

**Name**

Food Standards Scotland

**Publication consent**

Publish response with name

**Q1) Do you agree or disagree with the Council’s approach to the distinction between a ‘principle’ and a ‘purpose’ of sentencing?**

**Please provide any reasons for your response.**

**Q2) Should there be an overarching principle of “fairness and proportionality”?**

**Please provide any reasons for your response.**

Therefore, whilst agreeing with the principle that 'Sentences in Scotland must be fair and proportionate,' in compliance with our obligations in Community law we would recommend that they are also seen to be dissuasive, particularly in circumstances where deliberate criminality is involved, for example in fraudulent activity being undertaken for financial benefit. Whilst the vast majority of operators meet or exceed legal requirements, there are occasions where standards are such that they put consumers' health at risk and or jeopardise Scotland's reputation. For example reports which considered the handling of the horse meat incident at Scottish and UK levels, identified concerns about the low level of sentencing imposed following formal enforcement action and also the need for a robust regulatory regime with strong sanctions available in cases where clear evidence of large scale fraudulent activity is present. Where cases warrant prosecution in the courts and result in a conviction, we feel that it is important that sentencing guidelines recognise the severity of food crime (fraud against consumers in terms of not getting what they paid for, risk to public health with potentially life threatening consequences and the financial gain for the perpetrator). Sentences which are significantly more lenient for food crimes compared with other types of fraud risk undermining our message that compliance with food law always pays and would not be fair or proportionate in relation to the stated objectives of this policy.

**Q3) Are the supporting principles which underlie the overarching principle of fairness and proportionality (as listed at paragraph 2(i)-(vi)) appropriate?**

Please provide any reasons for your response.

Q4) Are the supporting principles expressed clearly and accurately?

Please provide any reasons for your response.

Q5) Are there any other supporting principles which should be included at paragraph 2?

Q6) Do you agree or disagree with the approach to the purposes of sentencing as set out at paragraph 4 of the draft guideline?

Please provide any reasons for your response.

Turning to the 'Purposes of Sentencing' we agree with the elements of punishment and, in line with our comments above, particularly reducing the risk of crime through deterring offending behaviour. The horse meat incident seriously knocked public confidence in the food supply chain and while not a food safety issue, consumers clearly disapproved of the deception with a view to financial gain involved in the case. Giving food fraud equal footing with other types of fraud when considering sentencing would strengthen the deterrent element and support our efforts to protect consumers. This will also allow us to meet the new test set out in Article 139 of Regulation (EU) 2017/625, which, although probably not in force until after Brexit would align with the Scottish Government's stated aspirations for Scotland's Place in Europe. The new test which was heavily influenced by the experience of the horse meat incident is that ***member states shall ensure that financial penalties for violations of food and feed law, perpetrated through fraudulent or deceptive practices reflect, in accordance with national law, at least either the economic advantage for the operator or, as appropriate, a percentage of the operator's turnover.***

Q7) Are the purposes as listed at paragraph 5(a)-(d) appropriate?

Please provide any reasons for your response.

**Q8) Are the purposes expressed clearly and accurately?**

**Please provide any reasons for your response.**

**Q9) Are there any other purposes which should be included?**

**Q10) Do you agree or disagree with the approach set out at paragraph 6 of the draft guideline in relation to the efficient use of public resources?**

**Please provide any reasons for your response.**

**Q11) Is it appropriate to consider efficient use of public resources during the sentencing process?**

**Please provide any reasons for your response.**

**Q12) Do you agree or disagree that the guideline would lead to an increase in public understanding of how sentencing decisions are made?**

**Please provide any reasons for your response.**

**Q13) Do you agree or disagree that the guideline would lead to an increase in public confidence in sentencing?**

**Please provide any reasons for your response.**

**Q14) What costs (financial or otherwise) do you see arising from the introduction of this guideline, if any?**

**Q15) What benefits do you see arising from the introduction of this guideline, if any?**

**Q16) Would you like to make any other comments in relation to any matter arising from this consultation?**

We note in the consultation document that the Scottish Sentencing Council intends to develop offence specific guidelines in future. We are keen to see the introduction of sentencing guidelines covering breaches of food and animal feed legislation and would be pleased to support any work on this at the appropriate time.