1. Introduction

Background

1.1 With the identification of BSE in 1986, the Government needed to consider how to respond to this novel disease in cattle. Although the livestock farming industry lay firmly in the private sector, like agriculture generally, it had historically enjoyed a close relationship with government. As a matter of national economic concern, the Government wished to ensure the viability of this sector of the economy and hence the nation’s food supplies. Of equal if not greater importance to government was the protection of human health where this was threatened by diseased or contaminated products of agriculture and agriculture-related industries or by the potential transmission of diseases from animals to man.

1.2 At the time of the identification of BSE, measures which enabled the protection of human health and animal health in the livestock farming sector consisted of statutory legislation, administrative control and enforcement, and informal advice and guidance. These had been developed in response to the lessons learned from earlier outbreaks of disease, and dealt with:

i. dangers to animal health from infection between beasts or through exposure to feedingstuffs, medication or other factors;

ii. dangers to human health through contaminated food and animal by-products;

iii. dangers to human health through contaminated medical products; and

iv. dangers to human health through occupational exposure.

Vol. 15: Government and Public Administration describes the system of Government administration within which Ministers, officials and local authorities operated during the period 1986–96.

1.3 Vol. 14 explains the relevant legislative and executive framework in place when BSE was identified at the end of 1986. This was the background against which policy-makers had to consider what action was needed to deal with the perceived hazards from BSE and what control measures could and should be introduced. It does not describe those control measures; they are covered in detail in vols. 3–7. But it does describe the changes made to the legislative and executive framework up to 20 March 1996 that were brought about by factors not connected with BSE. One example was the continuing integration with Europe, which required, amongst other things, a common standard of meat hygiene within the Single Market.

1.4 As the following chapters show, the legislation controlled processes and activities rather than complete industries or industrial sectors. It thus recognised that disease or contamination was spread along pathways established by the processing of materials and could come into contact with humans at many points along the way. Hence, at any given time the legislation affecting a sector such as agriculture consisted of interwoven Acts, Orders and Regulations each designed to deal with
specific matters in greater or lesser detail. The interwoven powers thus affected
different sectors to varying degrees with some – such as the legislative control over
animal feedingstuffs – being extremely detailed.

1.5 Legislation established control points or gateways at which checks could be
made and contaminated or diseased material separated from material which was
clean or fit for human consumption, use or contact. The action that might be taken
at these gateways varied. At one end of the spectrum, entire animals might be
condemned and destroyed. Less severe was the removal and destruction of parts of
the animal considered infected or contaminated and, more moderate still, the
prohibition of use of contaminated parts for certain purposes. At the other end of the
spectrum, responsible behaviour might be encouraged by procedures for the
licensing of material or for the formulation of codes of good practice.

1.6 All these gateways or controls were put into effect by an executive system of
identification, monitoring and enforcement by both central and local government.
Powers were given to, and duties were placed on, Ministers. Many of these powers
and duties were in turn delegated to civil servants, both professional and
administrative, working in central Departments and also in regional and local
centres. In addition, legislation gave important powers to, and placed substantial
duties on, local government.

The legislative process

1.7 Ministers, and officials acting on their behalf, could generally only take action
where Parliament had granted them specific powers or authorisation to do so. The
legislative process is described in Chapter 3 of vol. 15: Government and Public
Administration. To summarise, UK legislation was of two kinds:

i. Acts of Parliament, known as ‘primary legislation’, granting specific
powers or authorisation, or ‘enabling powers’ for the Minister to take
action in certain circumstances or if certain conditions were fulfilled; and

ii. Orders or Regulations, known as ‘secondary legislation’, setting out
how the enabling powers in an Act of Parliament were to be used in a
particular case.

From July 1987, when the Single European Act came into force, there was
increasing harmonisation of legislation throughout the European Union (EU) designed
to eliminate barriers to trade and ensure uniform standards of regulation,
monitoring and enforcement throughout the Member States.

1.8 As vol. 15 indicates, the legislative process imposed constraints on Ministers
and officials:

i. they usually had to work with the powers given to them by existing
legislation. New primary legislation was time-consuming and difficult

---

1 This distinction is explained in ch. 4, vol. 15: Government and Public Administration
2 The European Union came into existence on 1 November 1993 as a result of the Maastricht Treaty. It incorporated but did not
replace the European Community. Throughout the volumes of this Report, the term EU is generally used for consistency’s
sake (even if sometimes chronologically incorrect), except where specific reference is made to the functions conferred by the
European Community Treaty or to its legal effect.
to obtain, as it was subject to detailed scrutiny by Parliament. Even new secondary legislation involved parliamentary procedures and, sometimes, scrutiny;

ii. if they decided that new legislation was required, the legislation itself took time to introduce, especially if consultation was required. It could not be done overnight;

iii. they could not legislate without reference to any EU legislation on the same subject; and

iv. once they had obtained new legislative powers, they had to use them reasonably and be prepared to justify their actions to Parliament and to the courts.

The legislative framework

1.9 The following chapters:

i. look briefly at the range of statutory powers available in respect of the topics listed below, including powers granted to Ministers to make secondary Orders or Regulations and to local authorities to make bylaws; 3

ii. outline the main pieces of primary legislation relating to Scotland and Northern Ireland, 4 where these differed from those in place for England and Wales; and

iii. describe how the legislation was deployed in respect of:

Identification and control of animals showing symptoms of disease (Chapter 2)

Red meat hygiene at the slaughterhouse (Chapter 3)

Red meat hygiene after the slaughterhouse (Chapter 4)

The treatment of material deemed unfit for human consumption (Chapter 5)

Animal feed (Chapter 6)

Human and veterinary medicines and cosmetics (Chapter 7)

Pollution control and waste disposal (Chapter 8)

Occupational health (Chapter 9).

---

3 Throughout this volume, where the powers, duties or responsibilities given to or laid upon an individual (for example, a Minister) are described, the use of the term 'he' also means 'she'. This is for reasons of legal convention only.

4 Northern Ireland had separate constitutional arrangements – see vol. 9: Wales, Scotland and Northern Ireland.
Separate legislative frameworks in Scotland and Northern Ireland

1.10 The United Kingdom (UK) comprised Great Britain – ie, England, Wales and Scotland – and Northern Ireland. The legal system in Scotland was different from that in place in England and Wales, while Northern Ireland was, in constitutional terms, separate from Great Britain.

1.11 The Government of Northern Ireland was separate from the Government of the UK and was staffed by a separate Northern Ireland civil service organised into Departments on lines similar to its counterpart in Great Britain. However, unlike their counterparts in the home civil service, these ministries were, under the Ministries of Northern Ireland Act 1921, bodies corporate with their own legal capacity and standing and as such were capable of acting in their own right where functions were conferred upon them directly by statute. The Northern Ireland Act 1974 provided that the Northern Ireland Departments were to discharge their functions under the direction and control of the Secretary of State for Northern Ireland, who was, therefore, politically answerable in Parliament for those Departments.

1.12 Hence, legislation passed by Parliament did not necessarily apply throughout the UK. For example, while the Animal Health Act 1981 and the Food Safety Act 1990 both applied throughout Great Britain, the Slaughterhouses Act 1974 and the Food Act 1984 applied only to England and Wales. Scotland and Northern Ireland had equivalent legislation of their own.

1.13 However, because ‘animal disease is no more a respecter of administrative, national or political convenience than is human disease’, the legislation relating to Scotland and Northern Ireland was for the most part very similar to that in place for England and Wales. This legislation is mentioned where appropriate in the following chapters, and any differences are described there.

1.14 In relation to BSE, the Scottish Office told the Inquiry that:

Policy on BSE for the UK as a whole was decided collectively by Agriculture and Health Ministers with MAFF and DH taking the lead. The aim was to implement the policy on a UK basis.

It added that:

The main Scottish Office aim was to ensure that the policy and its implementation took proper account of Scottish circumstances.

1.15 The Department of Agriculture for Northern Ireland (DANI) made a similar point:

Notwithstanding the degree of autonomy enjoyed by DANI, it is clearly desirable that, where there is a United Kingdom-wide threat to public and
animal health such as that posed by BSE, there should be a uniform United Kingdom-wide response. Accordingly, as was usual in such cases, the lead in formulating the policy to combat BSE was taken by Whitehall Ministers, in particular the Minister of Agriculture, Fisheries and Food and the Secretary of State for Health . . .

While DANI was extremely concerned about the BSE epidemic, there were no specifically Northern Ireland features which suggested the need for measures additional to or different from those being applied in the rest of the United Kingdom. 9

1.16 As a consequence, the measures implemented to deal with BSE in Northern Ireland largely mirrored those adopted in England, Wales and Scotland. These are described in more detail in vol. 9: Wales, Scotland and Northern Ireland.