

ADVISORY COMMITTEE ON THE MICROBIOLOGICAL SAFETY OF FOODS**OPENNESS OF *AD HOC* AND WORKING GROUP MEETINGS.****Issue**

1. At the September 2006 meeting Members discussed the Committee's approach to openness. The Committee considered that the public access to the Committee's work at that time was acceptable and Members were keen for the Committee to remain as open as possible. Members explored holding *Ad Hoc* and Working Group meetings in open session and requested a paper for discussion on this issue.
2. In December 2009 the Committee gave its views on a series of proposals for holding *Ad Hoc* and Working Group meetings in open session. The Committee, in principle, welcomed the commitment to more openness but felt there was a need to ensure flexibility so that openness did not inhibit discussions and the quality of advice given to the Agency. The committee suggested further consideration be given to the practicalities of a move to more openness.

Background

3. Since 2003, the ACMSF has held its main meetings in open session with the agenda and papers for these meetings published on the Committee's website. Committee meetings are meetings held in public, rather than public meetings, in which members of the public may attend to observe the Committee's work, although they cannot participate in the Committee's discussions. At each meeting, following conclusion of the Committee's business session, members of the public are invited to comment or ask questions concerning the day's business or other aspects of the Committee's work. The comments, questions and, where appropriate, response from the Committee are published at the end of the minutes of each meeting. The minutes of the meeting are published on the Committee website after the meeting, subject to rare exceptions on grounds of commercial or other sensitivity.
4. In 2007 both the FSA Board and the Government Office for Science (through its Code of Practice for Scientific Advisory Committees) published documents which supported the use of open advisory committee meetings with the presumption that business should be conducted in public. It was recognised that this may not always be possible due to the tension between openness and sensitive handling of confidentiality.
5. The ACMSF, being a public authority, abides by the provisions of the Freedom of Information Act 2000 (FOI). Under the FOI, information may be withheld from disclosure under a range of specific exemptions, such as those applying to information considered commercially sensitive or confidential (i.e. confidential to a third party the disclosure of which would be an actionable breach of

confidence). Some of these exemptions are absolute (if the exemption applies, there is no obligation under the Act to disclose the requested information); other exemptions are qualified (they do not permit the withholding of information unless, on a proper assessment, the balance of the public interest is against disclosure).

***Ad Hoc* and Working Groups**

6. In 1999 Members' considered options for opening up the Committee's specialist Working Groups and *Ad Hoc* groups. It was concluded that at that time the business of these groups involved much consideration of commercially sensitive information and further, there was a risk that public access to these meetings could inhibit discussion and adversely affect the quality of advice. It was recognised that care was needed to avoid compromising the quality of advice the Committee provided, to avoid creating unwarranted public anxieties about the safety of the food supply, or to inhibit the flow of relevant information from Departments. In 2006 the Committee again discussed openness of the Working groups and *Ad Hoc* groups reaching the same conclusions.
7. Since 1999 papers prepared for *Ad Hoc* and Working Group meetings which contain information and ideas that were assessed as being of a speculative nature, unpublished data or commercially sensitive material were marked 'For Members Use Only' and were not made available to the public under these arrangements. Meetings of *Ad Hoc* and Working Groups also continue to be held in closed session.

Conclusions of the December 2009 Openness Discussion

8. The Committee welcomed the Agency's commitment to more openness and agreed with the principles. However, there was a need to ensure that there was enough flexibility for the Working Groups and *Ad Hoc* groups and that openness did not inhibit discussion or alter how data was handled.
9. It was important to recognise that discussing contentious issues in an open environment could bias discussion as members may lose their willingness to hypothesise or fully explore an issue due to concerns about misinterpretation of statements which contain ideas and thoughts in their formative stage. There was real concern that this could have a detrimental effect on the quality of the advice given to the Agency. Members agreed that a move to openness had to be managed well and suggested that the working practices of similar Committees, such as SEAC, should be reviewed in terms of how they handle such meetings.
10. It was also important to consider the application of the FOI Act on data which stakeholders may request to be kept confidential. It was noted that it would be difficult for the Agency to agree that documents would be kept confidential due to the interpretation of the FOI Act and what is in the public interest. However, each item submitted by stakeholders would be reviewed on a case by case basis in terms of FOI issues.

Future ACMSF Working Groups and *Ad Hoc* Groups

11. After reviewing procedures and openness of similar Committees, the Secretariat suggests the following approach for future Working Groups and *Ad Hoc* Groups.

- Working Groups and *Ad Hoc* Groups will continue to be held in reserved business.

Justification:

Due to the nature of Working Groups and *Ad Hoc* Groups, there is a constant need to review data and papers containing pre-published or commercially sensitive information. It is further recognised that much of the groups work and discussion will be of a speculative nature and Members must not feel inhibited to hypothesise or fully explore such issues. There is also a real risk that those observing could misinterpret ideas in their formative stage before a final Committee position is agreed.

- A brief written summary paper of all Working Group and *Ad Hoc* group meetings will be presented at the main ACMSF open meeting following each Working/*Ad Hoc* group meeting. Meeting summaries will be drafted by the Secretariat and cleared by the group prior to presentation by the group Chair. Written summary papers will be published on the ACMSF website.

Justification:

This provides the public an opportunity to obtain a summary of the Working Groups' and *Ad Hoc* Groups' output and listen to the Committees discussion of that output. It also provides the public with an opportunity to raise issues at the end of the main meeting during public Q&A.

- The ACMSF website will be updated to create a page for all existing Working Groups and *Ad Hoc* Groups to include information on their Terms of Reference, membership and meeting summary updates. Once Working Group and *Ad Hoc* Group full reports are accepted for publication by the main committee, minutes of the groups' meetings will be published on the group webpage. Any potentially sensitive information in the minutes will be reviewed on a case by case basis.

Justification:

This will provide more information on the work undertaken by Working Groups and *Ad Hoc* Groups in the public domain. When the final outcome of a Groups' deliberations are published the minutes should no longer be considered to contain pre-published information. With the intent to publish all Working Group and *Ad Hoc* Group minutes this demonstrates the ACMSF commitment to openness.

- The Secretariat will ensure that authors of papers that contain pre-published material and commercially sensitive information understand how the Committee or Group will handle this information. They will also be made aware of the FOI Act and the potential for releasing such information.

Justification:

The FSA cannot guarantee that commercially sensitive information submitted to the Agency will be withheld from members of the public if a request is made

under the FOI Act. Although the FSA can advise on the FOI Act, the final decision for releasing the information lies with the Government's Information Commissioner who may consider the data to be in the public interest. Papers that are intended to be published in the future (i.e. pre-published) can be withheld until publication.

12. If agreed, the new procedures will be implemented for the next scheduled Working Group/*Ad Hoc* Group meeting. We will review this new approach in one year's time.

Action

Members are invited to:

- comment on and agree to the approach as highlighted in the section "**Future ACMSF Working Groups and *Ad Hoc* groups**".

Secretariat
January 2011