the relevant passages are reproduced as Annex 2 below for ease of reference.

In that consultation, the Commission called for the incorporation of the right to food into Scots law as part of the Good Food Nation framework legislation, as consistent with international best practice. Since then Scotland's [National Taskforce on Human Rights Leadership](#) has [recommended](#) that a number of international human rights be incorporated into national law, including the right to food, which the Scottish Government has [committed](#) to doing. Legislation passed now should therefore be drafted in recognition of the binding requirements of ICESCR and in anticipation of that incorporation.

The Bill does not fully reflect those obligations . It does not require that the food plans set out the steps that will be taken to eradicate hunger and progressively realise the rights to food, health, equality, and a healthy environment. The Bill requires only that the Scottish Ministers' and public bodies' plans are prepared *having regard to*, among other things, "the scope for food-related issues to affect outcomes in relation to (a) social and economic wellbeing, (b) the environment (c) health and (d) economic development."

While they are to *have regard* to Article 11 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), in so far as it concerns adequate food¹², there is no express acknowledgment that Article 11 is a binding right that must be fulfilled, nor any requirement that the food plans are intended to constitute one way in which we work towards fulfilment of that right. Limiting the

relevance of Article 11 to the right to adequate food also belies the interconnectedness of the elements of the right to an adequate standard of living, and the aim of taking a holistic approach to the food system. There is also no mention of the right to a healthy environment, recently recognised as a standalone right by the UN Human Rights Council, and which the Scottish Government has committed to [enshrining in national law](#).

Overall, the Bill does not appear to be cross-cutting framework legislation, acknowledging the interconnected policy areas concerned, and setting out goals which must be pursued in more specific legislation across a number of portfolios.

The Bill is also narrower in scope than is necessary, in that it is restricted to public sector actors. The activities of private businesses have a substantial impact on people's enjoyment of the right to food since most food is produced, processed, distributed and traded across borders by private entities.

The Government should encourage, enable and furthermore ensure, that businesses play their part in creating a Good Food Nation 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.

In addition to the right to food, a Good Food Nation Bill should address the duty to respect, protect and fulfil other aspects of the right to an adequate standard of living, the right to health, the right to a healthy environment and equality.

Recommendation 5

The Bill should:

- be recast as framework legislation, acknowledging the interconnected policy areas concerned, and setting out goals which must be pursued in more specific legislation across a number of portfolios;
- set those goals with explicit reference to: the key elements of the right to food, with reference to the duty to respect, protect and fulfil Article 11 ICESCR; the right to health; the right to a healthy environment, and non-discrimination;
- frame the Good Nation Food Plans as one means of achieving those goals;
- require that Good Nation Food Plans set out the steps that will be taken to eradicate hunger and progressively realise the rights to food, health, equality, and a healthy environment.
- require all future related legislation to reflect these goals, for example bills related to: agriculture; environment bill; biodiversity health etc
- place duties on relevant private actors to ensure that they play a role in achieving the progressive realisation of the rights to food, health, a healthy environment and equality in this area.

8. Conclusion

The Scottish Government has [previously set out](#) a bold vision for Scotland's food system: that by 2025 Scotland will be "a Good Food Nation, where people from every walk of life take pride and pleasure in, and benefit from, the food they produce, buy, cook, serve, and eat each day."

It is recognised that this cannot be achieved by legislative means alone, but legislation can play an important role in setting the pace and direction of the necessary change, and ensuring measurement and accountability.

While we welcome the Scottish Government revisiting this important area, the Bill as introduced does not fully reflect the measures which a human rights based approach to framework legislation of this sort requires and there are a number of respects in which it should be significantly strengthened.

Indeed, passing the Bill without ensuring that it is strengthened in these ways could give the appearance of having taken a significant step towards the creation of a good food nation, when in practice very little will change.

Annex 1

Consultation questions	Section heading
What is your view about the scope of the Bill? What else, if anything, would you have liked to see included in the Bill? Please explain your reasons.	See Section 7 (Legality)
What is your view of the decision not to incorporate the ‘right to food’ into Scots law through the Good Food Nation Bill? Please explain your reasons.	See Section 7 (Legality)
How should the Bill and/or the Good Food Nation plans link to other food policy initiatives, for example the current process of producing a Local Food Strategy , and addressing global impacts of food and drink supply chains – for example taking up any of the Global Resource Initiative recommendations ?	See Section 4 (Accountability)
What outcomes, indicators and policies should Scottish Ministers and ‘relevant authorities’ include in their Good Food Nation plans? Please explain your reasons.	See Section 4 (Accountability)
The Bill requires that Scottish Ministers and ‘relevant authorities’ must, when exercising a specific function or a function falling within a specific description, have regard to the national good food nation plan. Those “specified functions” will be set out in secondary legislation. In your view, what should those functions be? Please explain your reasons.	See Section 4 (Accountability)
The Bill does not provide for a body to oversee how the Scottish Government and ‘relevant authorities’ are implementing the Bill; what is your view on this? Please explain your reasons.	See Section 4 (Accountability)

What impact will the Bill have for local authorities and health boards?	Not addressed
Does the Bill provide for opportunities to participate in the production of national and local good food nation plans? You may wish to consider, for example, how the views of vulnerable people or those whose voices are seldom heard would be sought.	See Section 3 (Participation)

Annex 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 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.¹³

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.¹⁴ 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 meet minimum core standards and 'to take steps' as well as **progressive** obligations to fully 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:

- 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 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.
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- 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.

¹ Good Food Nation (Scotland) Bill Article 3

² Sections 2(1) and 8(1) of the Good Food Nation Bill (as introduced)

³ [Good Food Nation proposals for legislation: analysis of consultation responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/Good-Food-Nation-proposals-for-legislation-analysis-of-consultation-responses)

⁴ See 'End of Year Stats' by the Trussell Trust, available online at <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

⁵ [Government Policy \(bihr.org.uk\)](https://www.bih.org.uk/Government-Policy)

⁶ See sections 2(1)(b) and 8(1)(b)

⁷ Section 2(2) and 8(2)

⁸ [A Seat at the Table - Nourish Scotland](#)

⁹ See sections 1(5) and 7(6)

¹⁰ See for example [Global cropland and greenhouse gas impacts of UK food supply are increasingly located overseas | Journal of The Royal Society Interface \(royalsocietypublishing.org\)](https://royalsocietypublishing.org/journal/rsos/Global-cropland-and-greenhouse-gas-impacts-of-UK-food-supply-are-increasingly-located-overseas)

¹¹ See section 1(3) in the case of Scottish Ministers and Section 7(4) in the case of public bodies.

¹² Good Food Nation (Scotland) Bill Article 3

¹³ 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.

¹⁴ [General Comment No 12 on the right to adequate food, UN Doc E/C12/1999/5.](#)