ACM/966

ADVISORY COMMITTEE ON THE MICROBIOLOGICAL SAFETY OF FOOD

OPENNESS – HOLDING OPEN *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. This paper seeks the Committee's views on proposals for holding *Ad Hoc* and Working Group meetings in open session and whether these proposals should form the basis for guiding principles on the conduct of such meetings.

Background

3. At the end of 2002 the ACMSF agreed to conduct all its quarterly meetings in public. This followed the publication of the FSA's Review of Scientific Committees, which recommended that Advisory Committees should conduct as much of their business as possible in open session (1).

4. Since 2003, the Committee has held its main quarterly meetings in open session in accordance with the agreed principles outlined in ACMSF paper ACM/492 in August 2000 (2). The agenda and papers for these meetings are published on the Committee's website before each main meeting. Members of the public may attend to observe the Committee's work, although they do not participate in the Committee's discussions. Committee meetings are meetings held in public, rather than public meetings. At each meeting, following conclusion of the Committee's business session, members of the public are invited to comment on the day's business or other aspects of the Committee's work. These comments 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 (3).

5. In July 2007, the FSA Board supported a paper on openness in advisory committee meetings which confirmed a presumption that business should be conducted in public. Where that is not feasible, the Board felt that issues may be discussed as reserved business, and that clear criteria should be put in place which explained why issues needed to be considered in private rather than in open meetings.

6. Further to this, in December 2007, the updated Code of Practice for Scientific Advisory Committees was published by the Government Office for Science (5).

This confirmed the principle for scientific advisory committees to aim to hold open meetings on a regular basis or provide equivalent opportunities for direct public access but also recognised the tension between openness and sensitive handling of confidentiality.

7. The Advisory Committee on the Microbiological Safety of Food constitutes a public authority for the purposes of applying the provisions of the Freedom of Information Act 2000 (the Act). Under the Act, information may be withheld from disclosure using 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). In cases where an assessment of the balance of public interest needs to be made, the Committee Secretariat will seek advice from the Agency's Legal and Openness teams.

8. Guidelines that are adopted by the Committee for assessing the confidential or commercial nature of information or data that may be considered by the Committee, its Working Groups and *Ad Hoc* groups, are proposed below. These are intended to assist the Chair, authors and data holders in assessing whether it is appropriate for material to be considered as reserved business.

Ad hoc and Working Groups

9. In 1999 the ACMSF considered options for opening meetings up to greater scrutiny. As part of these discussions the ACMSF considered whether meetings of the Committee's specialist Working Groups and *Ad Hoc* groups could be open. At that time it was noted that the business of such groups involved the consideration of commercially sensitive information. There was also a risk that public access to such meetings could inhibit discussion and adversely affect the quality of advice (6). 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 (7).

10. Therefore papers prepared for *Ad Hoc* and Working Group meetings which contained 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 (8). Meetings of *Ad Hoc* and Working Groups were held in closed session. These arrangements continue at present.

11. In September 2006 the Committee again discussed holding *Ad Hoc* and Working Group meetings in open session. Whilst openness and transparency was viewed as desirable, it was recognised that this approach might constrain the type of scientific evidence currently submitted to these groups, particularly where information of a commercially sensitive nature or unpublished research was

relevant to the consideration of a particular issue. It was suggested that this type of information could be considered in a separate closed (reserved) session. Members however emphasised that they were keen for the Committee to remain as open as possible and requested a paper for discussion of this issue, which is provided here.

Options for future meetings

12. The Secretariat has reviewed procedures for holding meetings in open session adopted by other Agency Advisory Committees (9, 10). Based on these protocols, and in light of the July 2007 FSA Board Paper (4) and the updated Code of Practice for Scientific Advisory Committees (5), suggested principles for increasing the openness appropriate for ACMSF *Ad Hoc* and Working Groups could include the following:

    (i) There will be a general assumption that all papers prepared for consideration by *Ad Hoc* and Working Groups will be made public (published on the web site); with the exception of annexes containing information which is confidential, commercially sensitive, or sensitive in nature for other reasons, such as unpublished research, data or reports. This information will be placed in a separate annex marked 'For Members Use Only, to accompany the main paper. This annex will not be published or made available to members of the public.

    (ii) The Secretariat will ensure that authors of papers that contain such information understand how the Committee or Group will handle information of this type (described at para. 8(i) above) before evidence and information are submitted for consideration by these groups.

    (iii) Data to be made public will be contained in meeting papers. Discussion of this information will take place in public session.

    (iv) Where a data holder intends that selected commercial data are to remain unpublished, there will be an option to discuss this information in open session or as reserved business. This will be decided on a case by case basis in consultation between the data holder and the Chair of the group, with advice from the Agency's Legal and Openness teams. The data holder will be informed that members of the public may be present at meetings and that the intention is that as far as possible discussion would take place in the open. The data holder would need to specify the harm that disclosure could cause and provide reasons why they consider this should over ride the public interest.

    (v) Unpublished findings from research may be kept confidential where their premature disclosure may preclude their publication in the scientific literature. When later published, these data and findings will then be in the public domain.

    (vi) In the event that confidential information, or an otherwise sensitive issue, requires discussion, the item will be taken in a closed session, usually at the

end of the agenda. The published agenda will include such items, stating that they will be discussed in closed session. Draft minutes relating to these items may need to be withheld if the information they relate to remains confidential and will be marked as 'confidential'.

(vii) The default assumption of the Committee's Secretariat will be that information provided by other Government Departments can be discussed in open session. Where sensitivities linked to evidence or information from these sources requires discussion in reserved session, the Secretariat would also need to be informed in advance and the details of each case considered as described at 8(iv).

(viii) As is the case for main Committee meetings, members of the public who have registered an interest will be invited to comment on the day's business at the end of the meeting. These comments will be published at the end of the minutes of each meeting. The Chair will have discretion to determine whether such questions should be answered. The group, or individual members, will not be able to provide informed answers on specific issues not on the agenda or outwith its terms of reference. It will not be possible to answer questions on areas where the group's deliberations are incomplete.

(ix) Should the reasons for holding information as reserved cease to apply, the Agency should assess whether the information should be made public and, where appropriate, put it in the public domain unless it has been published by other means.

Action

13. Members are invited to:

- Comment on the proposals outlined above for increasing openness for ACMSF *Ad Hoc* and Working Groups;

- Consider and comment on whether these proposals should form the basis for guiding principles for holding *Ad Hoc* and Working Group meetings in open session.

Secretariat
December 2009

References

1. Food Standards Agency 2000 Report on the Review of Scientific Committees (Ref. FSA/0567/0402).
2. Advisory Committee on the Microbiological Safety of Food (Paper Ref. ACM/492). Open meeting.
3. Annual Report 2005. Advisory Committee on the Microbiological Safety of Food.
4. Increasing the openness of the Scientific Advisory Committees and Board Briefings on scientific issues, FSA Board Paper Ref: 07/07/08, July 2007.
5. Update to the Code of Practice for Scientific Advisory Committees, Government Office for Science, DIUS, Ref: URN 07/1570.
6. Advisory Committee on the Microbiological Safety of Food (ACM/432) Openness: The possibility of holding open meetings.
7. Advisory Committee on the Microbiological Safety of Food. Annual Report 1999.
8. Advisory Committee on the Microbiological Safety of Food (ACM/393) Publication of Committee papers.
9. The Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) procedure for holding COT meetings in open session.
10. http://www.food.gov.uk/science/ouradvisors/toxicity/cotmeets/arrangementcotopenmeetings/

Annexes from FSA Board Paper Ref: FSA 07/07/08 (19 JULY 2007):

INCREASING THE OPENNESS OF THE SCIENTIFIC ADVISORY COMMITTEES AND BOARD BRIEFINGS ON SCIENTIFIC ISSUES

ANNEX 1 - RECOMMENDATIONS FOR SCIENTIFIC COMMITTEES ON OPENNESS FROM THE 2002 REVIEW

a) Committees should follow standard practice in making their documents available, by publishing agendas and committee papers in advance of each meeting, and minutes and/or summary reports afterwards.

b) The data used as the basis for risk assessments and other committee opinions should be made freely available.

c) Applications to committees are published for public comment prior to any substantive discussion by the committee.

d) Whenever possible, draft opinions are published for all interested parties to comment.

e) All committees should move to a position where they conduct as much of their business as possible in open sessions.

f) Committees should draw up clear guidelines to define what material can justifiably be regarded as confidential.

ANNEX 2 - APPROACH USED TO DECIDE WHETHER SCIENTIFIC ADVISORY COMMITTEE MEETINGS SHOULD BE HELD IN OPEN OR RESERVED BUSINESS SESSIONS

Individual committees utilise the criteria which apply to their own business

The default assumption is that the committee will discuss all requests for advice in open session.

1. If Departments/Policy Divisions/Data Holders request that the committee review confidential information as reserved business they are required to make representation to the Secretariat as to why this particular topic should be exempted from discussion in public session. This requires a need to specify the particular harm that disclosure would cause and provide reasons why this overrides the public interest for disclosure, particularly given the increased transparency and confidence arising from public discussion.

2. Some examples of material which might be considered in reserved business sessions are:

   - Unpublished research results or reports (including results of FSA surveys), intended for subsequent publication.
   - Draft guidelines or risk assessments or reviews– whether the committee's own work-in-progress or arising from the work of other bodies or committees.
   - Confidential patient information or personal information about named individuals.
   - Documents and other information circulated by the European Commission or EFSA or other Member States (unless that information is already in the public domain).
   - Requests from regulatory authorities to assess data obtained using regulatory powers that provide absolute confidentiality.
   - Evaluation of substances of particular sensitivity.
   - Commercial data (see below)

3. There are 3 possible classifications for commercial data:

   (a) All data provided to be made public.

   (b) Selected parts of the data are confidential or commercially sensitive.

   (c) Evaluations/dossiers are commercially sensitive or confidential.

4. Data holders should be encouraged to put forward a time-frame for withholding any data where applicable.

5. Procedures for the 3 classes are:

   (a) Consideration in open session.

   (b) There is the option to discuss in open session or as reserved business. The preferred route will be decided in discussion with the data holder and Chairman.

   (c) Consideration in reserved business session.

ANNEX 3 - REQUIREMENTS IN THE DRAFT REVISED OSI CODE OF PRACTICE FOR SCIENTIFIC ADVISORY COMMITTEES

Openness

Para. 46 “Committees should operate from a presumption of openness. The proceedings of the committee should be as open as is compatible with the requirements of confidentiality. The committee should maintain high levels of transparency during routine business.”

Para. 93. “Committees should aim to hold open meetings on a regular basis or provide equivalent opportunities for direct public access. Open meetings may need to be organised in a different way from a committee’s normal meetings.”

Dealing with Confidential Information

Para. 67. “When decisions are taken to delay release of information, (for example to allow proper analysis), the scientific advisory committee should immediately agree realistic deadlines for public reporting.”

Para. 69 “The scientific advisory committee should develop procedures for handling confidential information, and communicate these to third parties so that those submitting such information know what to expect. Decisions on confidentiality should be exercised consistently with Freedom of Information legislation.”

Para. 70. “Committees should be prepared to explain publicly why information is being withheld.”

Para. 71. “Much information, which is confidential, may be sensitive for a relatively short time (for example, market sensitive information). When making decisions to withhold information, consideration should be given as to whether the documents could be released as soon as the sensitivity has passed and, if so, a future publication date should be determined accordingly. Consultation with suppliers of information will be necessary to ensure confidentialities are not breached. Where the suppliers of information consider information to be confidential, the reasons for that belief should be taken into account. However, in order to comply with the provisions of Freedom of Information legislation, it is not possible to give categorical undertakings to treat information as confidential.