Annex 1: Procedures adopted by the BSE Inquiry

1339 In this annex we describe how we sought to achieve our aims of being thorough, open and fair.

Thoroughness and openness

1340 At our preliminary hearing in January 1998 we asked anyone who thought they had relevant evidence to contact the Secretary to the Inquiry.

1341 To assist us in understanding the evidence we would be hearing, we pursued a course of education in order to acquire the necessary background knowledge. We attended a series of lectures on topics including microbiology, epidemiology and toxicology. We also went on a series of visits which we describe below. Government Departments set up ‘Liaison Units’ to assist us. The first of many tasks these Units undertook was to assemble a set of initial background documents which we published as our Initial Background Documents (IBD) series of bundles.

1342 With the assistance of the Liaison Units, the Inquiry Secretariat identified civil servants who appeared likely to have had an involvement with BSE and variant CJD. These civil servants were then divided into two groups. Witnesses identified as probably having only a peripheral involvement in matters of interest to the Inquiry were initially asked to provide general information about the posts they held and the nature of the dealings they had with BSE or vCJD between 1985 and 20 March 1996. Civil servants identified as probably playing a more central role were asked to provide a thorough statement of the part they played, their responsibilities as they understood them at the time, the information they received, the actions and decisions they took and the reasons for them.

1343 A consultation document on our procedures was circulated in January 1998. This explained that we would be seeking evidence from scientists, those who could give evidence of fact relating to the period prior to the outbreak of BSE (including evidence as to the manufacture of cattle feed and the rendering processes involved), administrators, families of victims of vCJD, the farming industry and other commercial interests, consumer representatives, former Ministers and others. We invited people to suggest names of witnesses for the Inquiry. As the Inquiry proceeded, we requested many individuals to provide supplemental statements, clarifying evidence or addressing further issues. In total, we have published over 1,000 witness statements from over 630 different individuals.

1344 Many of those who played a more central role in events were invited to participate in oral hearings. We heard oral evidence on 138 days. Each hearing was in public and we tried to make the atmosphere at these hearings as informal as possible. We permitted a live radio broadcast of our proceedings and television cameras were permitted when witnesses were not giving evidence.
The witness statements provided by those scheduled to give oral evidence were published prior to the relevant hearing. We invited comments from relevant individuals on the content of these statements, and where appropriate these were raised with the witness at the oral hearing.

We took full advantage of information technology to make transcripts of these hearings available over the Internet, usually within a few hours of the witness giving evidence. We also provided free access to all witness statements, timetables, and background information on our website. This website was extremely popular. Over 160,000 witness statements and almost 86,000 transcripts were accessed from our website, which received over 1.5 million page requests. In April 1998 the Inquiry was awarded a Freedom of Information Award by the Campaign for Freedom of Information for its innovative use of the Internet. Modern technology was used in other ways – during one hearing we discussed epidemiological evidence via a video link with scientists in Canada and New Zealand.

A less glamorous, but essential, part of the process of the Inquiry was the analysis of documentation. Members of the Secretariat went in teams to Government Departments to conduct a trawl of their files. Most information came from the Ministry of Agriculture, Fisheries and Food and the Department of Health. Other Departments which supplied information included the Health and Agriculture Departments in Wales, Scotland and Northern Ireland. These teams examined about 3,000 files, and identified approximately 75,000 pages of documents as being of interest to the Inquiry. Documents were also supplied to the Inquiry by companies, trade associations, scientists, and other individuals. Analysis of the documents we received, and requests for further material on points arising from them, was a continuing process.

Our Inquiry was unusual in beginning oral hearings before completion of the task of finding and collating relevant documentary evidence. In the early stages we were necessarily reliant on witnesses to point us to relevant material. As our documentary trawl proceeded we were able to check whether relevant avenues of investigation had been sufficiently covered.

Throughout the Inquiry, we sought to make available to the public the contemporaneous documents we considered relevant to our work. A reference room containing a full set of all materials was available for use by the press and public. In addition to all published witness statements and transcripts of oral evidence, these included:

- a mass of shorter documents (such as letters and minutes) arranged in chronological order (the Year Book, or YB, series). This series grew considerably during the Inquiry and ended up with nearly 16,000 separate documents;
- bulky materials, such as book chapters and reports (the Materials, or M, series);
- articles from scientific journals, telling much of the scientific story (the Journal series); and
- the selection of ‘initial background documents’ provided by the Liaison Units referred to above (the IBD series).
In addition to learning about scientific topics, we went on several visits. These included tours of an abattoir, a rendering plant, a Veterinary Investigation Centre, and two farms in Wales. We went to Weybridge to visit the Central Veterinary Laboratory and to Edinburgh to visit the CJD Surveillance Unit and the Institute for Animal Health’s Neuropathogenesis Unit. We also visited a livestock market in Northern Ireland to see the cattle-tracking system in operation and were shown the Animal Health Computerised Traceability System at the headquarters of the Department of Agriculture for Northern Ireland.

Early in the Inquiry, we issued a number of working documents, including a glossary, a dramatis personae and a time-line setting out some of the main events in chronological order. More ambitiously, in December 1998 the Inquiry began to publish draft factual accounts (DFAs) of aspects of the history of BSE and vCJD. The DFAs were placed on our website and sent to witnesses. They were intended to help us clarify the overall picture and to enable all those who were concerned or interested to draw attention to any errors or significant omissions in the drafts. The DFAs were not definitive. We recognised prior to their publication that they could contain errors or omissions. We stressed that DFAs should be treated as no more than working documents, intended to set out relevant evidence in a neutral manner.

Following the publication of the first tranche of DFAs, some witnesses raised concerns with us. They were very concerned that substantial amendment was required and that the original drafts were in places inaccurate or misleading. After considering what they said, we produced revised versions of many of the DFAs, taking account of the comments and additions which witnesses had, as we expected, proposed. The revised versions (RFAs) produced with the help of witnesses and others were considerably improved and this assisted us greatly in establishing the course of events. Further DFAs were published as the Inquiry proceeded. Updates to both the DFAs and RFAs were produced in some cases to deal with comments and to draw attention to further relevant evidence.

We believe that the DFAs, RFAs and updates assisted many of those who were taking an interest in the Inquiry’s work. We could not produce DFAs for all aspects of the story, but where they were produced, they collated a mass of relevant information in a way which enabled it to be digested and reviewed. They also enabled witnesses to refresh their memory of events and identify evidence upon which they wished to comment.

In June 1998 we published a document setting out our understanding of government structures for scientific research. This was followed in 1999 by discussion papers inviting comments on issues relating to the role of the advisory committees, particularly SEAC, and on epidemiology. When the hearing of oral evidence drew to a close, we issued a more general invitation to supply any further comments anyone wished to make.

In all we received over 11,700 letters, e-mails and faxes in relation to our work during the course of the Inquiry.
Fairness

1356 We gave an indication of the procedures we proposed to adopt at our Preliminary Hearing in January 1998. We considered it important to receive comments on our proposed procedures and therefore set these out in more detail in a consultation document issued by the Inquiry Secretariat at the end of that month. After taking account of comments on the consultation document, we issued a statement of our intended procedures.

1357 Further statements on our procedures in relation to later aspects of our work were issued during the course of the Inquiry. We did not regard our Statements on Procedures documents as an inflexible account of our procedures. We were prepared to, and did, vary our procedures in the light of representations and changing circumstances. The Statements were intended merely as a helpful guide to those participating in and following our work. Anyone wishing to learn more about the detail of the procedures we adopted may wish to refer to those Statements.111

1358 As we had proposed in our original consultation document, we adopted a two-phase approach to our work. The first phase, ‘Phase 1’, was confined to fact-finding. In ‘Phase 2’, we moved on to examine questions which required clarification, issues on which there were conflicts of evidence, and potential criticisms which might be made of individuals. This description seems to have given rise to a misunderstanding: some thought that there would be no, or no substantial, further fact-finding in Phase 2. In a revised Statement on Procedures for Phase 2, we made it clear that during Phase 2 we would continue to seek further evidence of the facts as we thought appropriate having regard to our Terms of Reference.

1359 As with Phase 1, our procedures for Phase 2 were the subject of a consultation process. Our consultation document explained that the Secretariat would write to individuals identifying potential criticisms. (Letters of this kind were recommended by the Royal Commission on Tribunals of Inquiry chaired by Lord Justice Salmon in 1966,112 and are known as ‘Salmon letters’.) All who received such letters would be asked to respond in writing and would be entitled (if they wished) to answer any remaining concerns at an oral hearing.

1360 A number of concerns were expressed by witnesses. In particular, concerns were expressed in relation to the confidentiality of the potential criticisms we wished to explore with witnesses and of the response of those witnesses. We concluded that we could not guarantee to keep potential criticisms or the replies confidential. We stated in the relevant Statement of Procedures document that neither our letter notifying our concerns nor the response from the witness would be treated as documents over which the individual concerned had a right of confidentiality. Material from either document could be disclosed where such disclosure was considered necessary for the fair and proper conduct of the Inquiry.

1361 Those facing potential criticism are naturally concerned to be aware of any information which might be in conflict with the potential criticism. We used DFAs, RFAs and updates to ensure that witnesses were kept informed of relevant evidence. Our Secretariat undertook to consider whether there was any evidence of this kind...
which had not been referred to in a DFA (or comments on a DFA) sent to an individual facing potential criticism, and to inform that person of any such evidence. We added in our Statement of Procedures for Phase 2 that if material were supplied to the Inquiry in confidence, and the confidentiality were maintained, we would pay no regard to anything in that material supporting a potential criticism. If confidential information could reasonably enable an individual to contradict an issue arising out of a potential criticism, we would discuss with that individual what procedures should be adopted to deal with the material.

1362 In order to ensure that all relevant information was in the public domain, we requested that responses to potential criticisms be accompanied by a statement for the purpose of publication, which set out all factual matters on which the recipient of a letter of potential criticism wished to rely in addition to any evidence already provided in material published by the Inquiry. Not all those involved followed this course. The Inquiry Secretariat had to devote substantial resources to going through responses, identifying new evidence of fact and putting forward a proposed statement for publication. On occasion, to ensure that new evidence of fact was put in the public domain, it was necessary for the Inquiry to publish a ‘statement of information provided by a witness’ in the absence of approval from the relevant witness.

1363 At first, we had envisaged a ‘final stage’ of our Inquiry when those participating in the Inquiry would be given a relatively short time in which to make written submissions on relevant aspects. As Phase 2 progressed, we thought it would be more useful, once the main evidence relevant to a particular area was complete, to write to those facing potential criticism identifying anything which no longer needed to be pursued, and suggesting a time within which additional comments on extant potential criticisms should be supplied.

1364 We also concluded in November 1999 that the time had come to reduce the burden on Inquiry resources and change our procedures. It seemed to us that new factual evidence in Additional Comments would not necessarily require a new statement for publication. Our Statement on Procedures for Additional Comments said that we did not propose to publish any Additional Comments we received. We recognised that it was possible that such comments could contain fresh evidence on matters of fact tending to contradict an extant potential criticism, and proposed that in such circumstances we would make arrangements to ensure that anyone notified of the potential criticism in question was informed. This appeared uncontroversial, but when Additional Comments were submitted, there were some who took issue with this. In contrast to the stance adopted at the time of receipt of Salmon letters, a number of those facing potential criticisms said that they wanted their Additional Comments to be published. We considered, in each case, whether we should depart from the procedures we had envisaged for Additional Comments, but concluded that we should not.