



RESEARCH PAPER 99/65  
18 JUNE 1999

# *The Food Standards Bill*

**Bill 117 of 1998-99**

The Food Standards Bill seeks to establish the Food Standards Agency as a UK wide non-ministerial Government department, funded through general taxation, and accountable to Parliament through the Secretary of State for Health, and to the devolved authorities through the respective counterparts in the devolved administrations.

The Bill fulfils a Labour manifesto commitment to set up an independent Agency, to take a strategic view of food safety across the whole of the food chain and able to publish its views on matters related to food and public health.

A draft Bill was issued for consultation and scrutiny by an ad hoc select committee, the Food Standards Committee, which reported in March 1999 (HC 276 1998-99). A separate consultation on the proposed funding levy was carried out, on which the Committee also commented. The Government has also issued a reply to the report of the Committee (Cm 4377).

Alex Sleator

SCIENCE AND ENVIRONMENT SECTION

HOUSE OF COMMONS LIBRARY

## Recent Library Research Papers include:

List of 15 most recent RPs

<b>99/50</b>	Scottish Parliament Elections: 6 May 1999	11.05.99
<b>99/51</b>	Welsh Assembly Elections: 6 May 1999	12.05.99
<b>99/52</b>	The local elections of 6 May 1999	17.05.99
<b>99/53</b>	Unemployment by Constituency - April 1999	19.05.99
<b>99/54</b>	Institutional Reform in the European Union	20.05.99
<b>99/55</b>	Wind Power	26.05.99
<b>99/56</b>	Homicide Statistics	27.05.99
<b>99/57</b>	European Parliament Elections - 1979 to 1994	02.06.99
<b>99/58</b>	The <i>Pollution Prevention and Control Bill</i> [HL] [Bill 107 of 1998-99]	03.06.99
<b>99/59</b>	Buses	08.06.99
<b>99/60</b>	Hospital waiting lists and waiting times	14.06.99
<b>99/61</b>	Freedom of Information - The Continuing Debate	16.06.99
<b>99/62</b>	Unemployment by Constituency - May 1999	16.06.99
<b>99/63</b>	By-elections since the 1997 general election	17.06.99
<b>99/64</b>	Elections to the European Parliament - June 1999 ( <b>forthcoming</b> )	18.06.99

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site,  
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,  
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Users of the printed version of these papers will find a pre-addressed response form at the end of the text.

## Summary of main points

- The Bill seeks to establish an independent Food Standards Agency (FSA) as a non-ministerial government department, operating across the UK, whose main objective will be protecting public health in relation to food. There will be separate executive bodies in Scotland, Wales and Northern Ireland with responsibility for their part of the UK.
- The Bill transfers accountability to Parliament for functions under *the Food Safety Act 1990* and other primary legislation relating to food from the Ministry of Agriculture, Fisheries and Food (MAFF) to the Secretary of State for Health. In Scotland, Wales and Northern Ireland his counterparts in the 'appropriate authorities' will remain responsible for these functions.
- The Agency will be governed by 10-14 appointed members with appropriate skills and expertise, but independent of particular 'interest' groups. Some Members will be appointed by the devolved authorities.
- The Agency will be advised by established independent scientific advisory committees and a new advisory committee on animal feedstuffs. Three new advisory committees for Scotland Wales and Northern Ireland will advise on food standards and safety issues in their part of the UK.
- The Agency will be responsible for developing food policy and advising Ministers, public authorities and consumers. It will be able to publish the advice it gives to Ministers.
- The Agency will monitor food safety and standards across the food chain, including animal feedstuffs, genetically modified foods and other novel foods.
- Responsibility for good agricultural practice remains with MAFF, but the Bill proposes powers for the Agency to intervene on the farm or at any point in the food production and supply chain if it perceives a problem with food safety.
- The Veterinary Medicines Directorate and the Pesticides Safety Directorate remain a function of MAFF, but the FSA will have powers to intervene in approvals processes.
- The Agency will provide advice on nutritional content of food and a balanced diet and a responsibility for labelling in respect of nutrition. The Department of Health (DoH) will retain responsibility for epidemiological surveillance of nutritional status and policy in relation to nutrition and public health.

- Respective responsibilities and mechanism for co-operation between the Agency and Government Departments (e.g. MAFF, the DoH) and devolved authorities will be set out in administrative concordats.
- Responsibility for monitoring and enforcement of food and hygiene standards will remain with local authorities, but the Agency will have powers to audit the performance of local authorities and to act as an enforcement authority in the event of underperformance.
- The Meat Hygiene Service will report to the FSA instead of MAFF.
- The Agency will be able to undertake or commission research or surveillance programmes relating to food safety and standards. Budgets will be transferred from the Department of Health and MAFF.
- The Bill makes provision for the statutory notification of laboratory isolations of food-borne illnesses.
- Funding the Agency - Agency will be funded through general taxation. Existing funding for food safety and standards work will be transferred from the Department of Health, MAFF and the devolved administrations to the Agency. Initial proposals for a levy on food businesses have been withdrawn.

This paper sets out the background to the Bill, including the legislative and regulatory basis of food safety, which is set within the context of European legislation. The main points of the Bill and issues arising are discussed. It should be read in conjunction with the explanatory notes which the Government has provided.

The statistical information in the background the Bill, Section 2 B and C, were kindly produced by Patsy Richards in the Social and General Statistics Section.

## CONTENTS

<b>I</b>	<b>Introduction</b>	<b>9</b>
<b>II</b>	<b>Background to the Bill</b>	<b>11</b>
	<b>A. Food law</b>	<b>11</b>
	<b>B. Current regulatory framework</b>	<b>12</b>
	1. Departmental responsibilities	13
	2. Advisory committees	14
	3. Enforcement responsibilities	15
	4. Regulation of genetically modified foods	20
	<b>C. Notification of food-borne disease</b>	<b>21</b>
	<b>D. Evolution of the Bill</b>	<b>28</b>
	1. The James report	28
	2. The White Paper - A Force for Change	29
	3. Consultation on Draft Legislation and pre-legislative scrutiny	31
	<b>E. Agriculture Committee report on Food Safety, April 1998</b>	<b>32</b>
<b>III</b>	<b>The Bill and issues arising</b>	<b>34</b>
	<b>A. Structure of the Agency and accountability</b>	<b>36</b>
	1. Monitoring and enforcement of the Agency's activities	38
	<b>B. Devolution</b>	<b>39</b>
	<b>C. Advisory committees</b>	<b>40</b>
	<b>D. Openness and accountability</b>	<b>40</b>
	<b>E. Risk assessment and the precautionary principle</b>	<b>42</b>
	<b>F. Remit of the Food Standards Agency</b>	<b>43</b>
	1. Role in food safety and the farm	44
	2. Animal feedingstuffs	44

3. Provision of advice information and assistance	45
4. Observations, information gathering and powers of entry	46
5. Genetically modified (GM) food	46
6. Meat and dairy hygiene	47
7. Pesticides and veterinary medicines	47
8. Nutrition, health protection and labelling	52
G. Administrative concordats	57
H. Enforcement	58
1. Food hygiene and local authority responsibilities	58
2. Meat Hygiene Service (MHS) - the Agency as enforcer	62
I. Notification of food-borne diseases	64
J. Research and research funding	64
K. Europe	66
IV Funding the Agency	69
Appendix 1: Primary Legislation Affecting Food	72
Appendix 2: Statistical appendix	77
Appendix 3: Overview of the Bill	80
Appendix 4: Committees related to food issues	83

# I Introduction

As the food supply chain has become ever more complex, several issues in the area of food safety have arisen which have dented public confidence in the current regulatory structures dealing with the safety and standards of food.

The problem of food-borne disease is shared across the world. Food poisoning notifications in the UK have been rising throughout the 1980's and 1990's. Increased reporting may account in part for the rise. Systems of reporting vary and by international standards the UK system is one of the more robust. However, there is concern that while notifications provide trends in food poisoning, the true extent of the problem is greater.

Poor hygiene practices at any stage in the food chain - whether on the farm, in food production processes, in transit, in retail or catering outlets, or importantly in the home, create the potential for foodborne disease. Centralised food production, large scale retailing and changes in life style which result in a large market for pre-prepared and 'fast' food and eating out can result in a large scale dissemination of what would in the past have remained a local problem. A recent food consumption survey found that just under 30 million people eat out at least once a week in the UK.<sup>1</sup>

Food scares such as Salmonella in eggs, Listeria in soft cheese and contamination of food with the virulent bacteria *E. coli* 0157, in addition to the probable link between bovine spongiform encephalitis (BSE) and variant Creutzfeldt-Jacob disease (vCJD), have resulted in calls for changes to the way in which matters of food safety are overseen.

Concerns about the chemical safety of food (e.g. veterinary drug and pesticide residues) and apprehension about new technologies such as genetic modification of foods have further raised the profile of food safety.

In particular the difficulties of achieving a balance in the dual roles of MAFF, as Department with responsibilities both to the agricultural industry food producers and to the interests of the consumer in matters of food safety, have been raised as an issue.

Following the outbreak of *E. coli* 0157 food poisoning in Lanarkshire in 1996 an enquiry led by Professor Hugh Pennington made recommendations designed to promote an increased standard of safety across the food chain. He called for rigorous enforcement of food safety and standards and a clear policy lead from Government.<sup>2</sup>

---

<sup>1</sup> IGD, *Food Consumption '98*, September 1998

<sup>2</sup> The Pennington Group, *Report on the circumstances leading to the 1996 outbreak of infection with E. coli 0157 in Central Scotland, the implications for food safety and the lessons to be learned*, April 1997

The Labour Government came to office committed to the introduction of an independent Food Standards Agency with a clear focus on protecting public health in relation to food. The Labour manifesto stated:

The £3.5 billion BSE crisis and the *E. coli* outbreak which have resulted in serious loss of life, have made unanswerable the case for the independent agency we have proposed.

The Food Standards Bill seeks to establish a Food Standards Agency as a non-ministerial government department to operate across the UK, and to confer on it functions, powers and duties. It proposes to transfer accountability to Parliament for functions under the *Food Safety Act 1990* and other primary legislation relating to food from the Minister of Agriculture, Fisheries and Food (MAFF) to the Secretary of State for Health. In Scotland, Wales and Northern Ireland his counterpart in the devolved administrations will remain responsible for these functions.

While the proposals for an independent food agency have been largely welcomed, concerns have centred predominantly on initial proposals to raise funding by means of a levy on food businesses, and on the remit of the Agency.

Public consultations demonstrated the strength of opposition to the levy, particularly from small businesses, and this proposal has been dropped in favour of funding direct from general taxation.

This paper discusses the background to the Bill and sets out the basis of food law and current regulatory structures. It outlines the proposals of the Bill, and should be read in conjunction with the corresponding explanatory notes which the Government has provided. Issues arising from the proposals of the Bill are discussed.

## II Background to the Bill

### A. Food law

Legislation, regulations and guidance operate to control food safety and hygiene within the context of European Community food law.

The main framework legislation in Great Britain<sup>3</sup> is the Food Safety Act 1990:

The main framework legislation is the *Food Safety Act 1990*, which applies to all stages of the food chain. It provides for a wide range of regulations in respect of food sources (live animals, growing crops) and contact materials (containers, packaging) It provides for emergency control orders.

One key feature of the Act is 'due diligence', where people processing, handling or selling food are required to have taken "all reasonable precautions and exercised all due diligence". The Act covers all food premises (including vehicles) and gives Ministers the power to issue 'horizontal' Regulations on a wide range of matters and Codes of Practice on enforcement. Chief among these are the *Food Safety (General Food Hygiene) Regulations 1995*, which implement EC Directive 93/43 on the hygiene of foodstuffs, and require businesses to take responsibility for food safety standards appropriate to the circumstances, and to implement a system of hazard analysis. This Directive applies to food caterers and retailers, and manufacturers and processors of non-animal products (animal products are covered by vertical, product specific legislation).

The Hazard Analysis Critical Control Point (HACCP) system is a seven step approach to identify potential microbiological hazards and Critical Control Points where operational failures might create or fail to eliminate hazards. Each business is thus empowered to recognise its own potential risks and to devise procedures to overcome these.

In addition, 'vertical' Regulations apply to specific products and set out requirements through out the production process. For instance, milk production and processing are subject to the *Dairy Products (Hygiene) Regulations 1995*, red meat premises are regulated by the *Fresh Meat (Hygiene and Inspection) Regulations 1995* and white meat premises by the *Poultry Meat, Farmed Game Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995*.

Other regulations - specific concerns in recent years have led to special measures, for instance, the Salmonella in eggs and poultry scare led to the *Zoonoses, Processed Animal Protein and Poultry Breeding Flocks and Hatcheries Orders of 1989*.<sup>4</sup>

---

<sup>3</sup> In Northern Ireland the equivalent legislation is the Food Safety (Northern Ireland) Order 1991

<sup>4</sup> Parliamentary Office of Science and Technology '*Safer eating - Microbiological Food Poisoning and its Prevention*' (adapted), October 1997

An example of hazard which has received much attention is the need for separation of cooked and raw meats, which Professor Pennington highlighted in his report on the E coli food poisoning outbreak in Lanarkshire in 1996.<sup>5</sup> Following this report a consultation has taken place on *the Food Safety (General Food Hygiene) (Butchers' Shops) Amendment Regulations 1998*. Under the draft proposals, *the Food Safety (General Food Hygiene) Regulations 1995* would be amended to make it a criminal offence for butchers' shops to operate without a licence or in breach of the licensing conditions, and extend the HACCP requirements to include verification and documentation.

### **Emergency orders**

Powers to make emergency orders to take contaminated foodstuffs off the market and to close premises where they are suspected of being the source of a food-borne infection are currently vested in Ministers under Sections 1 and 2 of the *Food and Environment Protection Act 1985* and section 13 of the *Food Safety Act 1990*.

Clause 17 of the Bill proposes that the Secretary of State will retain this power but the Agency may be empowered by him to make these emergency orders on his behalf. The explanatory notes indicate that in practice the Agency will only make the orders in emergency situations where the Secretary of State is not available, and that the Secretary of State remains ultimately answerable for emergency legislation.

Additional primary legislation affecting food is set out in the White Paper, "The Food Standards Agency: a Force for Change",<sup>6</sup> and this is included in Appendix 1 to this paper.

## **B. Current regulatory framework**

The current regulatory framework is very complex, requiring co-ordination of the variety of bodies involved.

At central government level responsibility for policy, promoting legislation and implementing EU legislation lies mainly with MAFF and the Department of Health (DoH), together with the devolved administrations. Environmental health and trading standards departments of local authorities and a number of other bodies also have responsibilities, generally related to enforcement.<sup>7</sup>

---

<sup>5</sup> The Pennington Group, *Report on the circumstances leading to the 1996 outbreak of infection with E. coli 0157 in Central Scotland, the implications for food safety and the lessons to be learned*, April 1997

<sup>6</sup> *The Food Standards Agency: a Force for Change*, Cm 3830 January 1998

<sup>7</sup> Professor Philip James, *Food Standards Agency: an interim proposal*, 30 April 1997

Lead departments are MAFF and the Department of Health which now operate a Joint Food Safety and Standards Group, co-ordinating programmes of research and monitoring the food supply.

## 1. Departmental responsibilities

Lead Responsibilities of MAFF include: Food standards, chemical safety of food (e.g. pesticide residues), food labelling (including food additives), food technology and meat and milk hygiene. It works in co-operation with bodies involved in agricultural practices such as the State Veterinary Service, to ensure high standards of hygiene and animal health, and standards of animal feed.

Executive Agencies of MAFF are set out below:

- Meat Hygiene Service (MHS) was set up in 1995 as an Agency under MAFF, with responsibility for meat inspection and monitoring of hygiene practices in slaughterhouses, cutting plants and cold stores. In addition to ensuring that standards required by law are met (for instance the removal of specified bovine offals), it is responsible for ensuring the welfare of animals at slaughter.
- Pesticides Safety Directorate (advises Ministers on food safety matters relating to pesticides)
- Veterinary Medicines Directorate (monitors levels of drug residues in meat and animal products as part of its main role of evaluating veterinary drugs)
- Veterinary Laboratories Agency (provides veterinary advice based on investigation and surveillance)
- Central Science Laboratory (provides scientific services and research to inform food policy)
- Farming and Rural Conservation Agency (the Dairy Hygiene Inspectorate enforces dairy hygiene legislation in England and Wales)

Lead responsibilities of the Department of Health in relation to food include general food hygiene and microbiological food safety and nutrition.

Responsibility for nutrition currently stands with the Department of Health, with advice and guidance provided by the Committee on the Medical Aspects of Food and Nutrition Policy (COMA). Responsibility for standards of food composition, labelling and food chemical safety regulation currently rests with MAFF, advised by the Food Advisory Committee.<sup>8</sup>

The Health Education Authority plays a part in providing nutritional information and advice to the public. It was founded in 1987 as a special health authority, and is largely funded by the Department of Health. It operates primarily on a contract funding basis.

---

<sup>8</sup> An independent non-statutory body appointed by Ministers

Its core health promotion remit includes public education, professional support, research and publishing, and providing advice on a wide range of health issues both nationally and locally.<sup>9</sup>

## 2. Advisory committees

A number of advisory committees provide independent advice to MAFF, DoH, DETR and the HSE. These committees have a secretariat staffed by civil servants and committee members who are appointed on the basis of their expertise in the relevant field. They perform their duties as committee members in addition to carrying on their current employment. A code of practice is laid down regarding disclosure of interests, and committee members are expected to withdraw from any discussion in which they may have a conflict of interests.

Advisory committees acting in the field of food safety include:<sup>10</sup>

- Advisory Committee on the Microbiological Safety of Food (ACMSF)
- Advisory Committee on Pesticides (ACP) (statutory committee)
- Veterinary Products Committee (VPC) (statutory committee)
- Food Advisory Committee (FAC) Its main tasks are to assess the risk to humans of chemicals in food and advise Ministers on the exercise of powers under the Food Safety Act 1990 relating to labelling, composition and chemical safety of food.
- Advisory committee on Novel Foods and Processes (ACNFP).
- Farm Animal Welfare Council
- Spongiform Encephalopathy Advisory Committee
- Chemicals on Food, Consumer Products and the Environment (Committees on Toxicity, Carcinogenicity and Mutagenicity)
- Committee on the Medical Aspects of Food and Nutrition Policy (COMA)
- Advisory Committee on Dangerous Pathogens
- The Consumer Panel (whose secretariat is supplied by MAFF)
- Advisory Committee on Animal Feedingstuffs

The latter Advisory Committee on Animal Feedingstuffs was established in March 1999 as previously announced in the White Paper, implementing a recommendation of the report of the independent Expert Group on Animal Feedingstuffs, published in 1992. This committee will advise Health and Agriculture Ministers, and subsequently the FSA and Health Ministers on the safety and use of animal feeds and feeding practices, with

---

<sup>9</sup> <http://www.hea.org.uk/about/index.html>

<sup>10</sup> Parliamentary Office of Science and Technology, *Safer Eating Microbiological Food Poisoning and its Prevention*, October 1997

particular emphasis on protecting human health and with reference to new technical developments and new feed materials, including genetically modified organisms.<sup>11</sup>

Concerns have been raised about the quality of scientific advice to Government, and the possibility of conflicts of interest in those serving on committees. The Science and Technology Committee has been conducting a review of the scientific advisory system. It published a review of the system in relation to genetically modified food in May 1999.<sup>12</sup> This recommended that the Government rejects proposals to bar employees from biotechnology or food companies from serving on scientific advisory committees:

It is vital that appointments to scientific advisory committees should continue to be made by selecting people with the most suitable and relevant expertise.

We reject any suggestion that scientists' integrity is automatically compromised by association with industry. If scientists from academia or the public sector with research connections to the biotechnology industry were to be barred from the Government's scientific advisory system relating to GM crops and food the Government would be deprived of some of the best scientific expertise available.<sup>13</sup>

The Food Standards Committee registered concern about the quality of advice given by the Committee on the Medical Aspects of Food and Nutrition Policy (COMA) and the Committee on the Toxicity of Chemicals in Food (COT), and has recommended that the Agency should monitor the quality of the advice it receives.<sup>14</sup> The Government does not consider these criticisms substantiated, but agrees that monitoring the quality of advice of expert advisory committees will be an important function of the Agency.<sup>15</sup>

### **3. Enforcement responsibilities**

Local authorities have a major role to play in food law enforcement:

The great majority of food law enforcement is carried out by local authorities (LAs). The only exceptions to this are enforcement of certain provisions on meat hygiene and inspection, and part of the milk hygiene regulations in England and Wales, which are carried out by Executive Agencies of MAFF (see below). In

---

<sup>11</sup> MAFF press notice, *Chairman appointed to new advisory committee on animal feedingstuffs* 115/99, 31 March 1999

<sup>12</sup> Science and Technology Committee, *Scientific Advisory System: Genetically Modified Foods*, 12 May 1999, HC 286-1 1998-99

<sup>13</sup> Science and Technology Committee, *Scientific Advisory System: Genetically Modified Foods*, 12 May 1999, HC 286-1 1998-99, summary and conclusions

<sup>14</sup> Food Standards Committee, *Food Standards Draft Bill*, HC 276-1 1998-99, xxii, para 56

<sup>15</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the Food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, para 20, Cm 4377, June 1999

addition certain enforcement activities in Northern Ireland are undertaken by DANI.

Local authorities have a duty to enforce food law made under the Food Safety Act 1990. They are responsible for initiating prosecutions under the Act and for investigating complaints that are passed on by consumers. Local authority inspectorates are free to choose the most appropriate manner of enforcement, working to Central Government guidance published in codes of practice.

Enforcement is carried out by Trading Standards Officers (TSOs) and Environmental Health Officers (EHOs). Both have a wide range of duties with some overlap in the food area. TSOs cover legislation on food standards and labelling, including quality, composition, presentation and advertising of food, materials in contact with food, weights and measures, consumer credit, consumer safety, animal movements and animal feedingstuffs. EHOs are responsible for work on food hygiene (including food safety and microbiological contamination) as well as safety at work, housing, pollution and noise. TSO and EHO functions are carried out by separate inspectorates in England, but are combined in a single department in most Welsh local authorities.

In Scotland and Northern Ireland, enforcement of all aspects of legislation on food standards and labelling and food safety and hygiene are the responsibility of Environmental Health Departments, in the single tier authorities. Generally, EHOs are responsible for food law enforcement.

Surveillance of the microbiological safety of food is carried out in England and Wales by the Public Health Laboratory Service (PHLS) on behalf of local environmental health departments, the Department of Health and the Welsh Office. The PHLS has around fifty local laboratories, all with special facilities for the microbiological examination of food. In addition there are other specialised laboratories providing a range of microbiological services. The PHLS also provides information to physicians in general practice.

In Scotland, surveillance of the safety of food is carried out by local authorities, co-ordinated by the Scottish Food Co-ordinating Committee. There is no PHLS in Scotland and microbiological food examinations are undertaken by a number of local authority, NHS Trust and independent private laboratories. Specialist laboratory services are provided by reference laboratories and other laboratories funded directly by the Scottish Office.

In Northern Ireland, environmental health officers send samples of food taken for microbiological examination to the Public Health Laboratory at Belfast City Hospital. The surveillance is co-ordinated by the Food Liaison Group of the Northern Ireland Chief Environmental Health Officers' Group.

Local authorities are required to appoint Public Analysts who are qualified and equipped to carry out the chemical analysis required for compositional sampling work under the Food Safety Act 1990. There are thirty one Public Analysts' laboratories in the UK, over half of which are based within local authority

departments. The remainder are private laboratories appointed as Public Analysts by local authorities.

Port health authorities are responsible for enforcing controls on food imported from countries outside the European Union.

In England and Wales local authority enforcement is co-ordinated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS), which provides advice and guidance to local authorities on enforcement issues. The Scottish Food Co-ordinating Committee (SFCC) carries out a similar role in Scotland, although LACOTS also extends to Scotland and Northern Ireland. Along with the Local Government Association, both offer advice and comment to Central Government on enforcement. In Northern Ireland the district councils outside Belfast have come together to form four groups. Those, together with Belfast, play a co-ordinating role on enforcement.

The Meat Hygiene Service (MHS) was established in April 1995 as an Executive Agency of MAFF. It is the central authority responsible for meat hygiene and inspection functions that were formerly exercised by local authorities. The MHS enforces hygiene and welfare laws in licensed slaughterhouses through Official Veterinary Surgeons assisted by Meat Hygiene Inspectors. The service is audited by the Veterinary Public Health Unit of the Joint Food Safety and Standards Group, acting in its own right and on behalf of the Chief Veterinary Officer. The State Veterinary Service carries out a separate audit of compliance with the specified risk material legislation. In Northern Ireland DANI is responsible for meat hygiene and inspection services.

Enforcement of milk hygiene standards (up to, but not including, pasteurisation and bottling) at registered (farm) holdings is undertaken by the Dairy Hygiene Inspectorate of the Farming and Rural Conservation Agency (FRCA) on behalf of MAFF and the Welsh Office. Enforcement of other aspects of milk hygiene legislation in approved establishments (including pasteurisation and bottling) is controlled by authorities, usually Environmental Health Departments. In Scotland, all milk hygiene enforcement is carried out by local authorities. In Northern Ireland the Department of Agriculture fulfils the role of the FRCA in England and Wales.<sup>16</sup>

***a. Food establishments and local authority inspections***

Some 14,000 environmental health staff (including administration staff, not just environmental health officers) work for local authorities in England and Wales. This translates to some 270 environmental health staff per million population.

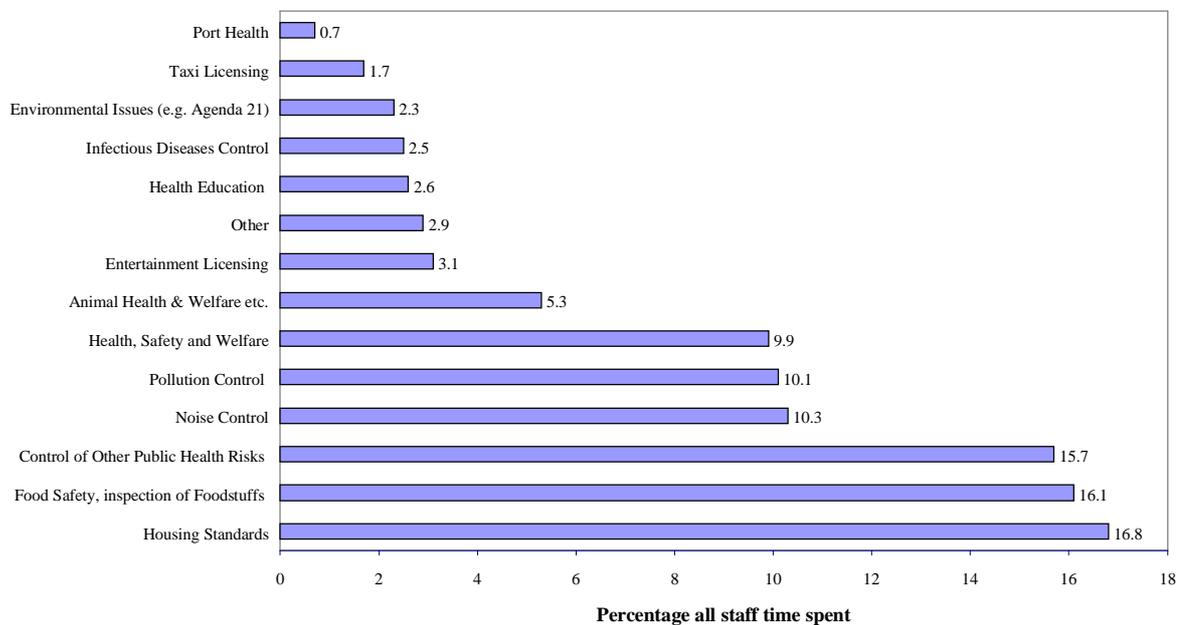
For all authorities, CIPFA figures show that over 16% of total staff time is spent on the core function of food safety, inspection of foodstuffs and sampling work. This is the

---

<sup>16</sup> *The Food Standards Agency: a Force for Change*, Cm 3830 January 1998

highest proportion of time spent on any issue apart from housing standards and otherwise only approached by time spent on control of other public health risks such as drainage, pests and nuisances<sup>17</sup>. Full figures behind this chart are shown in Appendix 2 table 3.

**Time spent by environmental health staff on core activities during 1997-98**



Reflecting this, spending on food safety is exceeded only by spending on housing. Of course, the pattern of environmental health priorities varies throughout the country according to environmental and man-made conditions.

<sup>17</sup> Environmental Health Statistics 1997/98 Actuals Chartered Institute of Public Finance and Accountancy January 1999

**Net expenditure on core functions 1997/98**

Grossed estimates

	London Boroughs	Metropolitan Districts	English Districts	English Unitaries	Wales	All Authorities
<i>£ thousands</i>						
Housing Standards	18,018	12,165	25,800	7,754	5,977	69,714
Pollution Control	6,670	8,527	20,114	3,602	3,313	42,226
Noise Control	10,926	4,275	17,500	3,163	3,121	38,985
Health, Safety and Welfare	6,537	6,995	21,725	4,263	1,611	41,131
Food Safety	11,252	11,430	32,020	6,633	3,483	64,818
Port Health	34	195	1,080	423	363	2,095
Infectious Diseases Control	1,023	2,068	3,546	648	2,150	9,435
Health Education (including home safety)	675	1,650	4,391	1,418	938	9,072
Control of Other Public Health Risks	9,171	12,039	24,912	3,867	2,894	52,883
Animal Health & Welfare etc.	1,964	2,525	12,922	2,440	2,168	22,019
Entertainment Licensing	1,597	193	3,545	368	205	5,908
Hackney Carriage and Private Hire Licens	-	(34)	566	95	241	868
Environmental Issues (e.g. Agenda 21)	593	442	6,383	488	408	8,314
Other	5,042	2,430	21,291	344	645	29,752
<b>Total net expenditure</b>	<b>73,502</b>	<b>64,900</b>	<b>195,795</b>	<b>35,506</b>	<b>27,517</b>	<b>397,220</b>

*Source: Environmental Health Statistics 1997/98 Actuals CIPFA January 1999*

Grossing up CIPFA returns for missing data and nil responses, in England and Wales in 1997/98 there were over half a million (some 530,000) licensed food premises subject to local authority inspection. Almost 290,000 food hygiene inspections were reported to have been carried out, 112,000 written warnings given, and 2,500 improvement notices, over 100 closure notices and over 600 summonses served; the true figures will be higher than these returns<sup>18</sup>.

A review of Public Analyst arrangements was reported in October 1998. This was set up in April 1998 to make recommendations on how best to provide the scientific and technical support to food authorities in respect of their food law enforcement responsibilities. No major legislative changes were suggested, but recommendations included continuance of the requirement for food authorities to appoint one or more public analysts, and increased evaluation, co-ordination, standardisation of criteria and co-operation across food enforcement authorities.

<sup>18</sup> *ibid*

#### 4. Regulation of genetically modified foods

Library Paper 99/38 "Genetically Modified Crops and Food"<sup>19</sup> discusses systems of control and labelling, which are set in the context of EC Directives. This sets out an overview of the system of controls:

In Britain, anyone wanting to produce genetically modified food must:

Notify the Health and Safety Executive (HSE) for approval;

The HSE consults the Advisory Committee on Genetic Modification (ACGM);

The Secretary of State for the Environment must then give approval before the plants can be grown in field trials;

The Department of Environment (DETR) carries out an environmental risk assessment following advice from the Advisory Committee on Releases to the Environment (ACRE);

If field trials are successful, the issue is considered by the Advisory Committee on Novel Foods and Processes (ACNFP);

The ACNFP can also ask for advice from the Food Advisory Committee (FAC), Committee on Toxicity of Chemicals in Food Consumer Products and the Environment (COT), Committees on Carcinogenicity and Mutagenicity, and the Committee on Medical Aspects of Food Policy (COMA);

and

Finally, a marketing consent allowing the product to be sold is only given by the Government following another full risk assessment.<sup>20</sup>

Submissions for approval of GM foods can alternatively be lodged initially in other member states. The ACNFP sets out the procedure:

From 15 May 1999, companies wishing to market a novel food in the EU have been required to submit an application to the competent authority in the Member State where they first intend to market their product. They are also required to send a copy of their application to the Commission. Following acceptance of the application, the competent authority is required to complete an initial safety assessment and forward it to the Commission, within 90 days. The Commission then copies it to other Member States for their comments, which have to be made within 60 days. If the initial assessment is favourable and no objections are

---

<sup>19</sup> Library Paper 99/38, *Genetically Modified Crops and Food*, Christopher Barclay, 31 March 1999

<sup>20</sup> MAFF News Release 408/98, *Food Minister welcomes shopper survey on Genetically Modified Foods*, 20 October 1998

raised by other Member States, then the product can be marketed. If objections are raised, or if the initial Member State considers that an additional assessment is required, the application will be referred to the EC Standing Committee for Foodstuffs for final agreement, consulting the EC Scientific Committee for Food as necessary. If no agreement is reached there, the matter will be referred to the Council of Ministers.<sup>21</sup>

The Science and Technology Committee has published a review of the scientific advisory system in relation to GM foods. The report recommended that ACRE and ACNFP are merged to form an integrated committee which considers all scientific issues relating to GM food and crops and advises Ministers and subsequently the FSA. It suggests that the functions of ACNFP and ACRE could then be delegated to sub-committees:

The integrated committee should have a joint DETR, Office of Science and Technology, Department of Health and MAFF secretariat (with MAFF's role moving to the FSA when it is established) with a joint budget and joint departmental responsibility. Departmental Ministers should continue to be responsible and the Minister for Science should have a co-ordinating role.<sup>22</sup>

### Review of regulatory framework

The Ministerial Cabinet Committee on Biotechnology and Genetic Modification (MISC 6), was set up in Autumn 1998 to co-ordinate the Government's policy on biotechnology.<sup>23</sup> As a result of this review a new Agriculture and Environment Biotechnology Commission is planned that will be responsible for the use of biotechnology in agriculture and its environmental effects. This and a Human Genetics Commission advising on applications of biotechnology to healthcare, and the impact of genetics on people's lives, will work alongside the Food Standards Agency which will take responsibility for GM food.<sup>24</sup>

## **C. Notification of food-borne disease**

### ***1. Recorded cases of food poisoning***

In 1998 there were almost 94,000 recorded cases of suspected infectious intestinal disease (IID) or food poisoning in England and Wales, and just over 9,000 cases in Scotland. Trends in food poisoning cases reported by GPs and by laboratories in Great Britain since 1982 are shown in the chart; the figures behind the chart are shown in Appendix 2 table 1.

---

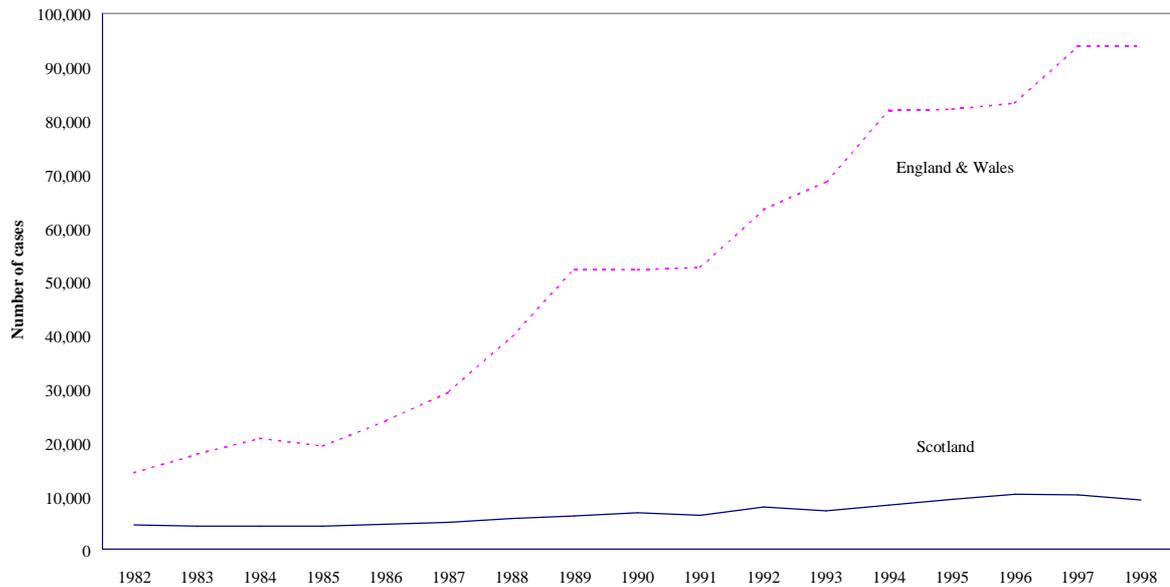
<sup>21</sup> <http://www.maff.gov.uk/food/novel/nfrregn.htm>

<sup>22</sup> Science and Technology Committee, *Scientific Advisory System: genetically modified foods*, 12 May 1999, HC 286-1 Session 1998-99

<sup>23</sup> Cabinet Office Press notice CAB 273/98, 17 December 1998

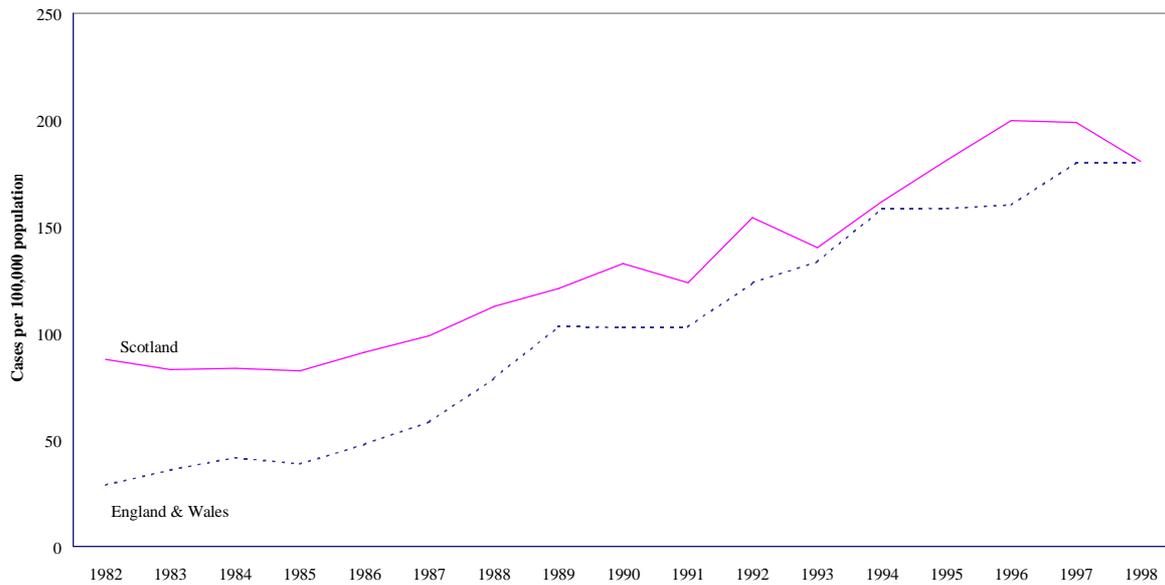
<sup>24</sup> Cabinet Office Press notice CAB 109/99, 21 May 1999

## Notified food poisoning cases



Since 1982, when cases started being recorded on a constant basis, the number of cases recorded annually has risen fivefold in England and Wales and doubled in Scotland. This may be due to a rise in the incidence of food-borne infection or may reflect changes in reporting practice, or the emergence of previously unidentified causes of infection. From 1997 to 1998 however there was a fall in food poisoning cases in Scotland, and no increase in England and Wales. This *may* have been due in part to the cool summer.

Although in general Scotland appears to have far fewer cases, the rate per 100,000 population is in fact now very similar throughout Great Britain.

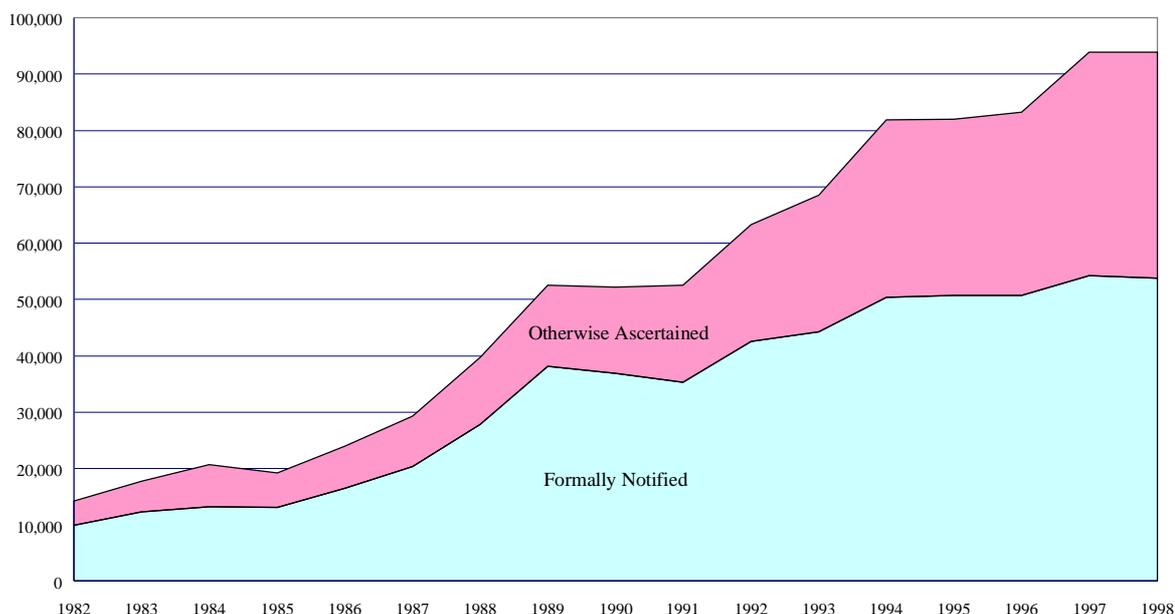
**Notified cases of food poisoning - rate per 100,000 population**

Of the cases recorded in England and Wales in 1998, almost 54,000 were formally notified by doctors, who since 1949 have had a statutory duty to inform their local authority of cases of food poisoning. The rest, some 40,000 cases, were ascertained by other means, including laboratory identifications<sup>25</sup>.

Laboratories routinely report, on a voluntary basis, identifications made from samples to the PHLS Communicable Disease Surveillance Centre. The breakdown of formally-notified cases and cases ascertained by other means for England and Wales since 1982 is shown in the next chart. Laboratory identifications have become increasingly important in identifying cases of food poisoning, compared to formal notifications by doctors<sup>26</sup>.

<sup>25</sup> *CDR Supplement*, Volume 9 No.3, PHLS, May 1999, Table 1

<sup>26</sup> Figures correct as of June 1999, Source: PHLS web site, <http://www.phls.co.uk/facts/foodt1.htm>

**Food poisoning corrected notifications, England and Wales 1982-1998**

## 2. *True levels of food poisoning*

Of the cases notified, not all are confirmed microbiologically, so not all are finally ascribed to a particular micro-organism or toxin. It is of course also recognised that not all cases of food poisoning are picked up at all by the national surveillance system. For every one case finally identified by national laboratory based surveillance, there will have been 136 cases in the community. It has been estimated that one in five of the population develops infectious intestinal disease in a year, amounting to almost 9.5 million cases in England alone.<sup>27</sup>

Figures from the Welsh Health Survey (these questions have not been asked in all national Surveys) support such figures. Adults taking part in the 1995 Welsh Health Survey were asked if they had had a stomach upset with diarrhoea in the past 3 months which they thought was due to something they ate. They were also asked if they had been abroad at the time and if they had seen a doctor about their illness. As with the notification data given above it is important to remember that symptoms put down to food poisoning can also result from infections acquired in a host of other ways;

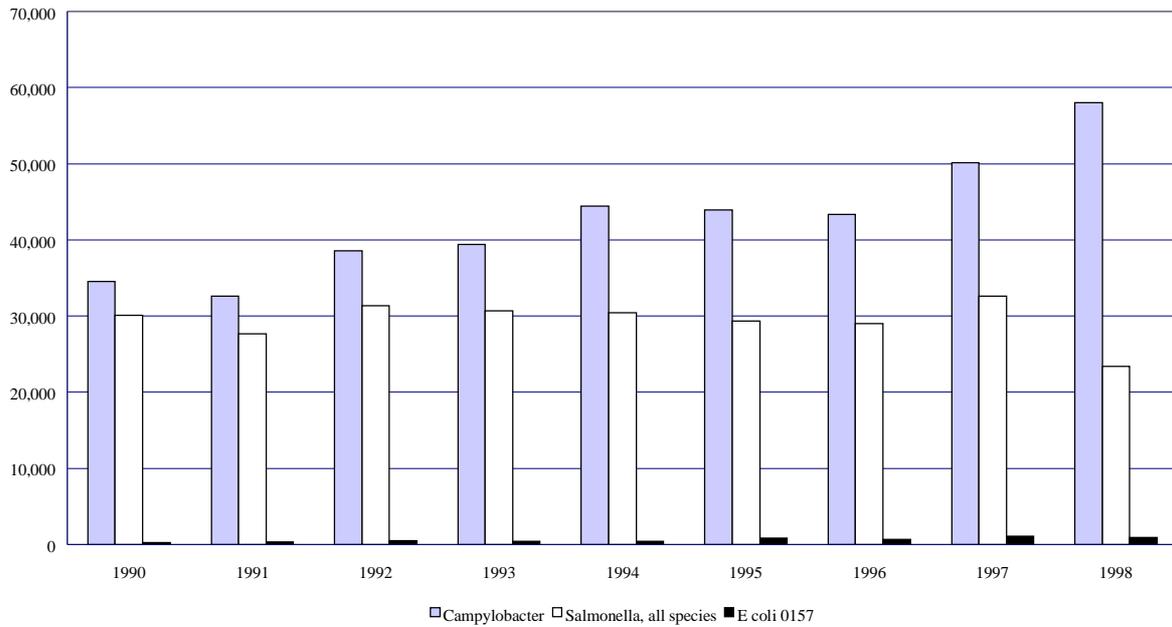
- Around one in five adults in Wales (19%) reported suspected food poisoning;
- The rate was highest for younger people - 22% of 18-24 year olds;
- A further 1% or so of adults put their stomach upset down to something they ate abroad.
- Of those who had had an upset stomach in Wales, only 16% said they saw their doctor about it.

<sup>27</sup> For a summary see Underascertainment of infectious intestinal disease *Communicable Disease and Public Health* PHLS June 1999 pp 78-79

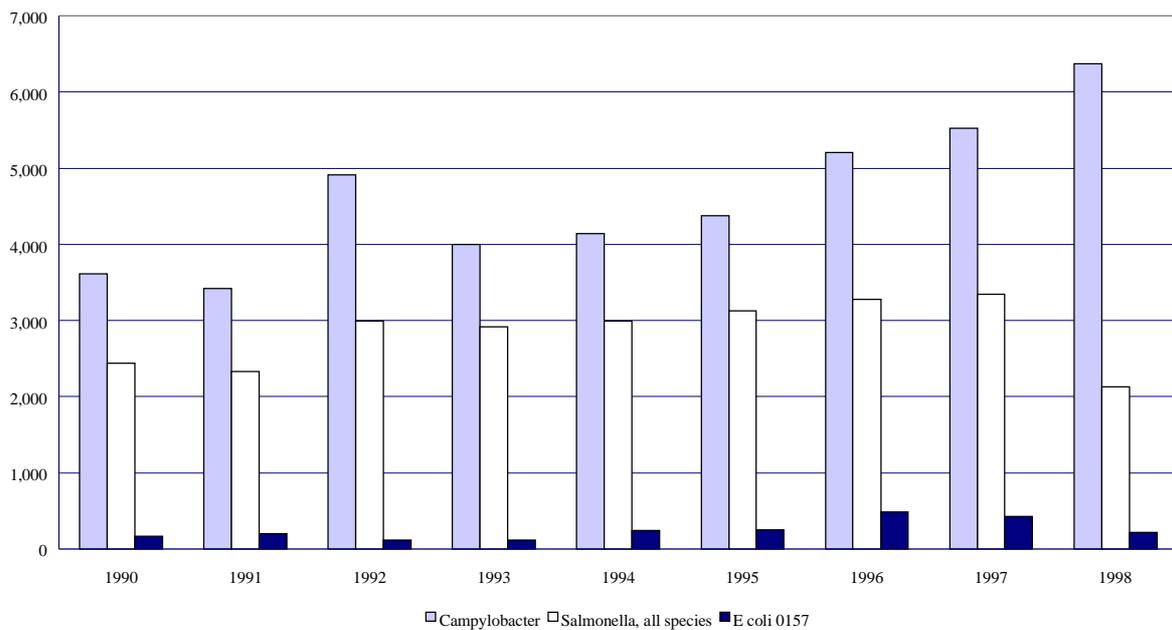
### 3. *Organisms responsible*

The charts show the incidence of some of the organisms which give most cause for concern in England and Wales and below, in Scotland. These are cases confirmed by the public health laboratory services, and the full figures are in Appendix 2 table 2.

**Identified organisms, England & Wales**



**Identified organisms, Scotland**



The overall picture is similar throughout Great Britain; with *E. coli* O157 prevalence dropping in 1998. The reason is unclear; perhaps less contamination on raw foods entering the food chain, improvements in domestic and commercial catering practices, or the cool summer allowing greater margin of error when poor cooking or cross-contamination has occurred.<sup>28</sup>

*Salmonella* infection peaked in 1997 when there over 32,000 laboratory confirmed cases in England and Wales. Much of this increase was caused by a resurgence of species of *Salmonella* associated with eggs and poultry. Although the figures for 1998 are as yet provisional, there is reason to think that there was a real and considerable fall from 1997 and 1990 levels in general. It is possible, but not certain, that again this was caused by last year's cool summer - the only *Salmonella* strains which increased were those associated with foreign travel.<sup>29</sup> In Scotland, *Salmonella* decreased similarly in 1998, to its lowest level since 1986. Again the reason is unclear.<sup>30</sup>

In contrast, *Campylobacter* infections have shown an increasing incidence continuing into 1998. Since this has been while both *E. coli* and *Salmonella* have declined in incidence it makes it less likely that declining commercial and domestic catering practices are to blame. Heavier levels of contamination of raw foods may be one theoretical answer; *Campylobacter* does not occur on foods in normal circumstances, unlike the other two pathogens, so its incidence and multiplication may not have been depressed by the cool summer.<sup>31</sup>

The Agriculture Committee, in the report on Food Safety sets out the possible pitfalls in the system, and supports the concept of compulsory notification:

19. Before food poisoning cases can enter the national notification statistics, they must surmount a number of hurdles, and at each hurdle an unknown number of cases falls by the wayside. First, many people, probably the large majority, do not visit their doctors, usually because their symptoms are mild or pass quickly. Secondly, though doctors throughout the UK are statutorily required to notify cases of food poisoning (in England and Wales, to the local authority; in Scotland to the area Health Board; and in Northern Ireland, to the local Health and Social Services Board[22]), it is thought that there is a substantial degree of under-reporting by doctors[23]. The best estimate of the extent of under-reporting is provided by data from the GP Sentinel Practice Scheme, which records the number of GP consultations for infectious intestinal disease (IID). In 1997 there was a mean annual incidence for such consultations of 2,420 per 100,000 population, twenty-four times the figure for formal food poisoning notification by doctors and thirteen times the total number of notifications (which include cases

---

<sup>28</sup> SCIEH Weekly, Report, 5 January 1999

<sup>29</sup> CDR Weekly, 22 January 1999

<sup>30</sup> SCIEH, Weekly Report, 5 January 1999

<sup>31</sup> ibid

ascertained by other means than through GP notification)[24]. Though the ratio of consultations to notifications has decreased substantially over the last ten years, indicating that GPs are probably more likely now to notify cases, a wide margin of under-notification is still apparent. This hampers efforts to understand the extent of the problem of food-borne illness in society. Dr Rubery told us that the Government had "actually taken quite a number of steps like writing to GPs or encouraging GPs to notify more frequently"[25]. Under-notification by GPs is only one part of the wider jigsaw of under-ascertainment of infectious intestinal disease in the UK, but it is an important part, and the Government must both ensure that GPs are advised of developments in food-borne illnesses and their symptoms, and continue to press GPs to meet their responsibilities in respect of notification. This task will be a crucial one if the Agency's work is to be informed by accurate statistical information and not just by hunches and guesswork.

20. Complementary to the GP notification system is the voluntary laboratory reporting system, under which laboratories throughout the UK report faecal isolates of pathogenic organisms, following analysis of specimens referred by doctors, to their respective surveillance centres (in England and Wales, to the PHLS's Communicable Disease Surveillance Centre (CDSC); in Scotland, to the Scottish Centre for Infection and Environmental Health (SCIEH); in Northern Ireland, to the Department of Health and Social Services)[26]. Drawing attention to the variability in reporting levels, the Government also pointed out that laboratory-confirmed infections gave a "significant underestimate of the true incidence of food-borne infections since not all cases seek medical attention and only a proportion of these have a specimen submitted for analysis"[27]. The PHLS was critical of the laboratory reporting system's lack of coherence and consistency, claiming that "laboratories in different regions vary greatly in their reporting efficiency with a concentration of poorly reporting laboratories in certain regions"[28]. Professor Brian Duerden, Deputy Director of the PHLS, argued that "laboratory notifications should become a statutory responsibility"[29]. We agree. Such measures are essential in improving public health and food safety policy.

21. In addition to formal notifications and laboratory confirmations, local authorities ascertain cases by other means, from outbreaks in the community, for example, or as a result of direct contacts from members of the public or owners of food businesses. For general outbreaks, defined as "an outbreak affecting members of more than one private residence or residents of an institution"[30], the CDSC has developed a surveillance scheme in England and Wales which involves the dispatch of a questionnaire to the local authority for completion and return on the conclusion of the investigation of the outbreak[31]. Implication of foodstuffs in such outbreaks may be based upon microbiological analysis, statistical probability or more circumstantial evidence. The PHLS pointed out that because of the voluntary nature of the surveillance scheme, there was

significant variability between local authorities both in the rigour with which outbreaks were investigated and in reporting levels.<sup>32</sup>

## **D. Evolution of the Bill**

### **1. The James report**

The Labour Government took office committed to setting up an independent Food Standards Agency. Before the General Election Tony Blair, then leader of the Opposition, commissioned a report setting out proposals for such an Agency. This was carried out by Professor Philip James, Director of the Rowett Research Institute, Aberdeen, and was published in April 1998 for consultation.<sup>33</sup>

Professor James identified key factors contributing to erosion of public confidence in the current system of food controls

- the potential for conflicts of interest within MAFF arising from its dual responsibility for protecting public health and for sponsoring the agriculture and food industries
- fragmentation and lack of co-ordination between the various government bodies involved in food safety
- uneven enforcement of food law

Professor James looked at a various of international models. He proposed :

- The FSA should advise Ministers on food safety matters across the whole food chain from plough to plate. It's remit should include a full range of food standards issues chemical food safety, microbiological safety, novel foods and processes, nutrition and food labelling.
- It should be a statutory Non-Departmental Public Body with executive powers, reporting to Parliament through Health Ministers, with the Secretary of State for Health taking the lead.
- The Agency should be governed by a Commission which includes representatives from Scotland, Wales and Northern Ireland, and in which consumer and public interest nominees are in the majority.
- Arrangements should be put in place in Scotland Wales and Northern Ireland to assess policy and legislation emerging from the UK Agency and the EC from a territorial perspective and to initiate work on particular territorial issues. The Agency's role should include developing policy, proposing and

---

<sup>32</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 331-1 1997-98, paras 19-21

<sup>33</sup> Professor Philip James, *Food Standards Agency: an interim proposal*, 30 April 1997

drafting legislation, and public education and information on matters within its remit.

- The Agency should be responsible for co-ordinating, monitoring and auditing local food enforcement activities.
- The Agency should co-ordinate all the research in the food safety, nutrition and consumer protection area.
- Funding for the Agency should come through the Department of Health budget by a mechanism that is open to public scrutiny.<sup>34</sup>

When the new Government took office, a new Food Safety and Standards Group was established within MAFF, bringing together elements of the Ministry concerned with food safety issues. In July 1997, conclusion of consultation on the James report led the Government to declare that there was widespread public support for a new Food Standards Agency.<sup>35</sup> A transitional Joint Food Safety and Standards Group was set up composed of MAFF and DoH officials, and in January 1998 the Government issued a White Paper, "The Food Standards Agency: A Force for Change",<sup>36</sup> incorporating many of the conclusions and recommendations of the James report.

## **2. The White Paper - A Force for Change**

The White Paper set out proposals for major changes in the arrangements for handling food safety and standards in the UK. It proposed the establishment of a Food Standards Agency (FSA) with widespread responsibilities and powers:

To be responsible for protecting the public health by promoting a safer food supply, and ensuring that consumers have the information they need to be able to choose a safe and healthy diet.<sup>37</sup>

The White Paper proposed an Agency with a clear focus on protecting the public health in relation to food, accountable to Parliament through Health Ministers, and having a statutory remit across the whole food chain. It envisaged the continuance of enforcement responsibilities of local authorities but proposed that the Agency should set standards for enforcement and have powers to take action directly to protect the public, or to direct others to do so, if there is a failure in the system. It would be open and transparent in the way it works and consult fully with all interested groups affected by its activities, though it should not be tied to any vested interests. The Agency would be free to publish the advice it provides to the Government. Its guiding principles would be laid down by law.

---

<sup>34</sup> *The Food Standards Agency: A Force for Change*, Cm 3830

<sup>35</sup> MAFF news release 224/97, 30 July 1997

<sup>36</sup> *The Food Standards Agency: A Force for Change*, Cm 3830

<sup>37</sup> *The Food Standards Agency: A Force for Change*, Cm3830, p 1

The proposals largely followed those of the James report, but differed in the structure of the Agency, proposing no division into Commission and Executive. It also gives a lesser role in nutrition, and importantly provides for financial revenue to be raised from industry as well as deriving funding from the Department of Health.

The Guiding Principles for the Agency were set down in the White Paper:

1. The essential aim of the Agency is the protection of public health in relation to food.
2. The Agency's assessments of food standards and safety will be unbiased and based on the best available scientific advice, provided by experts invited in their own right to give independent advice
3. The Agency will make decisions and take action on the basis that:
  - the Agency's decisions and actions will be proportionate to the risk; pay due regard to costs as well as benefits to those affected by them; and avoid over regulation;
  - the Agency should act independently of specific sectoral interests.
4. The Agency will strive to ensure that the general public have adequate, clearly presented information in order to allow them to make informed choices. In doing this, the Agency will aim to avoid raising unjustified alarm.
5. The Agency's decision making processes will be open, transparent and consultative, in order that interested parties, including representatives of the public:
  - have an opportunity to make their views known;
  - can see the basis on which decisions have been taken;
  - are able to reach an informed judgement about the quality of the Agency's processes and decisions.
6. Before taking action, the Agency will consult widely, including representatives of those who will be affected, unless the need for urgent action to protect public health makes this impossible.
7. In its decisions and actions, the Agency will aim to achieve clarity and consistency of approach.
8. The Agency's decisions and actions will take full account of the obligations of the UK under domestic and international law.
9. The Agency will aim for efficiency and economy in delivering an effective operation.<sup>38</sup>

(The Governments Consultation on Draft Legislation sets out the relevant provisions of the draft bill which give effect to the guiding principles.<sup>39</sup>)

---

<sup>38</sup> *The Food Standards Agency: a Force for Change*, p 5, Cm 3830, January 1998

<sup>39</sup> *The Food Standards Agency Consultation on Draft Legislation*, Cm 4249, January 1999 pp 5-6

Comment on this White paper was invited, consultation to be completed by 16 March 1998.

During this and subsequent consultation processes widespread support for the basic idea of a Food Standards Agency has been tempered by concerns about its remit and funding, and also that the new arrangements should be able to provide a demonstrably better means of integrating food safety and consumer health considerations into UK policies than existing institutional arrangements.

### **3. Consultation on Draft Legislation and pre-legislative scrutiny**

Draft legislation was subsequently published<sup>40</sup> in January 1999, taking forward the proposals set out in the White Paper where primary legislation is necessary. This was issued for further consultation and pre-legislative scrutiny by an ad hoc select committee of thirteen members, the Food Standards Committee. The Committee took evidence, and published its report on 24 March 1999.<sup>41</sup>

The Consultation document made it clear that the Government might introduce measures (as indicated in the White Paper) for statutory laboratory notifications of isolated organisms responsible for food-borne diseases.

A separate consultation was carried out on the contentious issue of funding. The Government proposed a scheme of charges levied on certain types of food premises to recover some of the costs associated with the new Agency.<sup>42</sup>

The report of the Committee raised several concerns relating to:

- openness and accountability, including the criteria by which Members of the Agency are selected and interests declared;
- potential problems relating to the independence of the Agency should it have a conflict of opinion with the Government, particularly when acting on behalf of the Government in European or international fora;
- the need for explicit arrangements for co-operation and allocation of responsibilities between the Agency and Departments;
- reservations about the limited remit of the Agency in nutrition;
- limited scope to intervene in the pesticides and veterinary medicines regulatory process;
- the dual role proposed for the Agency as regulator and enforcer of the Meat hygiene Service;

---

<sup>40</sup> *The Food Standards Agency Consultation on Draft Legislation*, Cm 4249, January 1999

<sup>41</sup> , MAFF/DH Joint Food Safety and Standards Group, Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99

<sup>42</sup> *The Food Standards Agency: Proposals for a levy scheme: a consultation paper*, January 1999

- enforcement issues raised included a role for the Agency in setting standards and training for enforcement staff and secondment of enforcement staff to the Agency for short periods. These measures would help to ensure an even standard of enforcement;
- concerns that the research budget is insufficient and firm opposition to the levy scheme for funding the Agency.

These issues are discussed in Part III of this paper. Many of the issues have also been raised in other fora by a broad range of organisations/groups. The Government has commented on these concerns in its reply to the report of the Food Standards Committee, and its comments are discussed in Part III of this paper in connection with specific issues.<sup>43</sup>

### **E. Agriculture Committee report on Food Safety, April 1998**

In the meantime the Agriculture Committee had undertaken a comprehensive inquiry into food safety, with the aim of informing the debate. Concentrating largely on microbiological hazards, evidence (around 150 memoranda) was taken on:

- recent trends in the incidence of bacterial food poisoning in the UK and the effectiveness of the system of notifying cases of food poisoning; significant gaps in current scientific understanding of, and statistical information on, food safety issues, and measures which could be undertaken to reduce these gaps;
- the level of food safety risk at all stages of the food chain (on the farm, in transit, at slaughter, in the food processing industry, the food retail sector, the catering industry and in domestic households);
- any food safety implications of the presence of genetically modified organisms (GMOs) in the human food chain, and the desirability and feasibility of labelling foodstuffs containing GMOs.<sup>44</sup>

The Committee published its conclusions and recommendations with regard to the safety of food and some of the main issues surrounding the proposed FSA in April 1998.<sup>45</sup> Conclusions and recommendations with regard to the White Paper included (*inter alia*):<sup>46</sup>

- The Committee welcomed the inclusion of nutrition but requested clarification of division of responsibilities between FSA and Department of Health

---

<sup>43</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the Food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999

<sup>44</sup> Agriculture Committee *Food Safety*, 22 April 1998, HC 331 -1 1997-98, vii, para 5

<sup>45</sup> Agriculture Committee *Food Safety*, 22 April 1998, HC 331-1 1997-98

<sup>46</sup> Agriculture Committee *Food Safety* HC 331-1 1997-98, 1V, xiii-li, para 123, Summary of conclusions and recommendations

- It was recommended that individual food businesses should only be charged for specific identifiable activities or services such as inspections. All other operating costs should be borne by the Government, as should the Agency's start-up costs. Licensing should not be the subject of charges, and should be selective (e.g. butchers' premises), not universal. "Food safety is a matter of public responsibility and should, therefore, be publicly financed". Consideration should also be given to charging importers for the cost of safety checks to avoid discrimination against domestically produced foods.
- The Committee was satisfied with arrangements for PSD and VMD to lead in approving new products while FSA has effective veto in these matters, but suggests FSA should control surveillance schemes, so that approvals and surveillance of pesticides and veterinary medicines are carried out by different organisations.
- The Committee recommended that the FSA should be monitored by joint meetings of existing agriculture and health select committees (rather than a new Food Select Committee)
- Priorities and targets should be set by the Agency
- The Government and subsequently the Agency should consider derogations from certain legislative requirements for specific types of small producers and retailers offering exemplary levels of food safety, but whole business livelihoods may be threatened by increased administrative costs consequent on greater regulation.

The Committee also supported the Government's labelling policy for GMOs as well as emphasising the importance of research and of monitoring hazards throughout the food chain. It recommended that laboratory notifications of food poisoning should become a statutory responsibility.

### **III The Bill and issues arising**

The full title of the Bill is:

A Bill to establish the Food Standards Agency and make provision as to its functions; to amend the law relating to food safety and other interests of consumers in relation to food; to enable provision to be made in relation to the notification of tests for food-borne diseases; to enable provision to be made in relation to animal feedingstuffs; and for connected purposes.

The Bill seeks to establish the Food Standards Agency, and provide it with functions and powers that are currently exercised by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Health, in relation to food safety and standards.

The Agency will be a publicly funded independent authority. The Government has responded to the views put forward in the public consultation and will not be funding the Agency through a levy on retailers and caterers.

The main objective of the Agency as set out on the face of the Bill (Clause 1) is the protection of public health in relation to food. This is intended to encompass wider food related interests of consumers, including responsibilities on standards of composition, labelling and nutritional content of food, as well as food safety.

The Bill proposes that the Agency will be responsible for formulating policy and advising Ministers, the public and interested parties (such as the food industry) on the need for legislation on all aspects of food safety and standards. It will be able to publish its advice. (Clause 19). Its remit will include the safety of animal feedstuffs (Clauses 9).

The Agency is given powers to compile information related to food safety matters including powers of entry. It has the function of monitoring food safety and standards across the food chain. It will be the competent authority for authorising genetically modified foods.

It will set standards for and monitor food law enforcement as carried out by local authorities, and will have the power to act as an enforcement body in the event of under performance.

The Meat Hygiene Service will report to the FSA instead of MAFF. The Agency will therefore have a dual role as regulator and enforcer for the MHS.

The Bill make provisions for statutory laboratory notification of isolations of food-borne diseases (Clause 27), and provides powers for the Agency to issue guidance on control of food-borne diseases. Such guidance might relate to tracing the food-related source of any outbreak, or the speed with which action needs to be taken to limit the spread of food poisoning. The Bill also makes provision for sharing of information about food-borne zoonoses (animal diseases or organisms carried by animals which may be a risk to human health through the consumption of or contact with food) (Clause 28).

An overview of the Bill is included in Appendix 3.

These proposals have been generally well received. The separation of the role of protecting public health and safety in relation to food under an Agency reporting to the DoH from the role of MAFF which has primary responsibility to producers, has been welcomed. A commitment to openness and a rigorous approach to improving food safety and standards has found favour. The inclusion of nutrition, however, has been contentious.

Proposals for public funding of the Agency have been welcomed. Throughout the consultation period the source of funding has been a primary concern, particularly amongst small food retailers. Enforcement authorities have voiced concerns about the levels of funding.

The Conservative Opposition party was amongst those who opposed the levy. It also raised concerns about the degree of independence of the Agency, that it should be effective, particularly in relation to regulation of GM foods, that it should deliver good value for money and be able to gain the confidence of the public. It will need to demonstrate that it is able to avert food scares such as the recent finding of the chemical dioxin in animal feedstuffs that occurred in Belgium in May 1999.<sup>47</sup>

Liberal Democrats, while strongly in favour of an independent Agency, opposed the levy, and maintained that the Agency should be funded by the public purse..<sup>48</sup>

Political parties in Scotland, Wales and Northern Ireland are concerned that consideration should be taken of the views of the devolved administrations. The Scottish National Party argued for a separate Scottish Food Standards Agency based in Grampian.<sup>49</sup>

More fundamental criticism of the rationale behind the Agency has come from the Soil Association:

Our overview and critique of the Agency is that the rationale for its creation is flawed in that it has been designed to treat symptoms not causes. As such it will have only limited ability to prevent the development of new food safety problems which generally arise through weaknesses in agricultural policy, over which the Agency will have no control.

The Soil Association would therefore have preferred to see the substantial effort currently going into the establishment of the Food Standards Agency used to restructure and 'green' the Ministry of Agriculture, Fisheries and Food, so that

---

<sup>47</sup> Conservative spokesman, personal communication, 16 June 1999

<sup>48</sup> Liberal Democrat spokesman, personal communication, 16 June 1999

<sup>49</sup> Scottish National Party spokesman, personal communication, 16 June 1999

food safety problems could have been addressed in an integrated and fundamental way through changes in agricultural policy which encouraged a move away from damaging chemical inputs and towards a more systems-oriented approach. Had this happened we believe it would then not have been necessary to bring about the artificial, inappropriate and in the long term unworkable separation of food and agricultural policy which is enshrined in the draft Food Standards Agency legislation.<sup>50</sup>

Further details and some of the key issues raised by the Bill are discussed below.

### **A. Structure of the Agency and accountability**

The Bill establishes the Agency as a 'Crown body' (Clause 1(3)), a non-Ministerial Government department with advisory and executive powers. This allows for independence from Government greater than if it were an Executive Agency of a Government department, and on similar lines to the Inland Revenue and Customs and Excise.

Professor James had recommended that the Agency should be based loosely on that of the Health and Safety Commission/Executive (HSC/HSE) model. (The HSC and the HSE are two separate legal entities, with advice to Government being the province of the Commission, which also sets the broad policy and resource framework for enforcement. It is precluded from intervening in specific enforcement activities because of the representative nature of the Commission, and to prevent a conflict of interest.)

However, the Government does not consider formal separation between Commission and Executive appropriate for the new FSA:

"in order to ensure that the Commission is clearly responsible for the operations of the Agency the Government intends to establish it as a single legal entity, and to endow the Commission with all of the Agency's policy and executive powers. It would be for the Commission, acting collectively, to determine the extent to which it delegated responsibility for day to day operational matters to the Chief Executive and his/her staff. This arrangement would not give rise to the conflicts of interest which might occur with a model based on the HSC/HSE..."<sup>51</sup>

The Bill allows for an Agency consisting of a chairperson and a deputy and eight to twelve other appointed members who will govern its activities (Clause 2). Members will be appointed by the Secretary of State for Health and the appropriate devolved authorities in Scotland, Wales and Northern Ireland. The authorities are required to consult each

---

<sup>50</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 38 submitted by the Soil Association p 116

<sup>51</sup> *The Food Standards Agency: a Force for Change*, Cm 3830, p 37

other before making appointments. The "appropriate authorities" are defined (Clause 36 ) as:

- the Secretary of State: in practice, for the purposes of the Bill, this will be the Secretary of State for Health;
- in Scotland, the Scottish Ministers - the Secretary of State for Health will take the lead;
- in Wales, the National Assembly of Wales. That part of the Assembly which takes responsibility for health will take the lead;
- In Northern Ireland, the Department of Health and Social Services. In Northern Ireland, powers are vested in departments, acting on behalf of the NI Executive.<sup>52</sup>

It is expected that Members will be appointed part time for perhaps 3-5 years, and be able to continue their remunerative employment.<sup>53</sup>

During consultations the importance of including persons with appropriate skills and expertise has been raised as critical to the successful functioning of the Agency.<sup>54</sup> The draft Bill requires that "a variety of skills and experience shall be available among the members of the Agency (including matters relating to food safety or other interests of consumers in relation to food)." The explanatory notes say that while the appropriate authorities have a duty to consider interests, no interest will of itself disbar anyone from membership of the Agency. The Food Standards Committee commented on ambiguity here, and recommended that at Second Reading the Minister should make explicit the criteria by which members of the Commission are selected and interests declared.<sup>55</sup> Provision is made for a register of interests to be established under paragraph 9 of schedule 1 to the draft Bill. The Food Standards Committee suggest that greater openness might be achieved by providing on the face of the Bill that members should not take part in discussions on matters in which they have a particular interest.

The Government has responded to these comments:

The Agency will operate a Code of Practice for board members, which will be modelled on the guidance set out by the Cabinet Office...The Code will be published in full.

...It will be for the Agency's rules of procedure to determine how declared interests of members are handled in relation to the Agency's day-to-day business. The common law requires that members of public bodies should not participate in the discussion or determination of matters in which they have a direct pecuniary

---

<sup>52</sup> *Food Standards Bill Explanatory Notes*, Bill 117-EN

<sup>53</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-11 1998-99, Q753, p 138

<sup>54</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1998-99, HC 276-111 1998-99, Food and Drink Federation, memorandum 14

<sup>55</sup> Food Standards Committee, *Food Standards Draft Bill*, HC 276-1 1998-99, para 21

interest, and the Agency will need to follow this practice. It also requires members to act with caution where they have an interest which is not of a direct pecuniary kind.<sup>56</sup>

The staff of the Agency will be civil servants led by a full time Chief Executive. The explanatory notes to the Bill discuss staff numbers:

It is estimated that once established the Agency will include up to 150 more posts than are currently in the MAFF/Department of Health Joint Food Safety and Standards Group and the equivalent functions in Scotland, Wales and Northern Ireland. Not all these posts will be new - there will be some offsetting savings in parent departments. The Meat Hygiene Service, which will also transfer to the Agency, employs around 1650 staff. It is not anticipated that this number will change as a result of creation of the Agency.<sup>57</sup>

### **1. Monitoring and enforcement of the Agency's activities**

Under Clause 4 the Agency will be required to make an Annual Report to Parliament. The Food Standards Committee recommended that this should indicate annual progress in food safety and in raising dietary and nutritional standards. The Food Standards Committee pointed out the lack of a mechanism for detailed monitoring of the activities of the Agency and recommended an independent audit body should undertake this function, and that the Agency should undergo an independent review two years after it is established. It considered this particularly important with regard to monitoring the effectiveness of the Agency in raising meat hygiene standards.<sup>58</sup>

The Food Standards Committee recommended that parliamentary scrutiny of the Agency should be undertaken by a subcommittee of the Health Committee. The Government agrees that it falls within the Health Committee's terms of reference.<sup>59</sup>

The Food Standards Committee commented on the powers under Clause 24 which enable the Secretary of State to direct the Agency where it appears to him that the Agency is acting in breach of duty, and the possible implications for the independence of the Agency. The Government responded:

Powers of direction by the Secretary of State or the devolved authorities under the Bill are only exercisable after consultation with the Agency and the other

---

<sup>56</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the Food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, para 4, June 1999

<sup>57</sup> *Food Standards Bill Explanatory Notes*, Bill 117-EN, 10 June 1999, p 41

<sup>58</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xx, para 50

<sup>59</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, para 24, June 1999

appropriate authorities, and only with the agreement of the other appropriate authorities. They can only be used where there has been a serious failure by the Agency...Any decision made by the Secretary of State to direct the Agency would be subject to the usual and established procedures of Parliamentary and judicial accountability.<sup>60</sup>

## B. Devolution

Under devolution legislation<sup>61</sup> responsibility for food safety and standards is devolved to the new authorities in Scotland, Wales and Northern Ireland. The Bill proposes that the FSA will be a UK-wide body and there are arrangements for:

- Separate executive bodies headed by Directors in Scotland, Wales and Northern Ireland, and with responsibility for organisation of the Agency in their part of the UK;
- The creation of new Advisory Committees for Scotland, Wales and Northern Ireland, to give advice on food safety and standards issues in their part of the UK. (clause 5). The chairman of each of these committees will be a member of the Agency with particular experience in food safety and standards matters in their part of the UK. There is also a provision for establishing an advisory committee for England, or English regions in the future. (Clause 5 (2));
- The Scottish Ministers, the National Assembly for Wales and the Northern Ireland Department would retain legislative powers in all the key areas, advised by the Agency;
- The Agency will make annual and other reports to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly as well as to Parliament in Westminster (Clause 4);
- The devolved administrations will fund the costs of the Scottish, Welsh and Northern Ireland arms of the agency.<sup>62</sup>

The Bill makes provision for modification of the Act, including the constitution of the Agency, should there be need for change in response to altered circumstances generated by devolution. Under Clause 32 modifications to the Food Standards Act can be made by Order in Council, after consulting the Agency. This procedure will allow each legislature formally to consider and consent to such changes. (The Order is approved by affirmative resolution of each of the four legislatures).

Further changes to the Act will remain possible by a further Act of the UK Parliament, and also the Scottish Parliament and the NI Assembly, within the extent of their competence.

---

<sup>60</sup> *ibid* para 21

<sup>61</sup> The *Scotland Act 1998*, the *Government of Wales Act 1998* and the *Northern Ireland Act 1998*

<sup>62</sup> *Food Standards Agency Consultation on Draft Legislation*, Cm 4249, January 1999

Under devolution legislation the devolved authorities have the competence to withdraw entirely from the Agency completely. Clause 33 makes provision to deal with the consequences of such withdrawal by Order in Council.

The Agency has a duty to co-operate with the Food Safety Promotion Board (Clause 34), one of the all-Ireland implementation bodies created following the Belfast agreement. The Agency will not duplicate the functions of the FSPB in Northern Ireland.

### **C. Advisory committees**

The Agency will be accountable to Parliament through Health Ministers, and advised by established independent scientific Advisory Committees and four new Advisory Committees (Clause 5).

These new Committees will provide advice on the implications for Scotland, Wales and Northern Ireland of the Agency's activities and advise the Agency and Agricultural Ministers on all matters affecting the safety, quality and efficacy of animal feedstuffs. There is also a provision for establishing an advisory committee for England, or English regions in the future. (Clause 5 (2)), and for establishing other committees as required, as well as abolishing committees (not those representing the interests of devolved authorities). Schedule 2 gives detailed provisions for advisory committees.

The Joint Food Safety and Standards Group has set out the Committees which will advise the FSA on food issues.

63

### **D. Openness and accountability**

The draft *Freedom of Information Bill* (FOI) which was published for consultation in May 1999 (Cm 4355) contains an exemption for policy advice, including factual information. This enables the public body to withhold policy advice but does not stipulate that it will be withheld. There is also a duty for the body to consider the public interest in releasing the information. MAFF have stated that the Food Standards Agency will be covered by the FOI Bill.

However, the Food Standards Bill contains its own provisions on openness. Clause 22 requires the Agency to prepare and publish a statement of objectives and that these should include consultation, co-operation and openness. The Bill provides that the Agency may publish its advice to Ministers (Clause 19).

These provisions have been welcomed. The Food Standards Committee has however raised some concerns:

---

<sup>63</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 1, submitted by the Joint Food Safety and Standards Group

53. This picture of openness is not, however, without its uncertainties. The statement of general objectives and practices which the Agency is enabled to make by Clause 18 [now Clause 22 (4)] has to be submitted to the "appropriate authorities" the Secretary of State or relevant devolved authority—for approval before publication. Moreover, "modifications" to this statement can be made by those authorities under Clause 18 [now Clause 22 (5)] after consultation with the Agency, but not necessarily after their approval of those modifications. This power of the authorities goes in tandem with their power to request particular advice from the Agency and its corresponding duty to comply, set out in Clause 9 [now Clause 6] of the draft Bill. Taken together they effectively mean that the Agency could be directed in its actions by those authorities and prevented from making a statement of its general objectives that included matters that those same authorities wanted withheld from it. How this stands alongside the independence hoped for from the Agency is difficult to tell. We recommend that the Government clearly explain the reasoning behind these powers when the Bill proper is introduced to the House. This may then allay some of the concerns about them expressed in memoranda and evidence to the Committee.<sup>64</sup>

In its response to the Committee, the Government states:

The Bill provides for the Secretary of State and other appropriate authorities to require the Agency to include certain matters in its statement of general objectives and practices in order to reinforce the democratic accountability of the Agency and to ensure that it has regard to any wider requirements of Government policy. It is not the Government's intention that the Agency should be wholly independent of Government, since ministers will continue to be accountable to Parliament (and the devolved legislatures) for its actions. It does, however, intend the Agency should have a strong independent voice, exercised through its power to publish its advice to Ministers.

Provided the Agency acts reasonably and in accordance with its guiding principles, the Government does not believe it will be necessary to direct the Agency's actions. The powers of direction are however in the government's view the necessary concomitant of the requirement that the Agency is responsible through ministers to Parliament.<sup>65</sup>

In response to concerns over a possible conflict between the presumption of openness versus commercial confidentiality the Government has indicated :

Clause 19 subsection (3) provides that in deciding to disclose, the Agency will not be bound by non-statutory confidentiality requirements (such as personal privacy or commercial confidence). Nonetheless, it will have to consider, before disclosure, whether the public interest in disclosure (for example, in terms of

---

<sup>64</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xxi, para 53

<sup>65</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999

promoting openness or in making people aware of health risks) is outweighed by the confidence.<sup>66</sup>

The Government has also responded to the Food Standards Committee's concerns about the inclusion of a special provision relating to protection of the public interest in relation to national security and has removed this provision from the Bill.

A further difficulty is envisaged in which advice given by a committee to both the Agency and the Government is dealt with differently. This is addressed by the Scrutiny Committee:

59. It is easy to envisage a situation in which advice given by a committee to both the Agency and the Government is dealt with differently: the Agency receives the advice, considers it insufficient or at fault and advises the Government differently upon the matter in question. The Government sets aside the Agency advice in favour of the original advice it received directly from the committee concerned. This sort of situation will be as dangerous for public confidence as the current complexities unless the openness of the Agency explicitly includes openness as to all the advice it receives from whatever source, and openness about its criticisms of that advice. Such openness may not always have harmonious results for the bodies involved but is absolutely essential if the Agency is indeed to be given the precedence in advice to Government and public that surely this draft Bill implies.<sup>67</sup>

## **E. Risk assessment and the precautionary principle**

The issue of risk assessment has been much discussed, for example in relation to the decision to ban beef on the bone. Where there are uncertainties about the scientific evidence, an element of political judgement is inevitably involved in reaching decisions on the best course of action.

In his evidence to the Agriculture Select Committee on Food Safety Dr Cunningham, then Minister of Agriculture, said that the Agency should proceed on the basis of the precautionary principle, which calls for action to be taken against the possibility of risks emerging which may not be apparent from existing scientific knowledge.<sup>68</sup> The Agriculture Select Committee called for this to be explicitly stated in the agency's guiding principles. In addition:

One of the first tasks for the Food Standards Agency will be to draw up and publish the risk assessment criteria under which it will operate. We recommend that it consults widely on these criteria before they are adopted. A clear

---

<sup>66</sup> *Food Standards Bill Explanatory Notes*, Bill 117-EN, 10 June 1999, p 15

<sup>67</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xxii, para 59

<sup>68</sup> Agriculture Committee, *Food Safety*, HC 331 -1 1997-98, xxxvii, para 103

definition of the respective responsibilities of the Government, the food industry and the individual consumer in addressing risk is also required.<sup>69</sup>

Clause 23 states explicitly that the nature and magnitude of risks, particularly in relation to public health, and uncertainty in evidence should be taken into account in the functioning of the Agency, while the explanatory notes indicate "the Agency is likely to want to take a precautionary approach". This is not however included on the face of the Bill.

## **F. Remit of the Food Standards Agency**

The Bill proposes that the Agency should take over primary responsibility from the Agriculture and Health departments for advising ministers on UK policy framework to the Government as a whole, and to the devolved authorities, in the areas of food safety and food standards, including some limited aspects of nutrition. This would include advising on the need for and content of legislation and the implementation of policy. In some areas such as nutrition policy and food safety issues which relate to farming practices responsibility will be retained by Health, Agriculture and Environment Departments, but the Agency will be able to advise on development of policy by these departments where matters may have an impact on food safety.

The Agency will have executive as well as advisory powers. The proposals, unchanged in principle since the Draft Bill, allow for responsibilities for formulating policy, drafting secondary legislation, negotiating in the EU and internationally, providing advice, guidance and information, carrying out research and surveillance, setting standards and monitoring enforcement in the following areas:

- Pathogens in live animals
- Animal feed
- Food hygiene
- Meat and milk hygiene
- Food-borne illness
- Novel foods and Processes
- Food additives
- Chemical contaminants
- Radiological safety
- Food intolerance
- Food emergencies
- Food standards (including labelling, and with regard to nutrition)

---

<sup>69</sup> Agriculture Committee *Food Safety*, HC 331 -1 1997-98, xxxviii, para 104

Additional responsibilities for issuing licences/approvals/authorisations are proposed for animal feeds, meat and milk hygiene, novel foods and processes and food additives.

## **1. Role in food safety and the farm**

It is recognised that good agricultural practice can reduce the risk of contamination on the farm where most food production has its origin.

Most cases of food poisoning can be traced to animal origins, with the main sources of bacteria being poultry, poultry products, red meat and other animal and dairy products. High standards of animal housing reduce the transmission of bacteria from animal to animal, and clean animals reduce the risk of faecal contamination of meat in the slaughterhouse. Hygiene in the feed industry is also necessary to prevent contamination of stock.<sup>70</sup>

Good agricultural practice can also prevent contamination of other foodstuffs - food poisoning can result, for instance, if animal or poultry wastes are used as fertilisers on salad crops.

While primary responsibility for good agricultural practice will remain with MAFF, the Bill (Clause 25) extends the scope of the *Food Safety Act 1990* to cover on-farm activities related to food production which may affect food safety. The *Explanatory Notes* provided by the Government state that these powers are intended to be used in relation to on-farm activity only when existing powers available to, for example, Agriculture or Environment Ministers, are unavailable or insufficient. However, in evidence to the Food Standards Committee, Jeff Rooker, Minister of Agriculture, Fisheries and Food, said

...if it perceives there are problems on the farm, either in husbandry practices, the way food is collected, the way it is cropped, the way it is stored in the grain stores, and draws that to the attention of the existing regulatory authorities for that and does not get any action, and does not get satisfaction, then the powers in this Bill give the Food Standards Agency the power to make sure that things happen...<sup>71</sup>

## **2. Animal feedingstuffs**

In accordance with the principle of a remit extending throughout the food chain, provisions are included in the Bill to give the Agency control over animal feedingstuffs. Clause 9 gives the Agency general functions with relation to animal feedingstuffs. The Government have clarified the wide-ranging responsibilities of the Agency in this area:

---

<sup>70</sup> Parliamentary Office of Science and Technology, *Safer Eating Microbiological Food Poisoning and its Prevention*, October 1997, para 2.31

<sup>71</sup> Food Standards Committee, *Food Standards Draft Bill, 24 March 1999*, HC 276-11 1998-99, Q55 p 12

The Agency will have wide-ranging responsibilities in the area of animal feedingstuffs. These include, for example, EU controls governing the safety, composition and labelling of animal feeds. The main reason for giving the Agency responsibility in this area is because of the possible implications of animal feedingstuffs for the safety of human consumers eating meat and animal products. This is already encompassed by the Agency's main objective in clause 1 and its advice and information functions in clauses 6-8, which apply to food safety and other interests of consumers in relation to food. However, in carrying out its responsibilities on animal feed, the Agency will also incidentally deal with matters which are not directly about food safety or the interests of consumers of food. For example, most of the relevant EU and domestic provisions also apply to pet foods, and responsibility for these cannot readily be separated from responsibility for animal feeds. Similarly there are provisions which relate to protecting the interests of the purchasers of animal feeds, or ensuring that the safety or health of the animal itself is not damaged. Although these matters are secondary to the Agency's primary purpose in relation to human health, the Agency needs to be able to have the legal basis to undertake these functions and this clause provides it.

At present, feedingstuffs are regulated by means of regulations under the *Food Safety Act 1990*, the *Agriculture Act 1970* and the *European Communities Act 1972*, and by Orders made under the *Animal Health Act 1981*. Under the Bill, the Minister of Agriculture, Fisheries and Food will cease to have responsibility for regulations under the 1990 Act, but will remain responsible for the 1970 and 1981 Acts. The Agency will be able to give advice to both Ministers on the need for legislation under all these Acts as it sees appropriate. However, orders under the *Animal Health Act* in relation to feed are usually used to control feed borne diseases of animals, where MAFF's veterinary expertise is very important. Thus MAFF will retain the primary policy making role in relation to these. Arrangements will be put in place to ensure that MAFF and the Agency do not duplicate work in this area. MAFF and the Agency will co-operate closely to ensure that both bodies consult each other on feedingstuffs matters affecting human and animal health (see also clause 28 in relation to co-operation on zoonoses).<sup>72</sup>

### **3. Provision of advice information and assistance**

The Food Standards Committee, set up to provide pre-legislative scrutiny of the draft Bill, recommended that the Agency's power to provide advice and information to the public as well as the public authorities be extended to providing advice to the food industry, and that this be made explicit on the face of the Bill.<sup>73</sup> Provision is now made (Clause 7) to extend the provision of advice, information and assistance to other persons. The Government's explanatory notes set out examples. The Agency will be able, for example to:

- run information campaigns on issues of current interest or importance;

---

<sup>72</sup> Food Standards Bill Explanatory Notes, Bill 117-EN, 10 June 1999

<sup>73</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xx, Para 51

- publish scientific data arising from research or surveillance and advise on its interpretation;
- produce leaflets on food hygiene, labelling etc;
- run a consumer helpline;
- issue advice for people with food allergies;
- pass on information about developments in food science to the public as a whole and to particular groups such as food producers;
- produce guidance on food safety matters for the food industry;
- issue food hazard warnings, alerting the public to particular problems.

#### **4. Observations, information gathering and powers of entry**

The Bill provides for measures to enable the Agency to monitor food safety throughout the food chain. Clause 10 gives the Agency specific powers necessary for gathering information for research and surveillance purposes in relation to food safety and standards. These powers are not intended for enforcement purposes. They replace and expand provisions in section 25 of the *Food Safety Act 1990* relating to taking samples of food and substances used in the preparation of food and contact materials to include the whole food chain. Thus information may be sought on animal feedingstuffs, and food premises and commercial operations relating to foods or contact materials, agriculture premises, businesses and activities, and premises, businesses and operations involving animal feedingstuffs may all be required to submit information or samples.

These powers are not intended for enforcement purposes and the information gathered could not be used directly for the purposes of food law enforcement. However, the *Explanatory Notes* (p10) indicate that the information gathered could be passed to the relevant enforcement authorities who would then take a decision on the need for further investigation.

The Agency will also have powers of entry for these purposes. (clause 11) and powers to inspect health records of people employed in food production, but only where the information is relevant to food safety. This will not allow the Agency general access to an individual's health records.

#### **5. Genetically modified (GM) food**

During the consultation period many commentators registered concerns that the Agency should have an effective role in regulating GM foods.

The bill proposes that the FSA will be the competent authority for authorising GM foods. The Advisory Committee on Novel Foods and Processes (ACNFP), which advises on UK applications for approval of novel foods and processes, including food irradiation and GM foods, will report to the FSA. The ACNFP looks at toxicology, allergenicity, and nutritional implications related to consumption patterns of GM foods.

The Food Advisory Committee has primary responsibility for details of labelling issues. This will also report to the FSA. The Advisory Committee of Releases to the

Environment (ACRE) is responsible for advising Government on consents to grow, and will continue to report to the DETR.

The Bill proposes that under Part II paragraph 10 of Schedule 3, the Agency must be consulted before any Regulations on the deliberate release of GMOs are made where these are related to matters connected with its food safety consumer protection remit. Details are set out in the *Explanatory Notes*.<sup>74</sup>

## **6. Meat and dairy hygiene**

The Bill allows for the transfer of statutory responsibility for meat and dairy hygiene, currently exercised by the Minister for Agriculture Fisheries and Food, under the *Food Safety Act 1990*, to the Agency, and grants the Agency powers as an enforcement body (Clause 26 removes the powers from MAFF and Schedule 3 allows the Agency to act as an enforcement body under the *Food Safety Act 1990*.) The Minister's current enforcement functions (for example on dairy and meat hygiene) will be transferred to the Agency by amending secondary legislation.<sup>75</sup>

There has been criticism, notably from the Food Standards Committee, of the dual role this creates for the FSA as both regulator and enforcer of the Meat Hygiene Service. This is discussed further in Section H below.

The Farming and Rural Conservation Agency (FRCA), which currently has responsibility for enforcing dairy hygiene regulations, will retain this duty but will be answerable to the FSA instead of MAFF.<sup>76</sup> The FRCA discharges a range of other agricultural duties, and in all other respects it would appear that it will remain a MAFF Executive Agency.<sup>77</sup>

## **7. Pesticides and veterinary medicines**

In these areas lead responsibility will remain with Executive Agencies of MAFF. Responsibility for administering policies on the registration and approval of pesticides will remain with the Pesticides Safety Directorate (PSD) and for registration and approval of veterinary medicines with the Veterinary Medicines Directorate (VMD). The current pesticides regulatory process is described by the Joint Food Safety and Standards Group:

---

<sup>74</sup> *Food Standards Bill Explanatory Notes*, p 34, Bill 117-EN, 10 June 1999

<sup>75</sup> *Food Standards Bill Explanatory Notes*, p 31, Bill 117-EN, 10 June 1999

<sup>76</sup> C Deb 8 February 1999 c 101

<sup>77</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xix, para 46

## THE CURRENT PESTICIDES REGULATORY PROCESS

The aims of the Pesticides Safety Directorate are to: protect the health of human beings, creatures and plants; safeguard the environment; secure, safe, efficient and human methods of pest control.

In order to achieve its aims, PSD works in close collaboration with a number of other Government Departments and Agencies (including Health, Environment, Transport and the Regions, Scotland and Wales).

The Directorate provides support for two Committees with which the Department of Health and the Joint Food Standards and Safety Group (JFSSG) are closely involved:

The *Advisory Committee on Pesticides (ACP)* is an independent Committee providing advice to Ministers in the regulatory Departments on the approval and review of pesticides.

The *Working Party on Pesticide Residues (WPPR)* monitors both home-produced and imported food for a wide range of pesticide residues.

In advising Ministers, the ACP evaluates substantial data dossiers covering, amongst other things, safety in use of a pesticide and residues.

Dossiers are scrutinised by independent experts in areas such as medicine, environmental matters, clinical toxicology and carcinogenicity.

The recommendations are considered by five Departments.

All approved pesticides are subject to routine review and to special review if circumstances require.

The WPPR (which is to be renamed the Pesticides Residues Committee) undertakes on behalf of the Government an annual residues surveillance programme.

All results are published on an annual basis free of charge.

Monitoring is targeted to where residues are most likely to be found.

Lay members have recently been appointed to both the ACP and WPPR.

The national arrangements for authorising pesticides are running in parallel to the emerging EU arrangements. The EU systems of approvals and reviews will gradually replace the national arrangements over a period of time.<sup>78</sup>

The memorandum also discusses future links with the Food Standards Agency:

---

<sup>78</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 1 Submitted by the Joint Food Safety and Standards Group Appendix 2

The pesticides regulatory process is already a joint effort with DH, DETR and the territorial Departments. The Advisory Committee on Pesticides (ACP) has a central role in offering advice to Ministers on the approval or revocation of pesticides.

The FSA will be closely involved with the ACP through:

- the appointment of an expert member nominated by the FSA;
- the appointment of an assessor to advise the Committee and to consider recommendations on behalf of the Agency;
- consultation on the appointment of the Chairman and members.

It is proposed that pesticides residues surveillance will remain with PSD. However, FSA will be fully involved in questions of membership, the work programme and the reporting or results of the Pesticides Residues Committee (PRC) (which will replace the Working Party on Pesticide Residues).

Proposals currently under consideration for the PRC envisage that:

- The FSA will be involved in the appointment of the Chairman and members of the PRC;
- The FSA will attend meetings of the PRC to act as advisers on the programme and its findings;
- The FSA will be involved in the preparation of the annual report and any special interim reports which the PRC may publish.

The Food Standards Agency will also provide a member for the ownership Board of the Pesticides Safety Directorate.<sup>79</sup>

Authorisation and policy on veterinary medicines is regulated as follows:<sup>80</sup>

The Licensing Authority for veterinary medicines in the UK is the Health and Agriculture Ministers.

The Veterinary Medicines Directorate (VMD) is responsible to the Licensing Authority for:

- the regulation of veterinary medicines and medicinal feed additives;
- monitoring of suspected adverse reactions;
- advice on veterinary medicine policy.

Independent expert advice to the Licensing Authority on the safety, quality and efficacy of veterinary medicines and on suspected adverse reactions is provided by the Veterinary Products Committee (VPC),

---

<sup>79</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 1 Submitted by the Joint Food Safety and Standards Group Appendix 3

<sup>80</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 1 Submitted by the Joint Food Safety and Standards Group Appendix 4

Two lay members with consumer expertise sit on the VPC.

The draft Food Standards Bill provides for:

- an expert member to be nominated to the VPC by the Food Standards Agency (FSA);
- FSA officials to advise the VPC on issues related to food safety;
- FSA to have the right to put its own advice to Ministers if it does not consider the VPC's advice properly reflects its concerns;
- FSA to publish its advice if necessary.

#### POLICY ON VETERINARY MEDICINES

- FSA will be consulted on all policy advice and proposals for legislation which has food safety implications.
- FSA will be consulted on all EU and other international negotiations.
- FSA will be able to put its own advice to Ministers and publish it as necessary.
- FSA will contribute to the production of an annual report to the EU Commission and in drafting for publication an annual report of the results from the surveillance programmes;
- FSA may choose to conduct its own surveillance programmes.

#### RESIDUES SURVEILLANCE

The VMD is responsible to the Minister of Agriculture, Fisheries and Food for surveillance of residues of veterinary medicines in meat and animal products.

- the statutory programme to meet EU requirements involves testing of some 35,000 samples each year;
- the non-statutory programme covers some 1,500 substances and products not included in the statutory programme on which almost 9,000 analyses are carried out;
- results are published quarterly in the Medicines Act Veterinary Information Service and in the Annual Report on Residues Surveillance;
- preliminary results for 1998 indicate that 99.6 per cent of samples are free of detectable residues of veterinary medicines.

Advice on the residues surveillance programme currently provided by the Advisory Group on Veterinary Residues (AGVR) which includes a consumer member.

#### **Under proposed new arrangements:**

FSA will be closely involved in the appointment of members of an independent Veterinary Residues Committee to replace the AGVR;

FSA will be closely involved in drafting residues surveillance plans and submitting them to the VRC for advice;

FSA will be consulted on the line to be taken at EU meetings at which the UK's and other national plans are approved by the EU Commission;

FSA will attend all meetings of the VRC as advisers/assessors and provide, in particular, input into the toxicological and other food safety implications of residues detected by the surveillance programmes;

FSA will be involved in presentation of results to the VRC and their quarterly publication in MAVIS, including reporting to the VRC on the outcome of follow-up action on samples containing residues;<sup>81</sup>

#### The Food Standards Committee comments:

43. In essence, the draft Bill proposes that both the PSD and the VMD remain MAFF Executive Agencies, whilst granting certain powers to the Food Standards Agency to intervene in the registration and approvals process applying to pesticides and veterinary medicines. Under Schedule 2, paragraph 8(2), [now Schedule 3 paragraph 6] the Agency has the right to nominate a representative to the Advisory Committee on Pesticides. Ms Jill Wordley from the Joint Food Standards and Safety Group assured us that this power would give the Agency "an effective veto" over the pesticides approval process should such action be deemed necessary, as any decision taken by the ACP has to be made on an unanimity rather than a majority basis. The Agency is similarly empowered under Schedule 2, paragraph 9(6) [now Schedule 3 paragraph 8] to appoint a nominee to the Veterinary Products Committee.

44. It is also expected that the Agency will exercise its right under paragraph 9 of Part II of Schedule 2 to the draft Bill to appoint advisers on food safety issues to both the ACP and the VPC. Furthermore, the PSD will be required to consult with the Agency on pesticides registration; the approval and suspension of pesticides products; and on the criteria under which the approvals process proceeds. The draft Bill places an analogous responsibility on MAFF to consult with the Agency on matters relating to the regulation of veterinary products, and for the Ministry to make available to the Agency all relevant information pertaining to veterinary medicines. Under Clause 10 [now Clause 19], the Agency can also place any advice made to the Government on pesticides and veterinary medicines in the public domain if it deems it necessary.

45. Generally, we are satisfied with the draft Bill's provisions relating to the PSD and the VMD. While the Ministry retains overall responsibility for the regulation of pesticides and veterinary products and for the enforcement of legislation concerning their use, there are clear organisational divisions in these responsibilities consequent on the VMD and the PSD having the status of Executive Agencies. **We are not completely satisfied that the draft Bill provides the Agency with sufficient scope to intervene in the pesticides and veterinary medicines regulatory process. The PSD and VMD should be required to submit a food safety impact study to the Agency for approval as**

---

<sup>81</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 1 Submitted by the Joint Food Safety and Standards Group Appendix 4

**part of the regulatory process. We remain concerned that the Agency has no direct role in monitoring the impact of pesticides and veterinary medicines after their introduction.<sup>82</sup>**

The Agriculture Committee, in their report on *Food Safety* had also suggested that approvals and surveillance of pesticides and veterinary medicines should be carried out by different organisations.<sup>83</sup>

The Government in its response to the Food Standards Committee maintains that the Agency will have sufficient input into these regulatory processes to ensure that food safety issues are fully considered, and the provisions follow through those in the Draft bill. With regard to surveillance the Government states:

A number of changes are already being made to the way in which surveillance programmes are undertaken. The Agency will jointly appoint the independent chairman to the respective committees with responsibility for overseeing the residue surveillance programmes. The Agency will also attend their meetings to advise on the content of the programmes and on the results including the risks to consumers from the level of residues found. An additional safeguard is that the Agency will also have powers to carry out its own surveillance if it considers that necessary.<sup>84</sup>

Clause 29 of the Bill, which requires that the Agency is consulted on matters relating to veterinary medicines, ensures that information can be passed to the Agency. The Agency will then be able to disclose this information to the public.

## **8. Nutrition, health protection and labelling**

Responsibility for nutrition currently stands with the Department of Health, with advice and guidance provided by the Committee on the Medical Aspects of Food and Nutrition Policy (COMA). Responsibility for standards of food composition, labelling and food chemical safety regulation currently rests with MAFF, advised by the Food Advisory Committee.<sup>85</sup>

The Bill proposes that the Agency will be responsible for the monitoring and providing of scientifically based information on the nutritional content of individual foods i.e.

---

<sup>82</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xviii, paras 43-45

<sup>83</sup> Agriculture Committee *Food Safety* HC 331-1 1997-98, xxxiii, para 85

<sup>84</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the Food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, para 13, Cm 4377, June 1999

<sup>85</sup> An independent non-statutory body appointed by Ministers

labelling, (within the context of EU Regulations<sup>86</sup>) and advice on a balanced diet, a rather less ambitious remit than that envisaged by Professor James, who recommended that it should have a major role in developing policy on the nutritional quality of diets and their impact on health.<sup>87</sup> The bill proposes that the Agency will work closely with the DoH which will retain responsibility for the wider public health aspects of nutrition, such as promoting healthy eating in the context of cancer and heart disease. Respective responsibilities and mechanisms for co-operation will be set out in 'concordats' between the Agency and the Department of Health. COMA will report to both the DoH and the FSA.

In evidence given to the Food Standards Committee, the Minister for Public Health, Tessa Jowell, said that:

It is the Agency's job through a whole range of steps that will be taken to improve public understanding about the nutritional content of food.

The Department of Health has major responsibility, as part of its broader functions in relation to public health, to conduct the epidemiological surveillance of nutritional status, the link between nutritional status and different major diseases. We know that nutrition has a part to play in the incidence of cancer and in the incidence of heart disease. These are Department of Health functions, not Agency functions, which is why we sought in the interests of practicability and effectiveness to limit and focus the Agency's responsibility in relation to nutrition to labelling as part of the broader issues in relation to food safety.<sup>88</sup>

The inclusion and extent of nutrition within the remit of the FSA has proved contentious. Consumer organisations, academics and public health organisations have in general been in favour of including nutrition, with the food and farming industry against.

The majority of commentators from the food industry responding to the White Paper were strongly opposed to the Agency taking any responsibilities in relation to nutritional policy, viewing it as a diversion from the primary task of enforcing food hygiene standards, although some conceded that a limited role in providing factual information on the composition of foods would be appropriate.<sup>89</sup>

The British Retail Consortium, in evidence submitted to the Agriculture Select Committee, stated:

---

<sup>86</sup> *Food Labelling Regulations 1996* (SI 1996/1499) govern the labelling of foods generally in England Scotland and Wales. Additional labelling requirements also apply to specific foods.

<sup>87</sup> Professor Philip James, *Food Standards Agency. an interim proposal*, p 19

<sup>88</sup> Food Standards Committee, *The Food Standards Draft Bill*, 24 March 1999, HC 276-11 1998-99, p 3 Q11

<sup>89</sup> Responses to the public consultation on the Government's White Paper *The Food Standards Agency: a force for change*, Cm3830, <http://www.maff.gov.uk/food/fsa/fsacosum.htm>

British food retailers believe the proposed Food Standards Agency will be sorely tested in assuring all food safety systems in the food chain and regaining public confidence in those systems. Such a daunting task ought not to be watered down or side-tracked by secondary considerations such as nutrition, which is currently handled by the Department of Health, or responsibility for research budgets.<sup>90</sup>

Concerns have also been voiced that the Agency should not venture into areas of lifestyle and personal choice. Scientific advice in the area of nutrition varies and can be controversial, as in the instance of advice relating to red meat and cancer. Marks & Spencer have commented:

... We recognise important messages about nutrition need to be delivered, for example about the benefits of a reduced fat intake. However, it must also be accepted that nutritional well-being cannot be imposed on the consumer or regulated in an overt fashion. We believe it is our job to provide customers with a range of properly labelled wholesome foods from which they will make their own informed choice - customers will listen and respond to common-sense arguments. Education in general dietary health cannot be achieved by food labelling or restrictions on product composition. Some of the media response to the recent COMA report shows how easily health advice can be rejected as interference by the "Nanny" state. The Food Standards Agency must not be allowed to jeopardise its credibility in this way.<sup>91</sup>

The Food and Drink Federation, Sainsbury's and the National Farmers Union of Wales were also concerned that disputes over nutritional qualities of various foods might undermine public confidence in the Agency.<sup>92</sup>

Arguments for inclusion of nutrition within the remit are equally vigorously maintained. Consumer organisations, academic and medical groups argue that food safety, standards and nutrition are inextricably linked. The need for independence from industry and for control over labelling and health claims on food are argued. The avoidance of conflicting advice generated by different bodies has been raised as an issue.

In the recent Independent Inquiry into Inequalities in Health, Sir Donald Acheson drew attention to the impact of nutrition on health. He lists some diseases with nutrition-related risk factors - some types of cancer, cardiovascular disease, osteoporosis, anaemia, dental disease, obesity and hypertension. He states:

However, the effect of policies aimed at changing nutrition or single nutrients in the diet may be difficult to predict, given the sometimes complex link between

---

<sup>90</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-11 1997-98, Memorandum submitted by the British Retail Consortium (C52), p 171

<sup>91</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-11, Memorandum submitted by Marks & Spencer plc (C29) 10 October 1997, p 188

<sup>92</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-1 1997-98, para 89

diet, nutritional status and health. Thus our recommendations are based on enabling those who are disadvantaged to have the choice to purchase and consume a balanced diet.<sup>93</sup>

The British Medical Association has also emphasised the relationship between morbidity, mortality and poor diet, and hoped that the proposed structure would lay emphasis on promotion of nutrition and healthy eating:

We accept that the new Agency should work in conjunction with the Departments of Health, Environment and Agriculture in relation to nutrition and should represent the UK in international negotiations on issues relating to the nutritional aspects of food. The Department of Health however should retain ultimate responsibility for adapting nutritional advice into policy and for issuing guidance to assist with the prevention of chronic disease.<sup>94</sup>

The National Food Alliance (NFA), which represents national public interest organisations including voluntary, professional, health, consumer and environmental bodies, states that the acute need to improve food safety should be tackled in the broader context of the chronic need to improve public health as a whole. It comments:

Diet related diseases and conditions (such as coronary heart disease, some cancers, strokes, dental diseases, diabetes and digestive disorders) account for a far higher burden of suffering and premature death than food poisoning.<sup>95</sup>

The Green Party emphasised the importance of healthy food in diet, and the Scottish Green Party proposed that this could be promoted by funding the Agency through a Food Ingredient Turnover Tax, based on the percentages of unhealthy ingredients in foods.<sup>96</sup>

Responses to consultations from all sectors raised the importance of a clear definition of areas of joint responsibility and a need for any areas of joint responsibility to be managed transparently.

The Agriculture Select Committee, while it did not enquire into issues of nutrition and health (as being matters for the Department of Health and not MAFF) favoured the inclusion of aspects of nutrition policy within the remit of the FSA. However, it was concerned that the White Paper lacks clarity in the division of responsibility between the FSA and DoH in this field. The Committee stated:

---

<sup>93</sup> Department of Health, *Independent Inquiry into Inequalities in Health*, 1998

<sup>94</sup> Agriculture Committee *Food Safety*, HC 331-11 1997-98, Appendix 66 Supplementary Memorandum submitted by the British Medical Association (C108) p 597

<sup>95</sup> Agriculture Committee *Food Safety*, 22 April 1998, HC 311-11 1997-98, Appendix 44 Memorandum submitted by the National Food Alliance (C61)

<sup>96</sup> Scottish Green Party *Response to the Food Standards Agency Consultation on Draft Legislation* 15 March 1999

Nutrition is not a second order issue... poorly balanced diets cause much greater damage to health than food poisoning, and over the long term the Agency could achieve significantly more in its nutritional activities than its food safety role.<sup>97</sup>

The Food Standards Committee recommended that the Agency should be the body responsible for setting the nutritional and dietary standards to be applied by health departments and health promotion agencies.<sup>98</sup> Witnesses were concerned that nutrition "is very much underplayed in the draft Bill": some called for "nutrition and diet" and "food standards" to be specifically included in the text of the Bill.<sup>99</sup>

The HEA endorsed the public health priorities of the FSA, and called for public health/health promotion experts on the Commission. Anxieties have been voiced that expertise already existing should not be squandered, but harnessed by the new organisation. The Health Education Authority (HEA) said, in response to the White Paper, that clarification was needed as to the level and type of communication to be provided by the Agency. It suggests a remit that includes developing consultation procedures, providing short-term communications in the event of a food 'scare' and assuming a co-ordinating, strategic and commissioning role. "Implementation of long term communication strategies should be contracted out to those who have experience and expertise in this area, including the HEA."<sup>100</sup>

The Minister for Public Health stated in evidence that she sees "the role of the Agency as being principally health protection rather than health promotion. Health promotion is the job of Government with the Department of Health as the lead department...".<sup>101</sup> The Food Standards Committee drew attention to the view of the Health Education Board for Scotland that the Agency's role in Health Education would be to provide them with a "reliable scientific basis from which to proceed."<sup>102</sup> It called for clarification of responsibility and accountability for each aspect of health promotion.

The Committee also recommended that the Agency should be given the role of providing expert advice to the Advertising Standards Authority in relation to food.<sup>103</sup>

The response of the Government was made clear in its reply to the report of the Food Standards Committee:

---

<sup>97</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-1 1997-98, para 89

<sup>98</sup> Agriculture Committee *Food Safety*, 22 April 1998, HC 311 -1 1997-98, xiii, para 27

<sup>99</sup> Food Standards Committee *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xiv

<sup>100</sup> The Health Education Authority's Response to the Government's White Paper *The Food Standard Agency: A Force for Change*

<sup>101</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-11 1998-99, Q 613

<sup>102</sup> *ibid* Q 199

<sup>103</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, para 32

It has always been intended that the Agency will have a role in nutrition and in dietary advice. The Agency will have a role in defining what is meant by a balanced diet, based on independent expert advice, and have an important role in disseminating that information to the public and to professionals. It is intended that the Agency will work closely with Health Departments who will retain responsibility for wider public health issues. The Bill provides the necessary legal basis to provide this function.

The Agency will therefore have a clear interest in ensuring effective health promotion in relation to food. It will need to work closely with other bodies operating in the area of health promotion, as well as with Health Departments, to ensure a coherent and consistent approach in this area.<sup>104</sup>

## **G. Administrative concordats**

Close co-operation will be necessary between the Agency and a number of government departments (especially the DoH and MAFF), with the devolved authorities, and a variety of other bodies such as the Public Health Laboratory Service. It is the Government's intention that respective responsibilities and mechanisms for co-operation will be set out in administrative 'concordats'. These may prove particularly important in dealing with responses to 'food crises'.<sup>105</sup> However, these 'concordats' are not present on the face of the Bill.

During the consultation on the draft Bill clarification was requested on the boundaries of responsibility for particular functions on numerous occasions. The Public Health Laboratory Service, for example, enquired:

Clause 10 - provision of advice, information and assistance to other persons.

It is not clear in this clause who will issue guidance to food producers, caterers and retailers with regard to food safety issues, e.g. warning notice on the use of raw egg shell.<sup>106</sup>

The scrutiny committee felt that, to satisfy the culture of openness, these concordats should be available for public scrutiny, and:

---

<sup>104</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999, para 6

<sup>105</sup> Jill Johnson, National Consumer Council, Food Law Conference 5 May 1999

<sup>106</sup> Food Standards Committee, *The Food Standards Draft Bill*, HC 276-111 1998-99, Public Health Laboratory Service, Memorandum 36, p 114

Drafts of concordats and their successors must be provided to the House upon introduction of the Bill so as to inform sensible debate on this otherwise obscure matter. Final versions should be made available for scrutiny by a select committee of the House.<sup>107</sup>

Professor Tim Lang, special advisor to the Food Standards Committee, emphasises the need for openness, review and consultation in the framing of concordats.<sup>108</sup>

The Government, in response to the report of the Food Standards Committee, has said that concordats will be non-statutory administrative documents which cannot override the duties and powers of the Agency as set out in legislation.

Each concordat will set out an overview of the agreed operational and policy responsibilities of the Agency and the other relevant organisation. The concordats will also cover how the two organisations will relate to each other for a range of issues including, for example, the exchange of information, provision of advice, emergency planning and requirements of joint working groups and secretariats to advisory committees, and specify any financial arrangements that exist.

Final draft concordats will need to be in place for the Agency Board to consider formally after vesting day, and work is currently underway to develop these agreements. The final versions of the concordats and any subsequent revisions will be publicly available, and will, of course, also be available for scrutiny through normal Select Committee arrangements made for the Agency.<sup>109</sup>

## **H. Enforcement**

### **1. Food hygiene and local authority responsibilities**

The bill proposes

- Enforcement of food hygiene and standards remains a function of local authorities
- The Agency will have powers to set standards for, monitor and audit local authority performance
- The Agency will have powers to act as an enforcement body and remove this function from an underperforming local authority.

---

<sup>107</sup> Food Standards Committee, *The Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, xxiv, para 65

<sup>108</sup> Food Law Conference, 5 May 1999

<sup>109</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999, para 22

Inspections and enforcement of food hygiene law are currently the responsibility of local authorities who hold a register of food premises, and is carried out by environmental health and trading standards officers on the ground. Introduction of the hazard analysis principles to the wide diversity of food premises, and ensuring its successful implementation has proved a formidable task. A study of the level of understanding of hazard analysis reported in the *Environmental Health Journal* found that "The requirements of hazard analysis are far too academic for ordinary businesses to interpret and adopt unless they are able to see specific examples directly applicable to them " It stresses the need for active education (direct contact by environmental health officers (EHOs) and access to food hygiene courses) and recommends (inter alia):

3. Better targeting of EHOs' resources to contribute towards the implementation of hazard analysis. Central government will need to ensure that resources are available to local authorities to fund this area.<sup>110</sup>

Arguments in favour of centralised enforcement include the variability of resources and expertise deployed by different local authorities, and the relatively successful precedent of the Meat Hygiene Service. Major food retailers in particular are concerned with a perceived lack of consistency in enforcement. A Memorandum submitted during pre-legislative scrutiny by J Sainsbury plc is disappointed that the enforcement proposals are not more radical, and would prefer to see responsibility for enforcement in relation to large multi-site organisations transferred to the Agency as 'Home Authority' to ensure greater consistency.<sup>111</sup> However, the Food Minister, Jeff Rooker has argued that if a central enforcement body such as the Meat Hygiene Service were to be set up a wealth of local co-operation and expertise would be jettisoned.

These provisions in the Bill have been supported by the majority taking part in the Government consultation, and in memoranda to the Food Standards Committee. This support has been particularly strong from the enforcement authorities themselves.<sup>112</sup>

The Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Government Association (LGA) favour local enforcement as an important contribution to local democracy, and having access to local public views, complaints and sensitivities, but welcomes the monitoring and auditing role of the FSA as it will provide a basis for funding bids within the local authority for food safety work. It draws attention to variations in approach of governments to rigor of enforcement in recent years, and the need for consistency and consensus building between LACOTS and the LGA and the

---

<sup>110</sup> Yvonne Morrison "Who cares about Haccp?" *Environmental Health Journal* March 1999

<sup>111</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111 1998-99, Memorandum 35 by J Sainsbury plc

<sup>112</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-1 1998-99, para 34

Agency when it begins its work.<sup>113</sup> LACOTS and the LGA have voiced disappointment that a system of licensing has been rejected in favour of the existing system of registration of food premises.<sup>114</sup> The Consumer's Association is also in favour of licensing of food premises as a measure to improve efficacy of enforcement.<sup>115</sup>

The Institute of Trading Standards Administration (ITSA), the professional body representing trading standards officers in the UK, emphasises the importance of sharing of information and consultation before introducing legislation which will require enforcement.

No matter what legislation or controls are introduced they are only effective if the enforcement regime is adequate and has the resources to ensure proper compliance. One of the major problems of the last decade has been the introduction of legislation with little regard to its enforceability. Legislation that was rushed out on BSE has rarely been discussed with trading standards officers and others responsible for its enforcement and as a result caused considerable problems...

...finally, while considerable additional resources have been provided for the Meat Hygiene Service and the SVS [State Veterinary Service], no resources have been made available to local authorities for increased responsibilities brought about by the BSE crisis. Recent funds allocated for hygiene enforcement are welcomed but more resources are necessary for all areas of food control work. Without that issue being addressed trading standards officers will not be able to provide the protection the public now demand and deserve.<sup>116</sup>

**a. Powers related to enforcement**

It is proposed that responsibility for monitoring and enforcing hygiene standards will remain with local authority. Clauses 14 and 15 empower the Agency to monitor, set standards for and audit the performance of enforcement authorities in carrying out food law enforcement. Thus the FSA will be responsible for ensuring consistency throughout the UK, and will have reserve powers which will enable it to act as an enforcement authority (Clause 18 and Schedule 3) if it is dissatisfied with the standard of enforcement of the relevant authority. The Scrutiny Committee was concerned that the Agency should be able to remove this function from LAs which are democratically elected bodies. For

---

<sup>113</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-11 1997-98, Memorandum submitted by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Government Association (LGA)(C1 9) p 232

<sup>114</sup> Food Standards Committee, *Food Standards Draft Bill*, 24 March 1999, HC 276-111, Memorandum 23 submitted by Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Government Association (LGA)

<sup>115</sup> *ibid*, Memorandum 10

<sup>116</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 311-11 1997-98, Appendix 13 Memorandum submitted by the Institute of Trading Standards Administration (C13), 10 October 1997, p 464

this reason the Bill requires that the removal of enforcement powers should be at the request of the LA or when the Agency is directed to do so by the Secretary of State. The Agency is also required to consult with the Secretary of State before issuing Codes of Practice under the *Food Safety Act 1990*, and giving directions on their enforcement.

The option for allowing the Minister of Agriculture, Fisheries and Food and the Secretary of State for Health and corresponding ministers in the devolved authorities to act as enforcement authorities will be retained.<sup>117</sup>

**b. Monitoring enforcement action**

The majority of the powers contained in clauses 13 and 14 are new. They provide specific powers for the Agency or an authorised person to carry out the monitoring role provided for in clause 12. At present clause 41 of the *Food Safety Act 1990* makes provisions for Ministers to require reports and returns, but does not allow for audit visits or the provision of detailed returns, statistics and supporting documentation, nor does it provide for Ministers to set performance targets in relation to enforcement. Part IV of the *Agriculture Act 1970* contains no powers comparable to section 41 of the *Food Safety Act 1990*.

**c. Emergency orders (Clause 17)**

Powers to make emergency orders to take contaminated foodstuffs off the market and to close premises where they are suspected of being the source of a food-borne infection are currently vested in Ministers under Sections 1 and 2 of the *Food and Environment Protection Act 1985* and section 13 of the *Food Safety Act 1990*.

Clause 17 of the Bill proposes that the Secretary of State will retain this power but the Agency may be empowered by him to make these emergency orders on his behalf. The *Explanatory Notes* indicate that in practice the Agency will only make the orders in emergency situations where the Secretary of State is not available, and that the Secretary of State remains ultimately answerable for emergency legislation.

**d. Training**

The Food Standards Committee recommended that the Agency should have a role in setting standards for training for enforcement staff,<sup>118</sup> and also that in line with suggestions by the Chartered Institute of Environmental Health (CIEH), local authority staff should be seconded to the Agency for short periods.<sup>119</sup> It recommended also and that the indicators used to monitor standards of enforcement should be multidisciplinary,

---

<sup>117</sup> Bill 117-EN *Explanatory notes* Food Standards Bill, 10 June 1999

<sup>118</sup> Food Standards Committee, *Food Standards Draft Bill Report*, 24 March 1999, HC 276-1 1998-99, para 37

<sup>119</sup> *ibid* para 36

based on best practice and developed in conjunction with the local authorities. These recommendations have been accepted in principle by the Government.

It also recommended that the final decision to remove food safety enforcement from a local authority (a democratically elected body) that has failed to meet the required standards should remain with the Secretary of State having received advice from the Agency.<sup>120</sup> The Government has confirmed that the default powers in the *Food Safety Act 1990*, under which Ministers may empower another authority to take over the duties of another failing authority, will remain with Ministers (Schedules 3 and 4). In addition, the Government has amended the relevant provisions so that separate power of the Agency to give and enforce directions to food authorities to comply with Codes of Practice should only be exercised after consulting the Secretary of State.<sup>121</sup>

## **2. Meat Hygiene Service (MHS) - the Agency as enforcer**

A centralised Meat Hygiene Service (MHS) was set up in 1995, as an Agency under MAFF, replacing local authority responsibilities for meat inspection and monitoring of hygiene practices in slaughterhouses, cutting plants and cold stores. In addition to ensuring standards required by law are met (for instance the removal of specified bovine offals), it is responsible for ensuring the welfare of animals at slaughter. The introduction of a unified MHS was a controversial move designed to drive up meat hygiene standards, made following review of meat hygiene enforcement in the light of single market requirements.

The completion of the single market of the European community led to the application of EC structural and hygiene standards to all meat premises. In particular the *Fresh Meat (Hygiene and Inspection) Regulations 1995* and the *Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995*, implemented the EC rules for slaughterhouses.<sup>122</sup>

The Bill proposes that the MHS will report to the FSA instead of MAFF. Part I of Schedule 3 of the Bill allows for the Agency to act as an enforcement authority. The Government's *Explanatory Notes* state that the Minister of Agriculture, Fisheries and Food's current enforcement functions under the *Food Safety Act 1990* (for example on meat and dairy hygiene) will be transferred to the Agency by amending secondary legislation.

---

<sup>120</sup> *ibid* para 39

<sup>121</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the Food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999, para 11

<sup>122</sup> MAFF, *Driving up meat hygiene standards*, 17 March 1999

There has been criticism that this arrangement may compromise the independence of the Agency:

"It cannot set its own standards and then monitor its own performance in achieving them. Nor can it monitor other agencies without inviting suspicions that it is seeking to expand its own enforcement activities."<sup>123</sup>

The Food Standards Committee echoes many commentators<sup>124</sup> in criticising the lack of separation that will exist when the Agency has direct responsibility for the MHS, and calls for greater clarity on the relationship between them:

47. We have a number of reservations on the proposed arrangements for the MHS, as set out in the draft Bill. First, we are concerned that the Agency will hold responsibility for both regulatory and enforcement functions in the sphere of meat hygiene, at a time when significant administrative reorganisation is being undertaken which permits these duties to be separated. Secondly, we consider that there is the possibility that the public perception of the Agency as an impartial meat hygiene standards regulator will be compromised, as under the draft Bill's provisions it is likely that the MHS will be incorporated into the Agency, becoming its single most important component. This, we foresee, will be particularly significant when the first food pathogen outbreak emerges which is directly linked to a lapse in meat hygiene standards. Thirdly we are unsatisfied with the draft Bill's failure to identify clear and independent monitoring and auditing systems for the Agency's own activities in this regard.

48. The transfer of responsibility for the MHS from MAFF to the Agency raises once again the question of whether a single organisational structure should exercise responsibility for policy regulation and policy enforcement. While this question has some similarities to that posed by MAFF's retaining overall responsibility for the VMD and the PSD, the draft Bill does not specify the precise organisational status which the MHS will have in relation to the Agency. We would prefer much greater clarity in the final Bill on the organisational relationship between the Agency and the MHS. For example, will the MHS enjoy status similar to that of a Departmental Executive Agency, or will it be incorporated within the Agency, as the draft Bill seems to suggest? We are concerned that the MHS's incorporation into the Agency could undermine its public image as an independent and impartial arbiter of meat hygiene standards, particularly when the size of the MHS relative to the rest of the Agency is taken into account. At present, the Meat Hygiene Service employs some 1,700 staff, chiefly meat inspectors, and has an annual budget of £53 million.[80] In

---

<sup>123</sup> Food Standards Committee, *Food Standards Draft Bill Report*, 24 March 1999, HC 276-111 1998-99, Dr Richard A E North, memorandum 32

<sup>124</sup> Martin Smith MP speaking for Ulster Unionists

comparison, it is unlikely that the Agency will have more than around 450 staff in total.<sup>125</sup>

The Government has stated its intention that within the framework of the Agency the audit function in relation to the MHS will remain separate from its day to day operation:

...it believes that the MHS, with its primary responsibility being one of food safety and the protection of public health, should report to the Agency, while maintaining its identity as a discrete executive agency. Within this framework, the government does intend to separate the audit function in relation to the MHS from its day-to-day operation.<sup>126</sup>

## **I. Notification of food-borne diseases**

The Bill (Clause 27) makes provision for the Secretary of State and his equivalents in the devolved authorities to set up a notification scheme for the laboratory tests for food-borne organisms.

The Public Health Laboratory Service (a non-departmental public body sponsored by the Department of Health) supports the proposal that notification of laboratory test results for specific food-borne illnesses should become a statutory responsibility, but comments that this notification must first and foremost serve the local control and prevention of communicable disease i.e., any system must deliver data to the local Consultants in Communicable Disease Control (CCDC) as well as to the national centre<sup>127</sup>

In addition it is apparent that, as compulsory notification is designed to increase reporting, an increase in food poisoning statistics can not, at least in the early stages, be used as a marker for the success or failure of the Agency.

## **J. Research and research funding**

The Public Health Laboratory Service, has indicated significant gaps in current scientific understanding of food safety issues. It lists (*inter alia*):

- agricultural practices e.g. health risks of land spread for disposal of sewage and sewage sludge are largely unknown;

---

<sup>125</sup> Food Standards Committee, *Food Standards Draft Bill Report*, 24 March 1999, HC 276-1 1998-99, para 47 and 48

<sup>126</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999, para 15

<sup>127</sup> Food Standards Committee, *Food Standards Draft Bill*, HC 276-111, 1998-99, Memorandum 36 submitted by the Public Health Laboratory Service

- animals in transit e.g. effects of transit time and transport facilities on animal stress and levels of excretion of *Salmonella*, *Campylobacter* and *E coli 0157*;
- animals at slaughter e.g. mechanisms to reduce cross-contamination at slaughter;
- food processing e.g. effective methods of decontamination of meat and poultry;
- Epidemiology and clinical aspects of bacterial enteric pathogens e.g. further research needed on *E coli 0157* (and other VTEC organisms), *Salmonella*, *Campylobacter*, viral and protozoal causes of gastroenteritis.<sup>128</sup>

Clauses 12 and 13 of the Bill provides for the Agency to undertake or commission research, and to undertake surveillance programmes ...at any point in the food production and supply chain, and anywhere else there might be implications for food safety and related matters.<sup>129</sup>

Budgets for food safety and standards research currently funded by MAFF, and relevant research funded by other Departments, including the Department of Health, will be transferred to the Agency. Current research funding amounts to approximately £25 million.<sup>130</sup> The size of the budget has been criticised. Professor Hugh Pennington, speaking at a Food Law conference in May 1999, commented that the research budget is too low, and Professor Tim Lang, Professor of Food Policy at Thames Valley University, and specialist advisor to the Food Standards Committee called the budget "derisory".<sup>131</sup>

#### The Food Standards Committee comments

Professional scientists and academics consider a research budget of £23 million to be insufficient for a national agency that is intended to have national and international scientific authority sufficient for it to hold people's confidence and influence debate...additional money is likely to be needed.<sup>132</sup>

The JFSSG has announced that of the approximately £25 million available for research, around £9 million will be available for investment in 2000:

Work due to start in 2000-2001 will include more research on:

- Food allergies, especially peanut allergy;
- Safety of food production processes;
- Safety of genetically modified organisms in foods;

---

<sup>128</sup> Agriculture Committee, *Food Safety*, 22 April 1998, HC 331-11 1997/98, memorandum submitted by Public Health Laboratory Service, Section 4

<sup>129</sup> *The Food Standards Agency: Consultation on Draft Legislation*, Cm 4249, January 1999 note on Clause 13

<sup>130</sup> 1999/0281 Press release Joint Food Safety and Standards Group 11 May 1999

<sup>131</sup> Food Law Conference, 4 May 1999

<sup>132</sup> Food Standards Committee, *Food Standards Draft Bill Report*, 24 March 1999, HC 276-1 1998-99, para 91

- The chemical safety of food;
- Food authenticity techniques to check on adulteration;
- More work on meat hygiene, to avoid contamination between farm and table.

The programme also invites work on communication of health-related food information to the general public<sup>133</sup>

In response to the concerns raised by the Food Standards Committee, the Government stated that "The Government believes that the expected research budget to be administered by the Agency is a significant sum in its own right". In addition, many other organisations are active in the area of food research, and the Agency will have an important role in co-ordinating research.<sup>134</sup>

## **K. Europe**

Throughout the consultation process many respondents commented on the extent to which food safety is now a European and international matter. Labelling legislation is governed by an EU Directive, and the activities of the Meat Hygiene Service are set out by the EU. The World Trade Organisation also takes a lead in international food matters, as has been seen in the discussions on genetically modified foods. The Food Standards Committee recommended that the Agency should establish links not only with its European counterparts, but between local authority enforcement bodies in the UK and similar enforcement bodies abroad. Several specific issues have been raised.

- A level playing field

European Union legislation now forms the basis for food law in the UK, and major manufacturers may have centralised sourcing across EU. The Conservatives have concerns that the UK food industry should not be disadvantaged by disproportionate regulation within the UK.<sup>135</sup>

The Agriculture Committee in its consideration of funding the Agency concluded that "There is a danger that any charging regime will discriminate against domestically produced foods and in favour of imports, damaging the competitiveness of the UK industry. Consideration should be given, consistent with EU legislation, to charging importers of food for the actual cost of food safety checks carried out at ports of entry"<sup>136</sup> Maintaining competitiveness for the UK food industry was a factor for the Government in deciding against a levy applicable to manufacturers and farmers.

---

<sup>133</sup> Joint Food Safety and Standards Group Press release 1999/0281, 11 May 1999

<sup>134</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, Cm 4377, June 1999, para 15

<sup>135</sup> Personal communication, Conservative Central Office, 16 June 1999

<sup>136</sup> Agriculture Committee, *Food Safety* HC 331-1, 1997/98 para 93

Manufacturers are concerned also that lack of co-ordination and lack of transparency within Europe could undermine consumer and industrial confidence. The establishment of a European Food Agency to provide consistency of scientific advice and regulation has been suggested by representatives of food manufacturing and catering industries. Geraldine Schofield, Head of Regulatory Affairs at Unilever Research has suggested that a successful UK Agency could provide a model for such an EU Agency.<sup>137</sup>

- Codex Alimentarius

Food safety is an issue with international as well as local implications, because of international trade. About 30 per cent of the food consumed in the UK is imported.<sup>138</sup>

Until recently, attention was concentrated upon the European Commission as the body proposing harmonisation and standardisation of laws relating to food. However, the fully international dimension is becoming more important, partly because of the increased role of the World Trade Organisation. The Codex Alimentarius is an intergovernmental body jointly sponsored by two UN agencies – the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO). It implements the joint FAO/WHO Food Standards Programme, the purpose of which is to protect the health of consumers and to ensure fair practices in the food trade. The Codex Alimentarius (latin for food law or code) is a collection of internationally adopted food standards presented in a uniform manner. It also includes provisions of an advisory nature in the form of codes of practice, guidelines and other recommended measures to assist in achieving the purposes of the Codex Alimentarius.

Issues like food labelling and permitted additives are already influenced by Codex policies, and this trend is likely to increase, because of their importance in facilitating international trade in food. Both European and international law allow the restriction of imports if human health is at risk. However, they both require scientific justification of the action because of concern that it might be used as a way of protecting home industry. The Food Standards Agency, and the British Government, have to operate within that framework. Martin Smith, speaking on behalf of the Ulster Unionists, is amongst those who have voiced concerns that labelling standards should be rigorous.<sup>139</sup>

- Negotiations in EU and internationally

The Bill (Clause 24) gives the Secretary of State power to direct the Agency to do anything the UK is obliged to do under EU and international treaty obligations. These are

---

<sup>137</sup> Food Law Conference 5 May 1999

<sup>138</sup> Agriculture Committee *Food Safety*, 22 April 1998, HC 331-11 Session 1997/98, Public Health Laboratory Service Memorandum 1.15

<sup>139</sup> personal communication, 16 June 1999

reserve powers, for use if the Agency has not already taken steps to fulfil the UK's obligations. The power to issue directions is also to be exercised as appropriate by the devolved authorities.

The Agency as an independent body will be able to issue advice to the Government. It is possible that the Government may develop policy contrary to this advice, which may form the subject of discussions in Europe or at the WTO. The Food Standards Committee requested greater clarity in the Bill on how the Agency will operate when there is a clear and public difference of opinion between the Agency and the Government on a matter which the Agency is having to pursue on behalf of the Government in European or international fora.

The Government responded:

The Government agrees that the Agency should represent the UK Government in European and other international negotiations within its remit. It is important from the point of view of international relations that it conducts those negotiations in accordance with UK Government policy. Procedures already exist within Government to ensure that negotiating positions are properly agreed by all Departments with an interest to reflect the UK position. The Agency will be free to make public its advice to Ministers on international as well as national issues. Its staff will properly reflect in international negotiation any variation which the Government as a whole may have agreed.<sup>140</sup>

---

<sup>140</sup> Minister of Agriculture, Fisheries and Food, *Reply by the Government to the Report from the food Standards Committee, Session 1998-99, 'Food Standards Draft Bill' (HC 276)*, para 34, Cm 4377, June 1999

## IV Funding the Agency

The Bill proposes that the Agency should be funded through general taxation. Clause 39(1) provides that:

Any expenditure incurred by the Agency shall (so far as it is not met out of money provided by the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly or from any other source) be paid out of money provided by Parliament.

The Government's *Explanatory Notes* make clear that the Clause also specifically provides for grant in aid from the National Assembly for Wales, and states that although it is not necessary in this Bill to mention funding from the Scottish Parliament and NI Assembly, it is envisaged that they will also make payments to the Agency.

Costs of the Agency have been estimated by the Government:

Mr. Martyn Jones: To ask the Minister of Agriculture, Fisheries and Food what is the expected cost of (a) setting up and (b) annually operating the Food Standards Agency; and if he will make a statement.

Mr. Rooker: Setting up the FSA is expected to involve additional one-off costs of around £12 million per annum over three years and additional ongoing costs of about £29 million per annum, taking account of the collection costs associated with the proposed levy. In addition, current food safety and standards functions, and their associated expenditure, will transfer to the Food Standards Agency from MAFF, DH, and the devolved administrations.<sup>141</sup>

The funding of the Agency has been a controversial issue throughout the consultation period. Initial plans for a levy were widely opposed by opposition parties and the food industry, and have been dropped following the consultation. The initial plans proposed

- a new annual flat rate levy estimated at £90 linked to the registration of food premises;
- food retailers and caterers to be liable for the levy subject to certain exemptions to exclude certain types of small businesses;
- collection of the levy to be undertaken by Local Authorities, who would retain a proportion to cover their costs and pass the rest to the Food standards Agency;
- that the total sum to be collected should not exceed £50 million a year initially, to meet the new costs of establishing the FSA, including its additional functions.<sup>142</sup>

---

<sup>141</sup> HC Deb 1 February 1999 c 533W

<sup>142</sup> MAFF/DH Joint Food Safety and Standards Group, *The Food Standards Agency, Proposals for a levy scheme; a consultation paper*, 1999, paragraph 2

Responses to the consultation was summarised up by the Government:

Of those who commented, most said that food safety and standards were public goods, and should therefore be funded from general taxation. There was a widespread view that if a levy were imposed, a flat rate would be inequitable. Some correspondents - mostly small businesses - said that the levy was unaffordable.

The strongest opposition to the flat rate levy came from small businesses, although there was some criticism from larger retailers. Large retailers with many small premises were concerned that the levy would put them at a disadvantage compared to larger competitors.

Members of the public who responded generally sympathised with the small business position on the levy. Some local authorities supported the flat rate on the grounds of administrative cost.

It was generally agreed that if a levy were imposed, it should be graduated. Several possible bases for graduation were suggested, principally:

- business turnover;
- floor space (using the Sunday Trading threshold of 280 sq. m. or the classifications adopted by the Institute of Grocery Distribution);
- rateable value; and
- risk classification.

Small village stores and specialist shops were highlighted as particularly vulnerable to the levy.

Many respondents, including some local authorities and members of the public, criticised the proposed exemption of manufacturers and farmers. Although many appreciated the concerns about discrimination against UK products, some commented that £90 a year would not be significantly discriminatory.

Butchers, who have also been consulted over a proposed new licensing charge, were critical of the levy proposals and suggested that they should be exempt in order to prevent double charging.

The Government proposed that food premises that not currently required to register under the Food Premises (Registration) Regulations 1991 would be exempt from the levy. Other exemptions that correspondents suggested included:

- community non-profit schemes
- group homes for those with learning difficulties
- village halls
- charitable institutions
- farm shops and farm gate sales
- off-licences.

The proposed exemption for sweets and similar wrapped products was criticised by some for threatening to reduce the availability of fresh food. Some local authorities pointed out that the current registration form did not differentiate between wrapped and unwrapped confectionery.

It was also argued that the policy would not survive a concerted campaign of non-payment.

## **Appendix 1: Primary Legislation Affecting Food<sup>143</sup>**

### Food Safety Act 1990

1. This Act is the main piece of primary food legislation in GB. The Act is principally an enabling piece of legislation but it also provides for offences and defences in law and defines food and the enforcement authorities and their responsibilities. It also provides Ministers with various powers. The main provisions of the Food Safety Act 1990 came into force on 1 January 1991. The Act covers Great Britain and provides the framework for all its food legislation. Northern Ireland has equivalent legislation, the Food Safety (Northern Ireland) Order 1991, which came into force on 21 May 1991.

### The Food And Environment Protection Act 1985

2. Part I of the Act empowers Ministers to make emergency orders where they consider that circumstances exist, or may exist, which are likely to create a hazard to human health through the consumption of contaminated food. Such orders prohibit the distribution of affected produce from an area where foodstuffs have, or may have, been contaminated. In practice these powers are used only where there are no other statutory means of dealing with contaminated food (e.g. sector-specific legislation under the Food Safety Act 1990).

3. Part I of the Food and Environment Protection Act was amended by Section 51 of the Food Safety Act 1990. The Act also applies in Scotland, Wales and Northern Ireland.

4. Part III of the Act governs control of pesticides, conferring on Ministers powers to control the importation, sale, supply, storage, use and advertisement of pesticides and to set maximum pesticide residue levels in food, crops and feedingstuffs, to make information on pesticides available to the public, and to enforce these provisions and to establish an Advisory Committee on pesticides.

### The Weights And Measures Act 1985

5. Section 28 of the 1985 Act makes short weight an offence. Orders made under Section 22 require prepacked food to carry on the container an indication of the net quantity of the contents. When sold other than prepacked, food is required either to be sold by quantity or, in certain circumstances, the seller has to make the quantity known to the customer. Orders also limit the quantities in which certain goods (the prescribed quantity goods) may be prepacked when offered for retail sale. Northern Ireland has equivalent legislation, the Weights and Measures (Northern Ireland) Order 1981.

### The Trade Descriptions Act 1968

---

<sup>143</sup> *The Food Standards Agency: A Force for Change*, Cm 3830, January 1998, Appendix 1

6. This Act makes it an offence for a person acting in the course of a trade or business to make false or misleading statements about goods, or knowingly or recklessly to make false or misleading statements about services, accommodation or facilities. It contains Order-making powers to require that goods bear, or be accompanied by specific information in the course of their supply, and to define terms for the purposes of the Act. The Act prohibits the unauthorised use of devices or emblems signifying Royal approval or award. The Act also applies in Scotland and Northern Ireland.

#### The Consumer Protection Act 1987

7. Part I imposes civil liability for damage caused by defective products (including food other than game and agricultural produce which has not been subjected to an industrial process). Part II provides for secondary legislation on consumer safety, e.g. of materials in contact with food.

8. Part III makes it an offence for a consumer to be given a misleading indication, by any means, of the price at which goods are available. Guidance is contained in The Code of Practice for Traders on Price Indications. The Act also contains powers to regulate specific price indications practices. Northern Ireland has equivalent legislation, the Consumer Protection (Northern Ireland) Order 1987.

#### The Animal Health Act 1981

9. This Act confers on Ministers powers to control diseases of animals, including power to make Zoonoses Orders to reduce the risk to human health from any disease of, or organism carried in animals, (e.g. brucellosis, salmonella and BSE), to control the use of animal waste and by-products in relation to animal feedingstuffs, and to enable surveillance of live animals on-farm.

#### The Agriculture Act 1970 (as amended)

10. Part IV governs fertilisers and animal feedingstuffs and requires that feedingstuffs when sold should be fit for their intended purpose and free from harmful ingredients. A statutory statement is required on the composition of the feed and other information. Regulations made under the above Act cover Great Britain. Northern Ireland has separate but parallel secondary legislation made under the Act.

#### Agriculture And Horticulture Act 1964 (Chapter 28 Part III)

11. This Act provides for the application and enforcement in Great Britain of European Community Regulations specifying the grading, marketing and labelling requirements for certain fresh fruit and vegetables and makes certain acts or omissions that contravene those rules punishable offences. Northern Ireland has equivalent legislation, the Horticulture Act (Northern Ireland) 1966.

International Carriage of Perishable Foodstuffs Act 1976

12. This Act enables Regulations to be made governing the standards for transport equipment used for the international carriage of perishable foodstuffs.

Agricultural Produce (Grading and Marking) Acts 1928-31

13. This Act enables Regulations concerning the grading and marking of agricultural produce and the cold storage of eggs.

Radioactive Substances Act 1993

14. This Act controls the disposal of radioactive waste.

Environmental Protection Act 1990

15. Part VI of the Act aims to prevent or minimise damage to the environment caused by the release of genetically modified organisms, and imposes restrictions on the importation, acquisition, release or marketing of such organisms.

The Medicines Act 1968

16. This Act controls the manufacture and marketing of medicinal products for humans and animals. Enables Regulations to be made implementing European Council Directive 90/167/EEC concerning the preparation, placing on the market and use of medicated animal feedingstuffs. The Act also applies in Scotland and Northern Ireland.

The Prices Act 1974

17. This Act enables Regulations to be made requiring prices to be displayed on any premises where food and drink is or may be for sale for consumption by the public.

The Act also applies in Scotland and Northern Ireland.

Alcoholic Liquor Duties Act 1979

18. Section 71 prescribes a penalty for misdescribing liquor as spirits or as wine fortified with spirits. In practice, therefore, this Section reinforces Section 15 of the Food Safety Act 1990 as far as these products are concerned. The Act also applies in Scotland and Northern Ireland.

Scotch Whisky Act 1988

19. The Scotch Whisky Act 1988 makes provision as to the definition of Scotch Whisky and production and sale of whisky. Northern Ireland has equivalent legislation, the Scotch Whisky (Northern Ireland) Order 1988.

Public Health (Control of Disease) Act 1984

20. Regulations made under Part II (Control of Disease) enable local authorities to impose controls to prevent the spread of food poisoning and food-borne infections in persons involved in the food trade.

Public Health (Scotland) Acts 1897 to 1907

21. Sections 58 and 59 prohibit infected persons engaging in any occupation connected with food unless proper precautions have been taken against spreading disease or infection.

European Communities Act 1972

22. Section 2(2) of the European Communities Act makes provision for any designated Minister or Department to make regulations for the purpose of implementing any European Community obligations of the United Kingdom.



## Appendix 2: Statistical appendix

Table 1

### Food poisoning cases 1982-1999

#### Suspected cases notified by GPs and cases identified by laboratories

	Number		Rate per 100,000 popln	
	Scotland	England and Wales	Scotland	England and Wales
1982	4,525	14,253	88	29
1983	4,265	17,735	83	36
1984	4,301	20,702	84	42
1985	4,230	19,242	82	38
1986	4,662	23,948	91	48
1987	5,050	29,331	99	58
1988	5,734	39,713	113	79
1989	6,156	52,227	121	103
1990	6,757	52,145	132	103
1991	6,318	52,543	124	103
1992	7,877	63,347	154	124
1993	7,170	68,587	140	133
1994	8,291	81,833	162	159
1995	9,297	82,041	181	158
1996	10,234	83,233	200	160
1997	10,177	93,901	199	180
1998	9,241	93,932	180	180
1999 to date <sup>1</sup>	2,553	28,543	..	..
<i>change-</i>				
1982-1998	104%	559%		
1997-1998	-9%	0%		

<sup>1</sup> to week 21 England and Wales, to week ending 28 May 1999 in Scotland

Sources: Communicable Disease Statistics ONS series MB2 various years; PHLS from 1996

Notifications of Infectious disease and food poisoning CDS various months

SCIEH Weekly Report various editions

CDR Weekly PHLS various editions

HC Deb 14 December 1998 c338w

CDR Supplement PHLS May 1999

Population Trends

Table 2

**Infection by selected organisms, Great Britain 1990-1998****Laboratory (PHLS and SCIEH) confirmed cases**

	SCOTLAND		ENGLAND & WALES	
	Number	pop'n	Number	pop'n
<b><i>Campylobacter</i></b>				
1990	3,617	70.9	34,552	67.9
1991	3,425	67.1	32,636	63.9
1992	4,915	96.2	38,552	75.2
1993	3,999	78.1	39,422	76.6
1994	4,146	80.8	44,414	86.0
1995	4,377	85.2	43,902	84.7
1996	5,210	101.6	43,316	83.3
1997	5,527	107.9	50,177	96.1
1998	6,375	124.4	58,059	111.2
<i>change 1990-1998</i>	76%	..	68%	..
<i>change 1997-1998</i>	15%	..	16%	..
<b><i>Salmonella, all species</i></b>				
1990	2,442	47.9	30,112	59.2
1991	2,330	45.6	27,693	54.2
1992	2,992	58.5	31,355	61.1
1993	2,919	57.0	30,650	59.6
1994	2,992	58.3	30,411	58.9
1995	3,130	60.9	29,314	56.6
1996	3,277	63.9	28,983	55.7
1997	3,349	65.4	32,596	62.4
1998	2,129	41.6	23,420	44.9
<i>change 1990-1998</i>	-13%	..	-22%	..
<i>change 1997-1998</i>	-36%	..	-28%	..
<b><i>E coli 0157</i></b>				
1990	165	3.2	250	0.5
1991	202	4.0	361	0.7
1992	115	2.3	470	0.9
1993	119	2.3	385	0.7
1994	242	4.7	411	0.8
1995	247	4.8	792	1.5
1996	488	9.5	660	1.3
1997	423	8.3	1087	2.1
1998	216	4.2	887	1.7
<i>change 1990-1998</i>	31%	..	255%	..
<i>change 1997-1998</i>	-49%	..	-18%	..

1998 data are provisional

Sources: HC Deb 2 December 1996 c551w, 3 March 1997 c524w, 27 January 1997 c108w

ONS Communicable Disease Statistics MB2 (various years)

CDR Supplement, CDR Weekly, PHLS and SCIEH Weekly Report

Population Trends

Table 3

**Time spent by environmental health staff on core activities during 1997-98**  
**Grossed average for all authorities in England**

<u>Function/Activity</u>	<u>Proportion of total staff time (%)</u>
Housing Standards (inc. area renewal, grants, nuisance)	16.8
Pollution Control (inc. monitoring of water supplies)	10.1
Noise Control	10.3
Health, Safety and Welfare	9.9
Food Safety, inspection of Foodstuffs and Sampling	16.1
Port Health	0.7
Infectious Diseases Control	2.5
Health Education (including home safety)	2.6
Control of Other Public Health Risks *	15.7
Animal Health & Welfare, Boarding Establishments etc.	5.3
Entertainment Licensing	3.1
Hackney Carriage and Private Hire Licensing	1.7
Environmental Issues (e.g. Agenda 21)	2.3
Other	2.9
<b>TOTAL TIME</b>	<b>100.0</b>

\* (includes drainage, pest control, nuisances, offensive accumulations)

*Source: Environmental Health Statistics 1997/98 Actuals CIPFA January 1999*

### **Appendix 3: Overview of the Bill<sup>144</sup>**

*Clauses 1-5 (the Food Standards Agency):*

- establish the Agency for the purpose of carrying out the functions given to it elsewhere in the Bill;
- state that its main objective is to protect the public health in relation to food, but also to protect the wider food standards interests of consumers such as labelling;
- provide for appointment of the Agency's members by the Secretary of State (in practice the Secretary of State for Health), the Scottish Ministers, the National Assembly for Wales and the Department of Health and Social Services in Northern Ireland;
- provide for appointment of the Agency's Chief Executive (who will be responsible for the Agency's day to day running and accountable for its expenditure) and of separate directors to run the Agency's executive arms in Scotland, Wales and Northern Ireland;
- require the Agency to produce an annual report to be laid before the Westminster Parliament and the devolved legislatures;
- establish advisory committees to advise the Agency on food safety and standards issues in Scotland, Wales and Northern Ireland and allow the Agency to set up other committees to advise it on food safety etc.

*Clauses 6-16 (General functions in relation to food and animal feedingstuffs) give the Agency the functions of:*

- developing policies and advising Ministers and public authorities on food safety, other interests of consumers of food, and on animal feedingstuffs;
- providing advice and, information or assistance on food safety and standards matters and animal feedingstuffs to the general public or other interests;
- obtaining and keeping under review information about food safety and related issues (eg by commissioning advice or undertaking or commissioning research).
- carrying out observations of the safety or quality of food at any point in the food chain (including on the farm) for the purposes of informing its general policy work;
- setting standards for enforcement and monitoring the performance of food law enforcement authorities (this will mainly relate to local authorities).

*Clauses 17-21 (Other functions) give the Agency the functions of:*

- issuing, by agreement with the Secretary of State (in practice the Secretary of State for Health) or equivalents in the devolved administrations, emergency orders under the Food and Environmental Protection Act and emergency control orders under the Food Safety Act;

---

<sup>144</sup> MAFF website: <http://www.maff.gov.uk/food/fsa/billsumm.htm> updated 11 June 1999

- publishing advice and information (including advice given to Ministers), except material whose publication is prohibited in other legislation or by virtue of a European Union obligation, and after considering whether the public interest outweighs any questions of confidentiality;
- issuing guidance to local and health authorities on the control of outbreaks of food-borne disease.

*Clauses 22-25 (General provisions relating to the functions of the Agency) set out key provisions to govern the way in which the Agency will operate. They require the Agency to:*

- prepare and publish a statement of objectives and proposed practice, which must be approved by the Secretary of State and the devolved authorities in Scotland, Wales and Northern Ireland;
  - include in the statement its objectives for consulting interested parties, for promoting links with other government departments and local authorities, and for ensuring that the basis for its decisions is transparent and open to public scrutiny;
  - take account of the statement of objectives and advice from any advisory committee in carrying out its functions;
  - take account of risks, costs and benefits before exercising any of its powers.
- The Secretary of State and the devolved authorities may issue directions to the Agency, when it is in serious breach of duty.
  - they also have power to make an order to relax or lift a prohibition on publication in another piece of legislation, where this would prevent the Agency from carrying out its functions.

*Clauses 26-35 (Miscellaneous and supplementary) include:*

- provision removing food safety and food standards responsibilities from the Minister of Agriculture, Fisheries and Food;
- an enabling power to set up a scheme under which laboratories would be required to notify the results of tests for food-borne disease to a central body;
- provision for the sharing of information on food-borne diseases carried by animals between the Agency, the Ministry of Agriculture and the devolved administrations;
- a duty for the Minister of Agriculture to consult the Agency on policy on veterinary medicines;
- a power to modify the Agency's functions in the light of its experience as a UK body operating in an area which has been devolved to Scotland and Northern Ireland and to allow for its constitution to be changed should either Scotland or Northern Ireland decide to withdraw from any of the UK arrangements.

*Clauses 36-42 (Final provisions)*

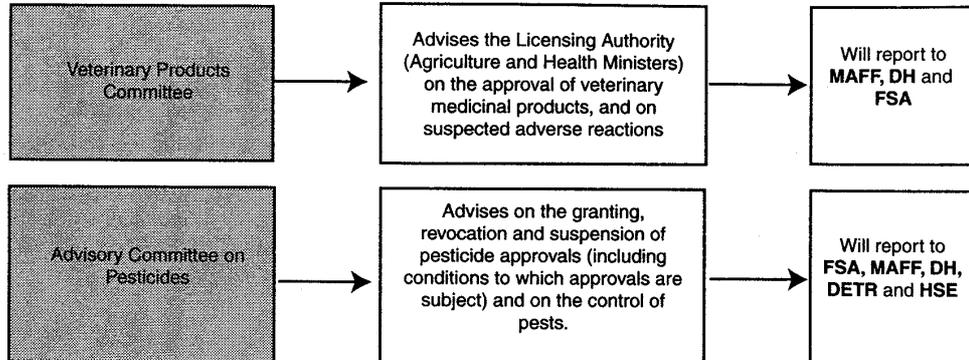
- provides for the agency to be funded by monies voted by Parliament (and from the devolved administrations);
- applies the provisions of the Bill to the Crown;
- includes minor and consequential matters.

*The Bill has 5 Schedules covering:*

- the constitution of the Agency and its staffing;
- the advisory committees including arrangements for transferring existing committees to the Agency and for setting up joint committees to advise the Agency and another body such as the Department of Health or the Ministry of Agriculture;
- the Agency's functions under other Acts including the Food Safety Act 1990;
- minor and consequential amendments to other legislation;
- repeals.

## Appendix 4: Committees related to food issues<sup>145</sup>

### 1) Statutory committees



\* In the process of appointing members. First meeting of committee expected by mid-summer.

ACP and VPC link to the FSA will be through the committee member nominated by the FSA.  
 Many committees operate informal sub-groups or working parties on particular topics. These are not listed.  
 MAFF may also seek advice from food committees on matters within its remit in the future.  
 Committees may seek advice from one another on an ad hoc basis. Cross membership of committees also exists in many cases.

Shading indicated a statutory committee.

<sup>145</sup> Food Standards Committee, *Food Standards Draft Bill*, HC 276-III 1998-99, 24 March 1999, Memorandum 1, submitted by the Joint Food Safety and Standards Group

## 2) Non-Statutory Committees

### Advisory Committee on Food - Related Issues

