4. Red meat hygiene after the slaughterhouse

Introduction

4.1 After leaving the slaughterhouse, the carcass or part-carcass of a slaughtered animal was subjected to further treatment before it reached the consumer. Butchery subdivided it into smaller portions, joints, and cuts, and simple processing including packaging might follow. Butchery might take place in premises adjacent to the slaughterhouse, or carcasses might be transported to centralised butcheries or to catering or retailing premises, either directly from the slaughterhouse or through meat wholesalers or meat processors. Thus, the treatment and handling of meat and meat products between slaughter and plate might involve transporters, butchers, meat processors, wholesalers, retailers and caterers before reaching the consumer.

4.2 This chapter describes the main elements of regulation that applied to these parts of the food chain. The various stages were regulated by controls which were both horizontal (general) and vertical (specific to a particular food or food group).

4.3 One particular aspect of meat processing which was relevant to BSE was the production of mechanically recovered meat (MRM), because this was designed to utilise the smallest and most inaccessible remnants of meat remaining on the skeleton after the carcass had been dressed. The legislation that applied to MRM and the Regulations which controlled MRM production, together with all the other food hygiene legislation which applied to meat between the carcass leaving the slaughterhouse and final consumption are therefore considered in this chapter. This formed the background against which the Government had to consider the need for action to ensure, for example, that the ban on the use of Specified Bovine Offal (SBO) for human consumption was fully and effectively implemented.

4.4 Like the other chapters in this volume, Chapter 4 examines first the situation as it was in 1986 in respect of meat hygiene after the slaughterhouse, and then considers changes in legislation and administrative arrangements between 1986 and 1996 which were not driven by BSE.

4.5 Before the emergence of BSE, the regulation of meat and meat products was primarily concerned with two basic principles: the need to ensure food safety, by protecting food from contamination that could render it unfit for human consumption; and the need to secure food standards, by ensuring that food when purchased was of the nature, substance and quality demanded and not fraudulently described.
Food Act 1984

Introduction

4.6 This measure consolidated several earlier pieces of primary legislation, notably the Food and Drugs Act 1955. Its main purpose was to protect public health in terms of food safety and food standards. It sought to do this by making it an offence to render food injurious to human health (food safety control) or to sell food for human consumption which was not of the nature, substance or quality demanded by the purchaser (food standards requirements). Those parts of the Act of most relevance to BSE dealt with the composition and labelling of food, hygiene, the control of food premises, administration, sampling and analysis, and enforcement.

4.7 The Act applied only to England and Wales, and the Ministers who were granted the powers to make Orders or Regulations in England were the Minister of Agriculture and the Secretary of State for Social Services. In Wales, these two Ministers plus the Secretary of State for Wales were given those powers. But in both countries the Ministers were required to act jointly, except in relation to a very few situations where the Minister of Agriculture alone was responsible. This included the power under Section 37 to appoint veterinary inspectors concerned with ensuring the safety of milk and dairy products. The concept of joint responsibility gave rise to the need for cooperation between Departments, a matter we return to later in this chapter.

4.8 The equivalent powers in Scotland were contained in the Food and Drugs (Scotland) Act 1956 and the Control of Food Premises (Scotland) Act 1977, while those for Northern Ireland were in the Food (Northern Ireland) Orders of 1980 and 1989.

4.9 Part I of the Food Act 1984 dealt with food generally and was subdivided into seven headings of which the first – composition and labelling of food – dealt with food standards matters, while the remainder covered food safety issues. To understand these provisions and the secondary legislation relating to them, it is convenient to consider the two groups in turn.

Food standards

Composition and labelling of food

4.10 Section 1 made it an offence to use any substance in the preparation of food, to abstract any constituent from food, or to subject food to any other process or treatment as to render it injurious to health with the intention that it would be sold for human consumption in that state. A person who sold, offered, exposed or advertised for sale for human consumption any food rendered injurious to health by such processes was also guilty of an offence. Section 2 gave general protection to purchasers of food by making it an offence to sell any food which was not of the nature, or substance or quality demanded by the purchaser.

269 The title in 1984 of the Minister heading the Department of Health and Social Security.
4.11 These underpinning principles of food standards were supported by regulation-making and information-gathering powers granted to ‘the Ministers’ – that is, the Minister of Agriculture, the Secretary of State for Social Services, and additionally in Wales the Secretary of State for Wales, acting jointly. Section 4 enabled the Ministers ‘so far as appears to them to be necessary or expedient in the interests of the public health, or otherwise for the protection of the public, or to be called for by any Community obligation’ to make Regulations for any of the following purposes:

i. to require, prohibit or regulate the addition of any specified substance to food intended for sale for human consumption, or using such a substance as a food ingredient, and generally regulating the composition of such food;

ii. to require, prohibit or regulate the use of any process or treatment in the preparation of food for human consumption;

iii. to prohibit or regulate the sale, offer or exposure for sale, consignment or delivery of food which did not comply with any regulations, or for regulating the import of such food; or

iv. to prohibit or regulate the sale, possession for sale, offer, exposure or advertisement of any specified substance for use in the preparation of food for human consumption.

4.12 The Regulations relevant to this Report which were made, or deemed to have been made, under this section of the Act, were the Meat (Treatment Regulations) 1964 – which prohibited the addition of several specified substances to raw or unprocessed meat; made it an offence to add such substances to meat; and provided for such meat to be condemned and destroyed as unfit for human consumption – and the Meat Products and Spreadable Fish Products Regulations 1984.270

4.13 The 1984 Regulations consolidated and revoked earlier Regulations dealing with particular types of meat product (Regulation 20 and schedule 5), and defined foods which were not considered to be meat products (Regulation 2(1) and schedule 3). These included raw meat to which no ingredient had been added; haggis, black pudding and white pudding, brawn and collard head; stock cubes and similar flavouring agents; foods for which ‘broth’, ‘gravy’ or ‘soup’ were used in the name; products known in Scotland as ‘potted head’, ‘potted meat’ and ‘potted hough’; and any product containing the fat but no other meat of any animal or bird.

4.14 Regulations 2 and 14 and schedule 2 defined which parts of the animal carcass were to be regarded as meat and which parts might not be used in uncooked meat products. For mammalian species, the parts to be regarded as meat were:

| Diaphragm | Liver |
| Head meat (muscle meat and associated tissue only) | Pancreas |
| Heart | Thymus |
| Kidney | Tongue |

270 L11 tab 6
4.15 Those parts not to be used in uncooked meat products were:

<table>
<thead>
<tr>
<th>Part</th>
<th>Part</th>
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<tr>
<td>Brains</td>
<td>Rectum</td>
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<tr>
<td>Feet</td>
<td>Spinal Cord</td>
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<tr>
<td>Intestine, large</td>
<td>Spleen</td>
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<tr>
<td>Intestine, small</td>
<td>Stomach</td>
</tr>
<tr>
<td>Lungs</td>
<td>Testicles</td>
</tr>
<tr>
<td>Oesophagus</td>
<td>Udder</td>
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</tbody>
</table>

4.16 The 1984 Regulations defined meat as ‘the flesh, including fat, and the skin, rind, gristle and sinew in amounts naturally associated with the flesh used, of any animal or bird which is normally used for human consumption’. This included those parts listed in paragraph 4.14 above, but no other parts of a carcass were to be regarded as ‘meat’. A meat product meant any product which consisted of meat or of which meat was an ingredient, other than foods listed in paragraph 4.13 above. ‘Cooked’, in relation to a food, meant ‘subjected to a process of cooking throughout the whole food so that the food is sold for consumption without further cooking’, and ‘uncooked’ was to be construed accordingly. 271

4.17 To enable the exercise of their functions under section 4, Ministers could by Order under section 5 require every person carrying on a business which included the production, use or importation of substances specified in the Order to provide them with particulars of the composition and use of those substances.

4.18 Section 6 of the Act made it an offence for any person to give or display a label with any food sold by him, or made available for sale by him, if the label falsely described the food or was calculated to mislead as to its nature, substance or quality. It was also an offence to advertise or publish an advertisement falsely describing food. Section 7 enabled the Ministers to make Regulations for improving requirements, on, or regulating, the labelling, marking or advertising of food for human consumption and the descriptions which could be applied to such food. The principal Regulations under section 7 were the Food Labelling Regulations 1984, 272 which also implemented the EC Directives on the labelling of foodstuffs. The Meat Products and Spreadable Fish Products Regulations 1984 were also made under this section of the Act, much of their content concerning the use of certain descriptions and declarations on contents.

4.19 Enforcement of the composition and labelling provisions of sections 1, 2 and 6 of the Act rested with the food and drug authorities – ie, county councils, metropolitan district councils and London borough councils.

**Mechanically recovered meat (MRM)**

4.20 Conventional methods of removing meat from bones during butchery left a substantial quantity of meat adhering to the bone. This meat could be recovered by various kinds of machines creating a product known as mechanically recovered meat (MRM). MRM was suitable for use in products where the texture of the meat

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271 L11 tab 6 Regulation 2(1)
272 L11 tab 5. The equivalents in Scotland were the Food Labelling (Scotland) Regulations 1984, and in Northern Ireland the Food Labelling Regulations (Northern Ireland) 1984
was not important to the finished product such as meat pies, burgers, and sausages. It could also be fed to animals, including pets. The MRM process is discussed further in vol. 13: *Industry Processes and Controls*.

4.21 As indicated above, the Meat Products and Spreadable Fish Products Regulations 1984 defined the term ‘meat’, and listed those parts of the carcasses of mammalian species which were to be regarded as meat, and those parts which might not be used in uncooked meat products.

4.22 In August 1987, the British Meat Manufacturers’ Association (BMMA)\(^{273}\) issued a Code of Practice to describe the essential criteria and appropriate conditions for the preparation of MRM.\(^ {274}\) The BMMA was concerned that if either the raw material source or the production process was not properly controlled, then the characteristics of the product could become so debased that it could no longer be considered meat as defined in the 1984 Regulations. The Code related only to meat close to the bone recovered from selected bones and separated by a process based on the application of pressure or a mincing and sieving action.\(^ {275}\)

4.23 The BMMA Code went further than Part I of schedule 2 of the 1984 Regulations. It stated that the only part of the carcass listed in the schedule that should be used in the production of MRM was the diaphragm. It particularly emphasised that no part of the head should be used, and in explanatory notes it stated that:

> The objective of this sub-paragraph is to exclude parts of the carcase inappropriate to the product and to ensure compliance with the definition of meat in the MPR [Meat Products and Spreadable Fish Products Regulations 1984]. Thus, spinal cord is prohibited in red meat species . . . \(^ {276}\)

4.24 The Code also said that meat from various specified bones should not be used in the manufacture of MRM:

i. uncooked – the head, feet, tail (other than ox tail), coccyx, femur, fibula, tibia, humerus, radius and ulna;

ii. cooked – the head, feet, tail (other than ox tail), femur, fibula, tibia, humerus, radius and ulna.

4.25 The Code was endorsed by the Committee on the Microbiological Safety of Food,\(^ {277}\) which was ‘satisfied that mechanically recovered meat, if properly prepared, need not present a significant risk to public health from the microbiological point of view.’\(^ {278}\)

\(^{273}\) Formerly known as the Bacon and Meat Manufacturers’ Association

\(^{274}\) YB87/8.00/3.1

\(^{275}\) YB87/8.00/3.1 para. 2

\(^{276}\) YB87/08.00/3.6 – note to para. 5(d)

\(^{277}\) Set up to advise UK Health and Agriculture Ministers, and chaired by Sir Mark Richmond. For further details of the Committee, and its remit and its work, see Chapter 1 of Part 1 of its Report, published in February 1990 (M22 tab 3)

\(^{278}\) M22 tab 4 p. 65 para. 4.65
**Food safety**

**Food unfit for human consumption**

4.26 The legislative basis for controls on the sale, etc of food that was unfit for human consumption was contained in section 8 of the 1984 Act. This made it an offence to sell, or to forward to any person to sell, or to prepare for sale, any food intended for human consumption but which was unfit for that purpose. It was a defence for anyone charged with this offence to show either that he gave notice that the food was unfit or that he did not know or could not, with reasonable diligence, have known that it was unfit. Section 8 (4) provided that anyone licensed to keep a slaughterhouse under the Slaughterhouses Act 1974, who was convicted of an offence under this section of the Food Act could have his licence cancelled by the court, in addition to any other penalty. Section 12 of the 1984 Act prohibited the sale, offer or exposure for sale or the possession for the purpose or perception for sale for human consumption, of any part or product derived wholly or partly from an animal slaughtered in a knacker’s yard. Anyone contravening this section was guilty of an offence, and, if licensed under the 1974 Act to keep either a slaughterhouse or a knacker’s yard, could have his licence cancelled, in addition to any other penalty.

4.27 Section 9 granted the power to examine and seize food suspected of being unfit for human consumption to an ‘authorised officer of a council’, who could act ‘at all reasonable times’ and ‘if it appeared to him to be unfit’ could seize the food and remove it to be dealt with by a Justice of the Peace (JP). The person found in possession of the unfit food was entitled to notice of liability to prosecution, to be heard by the JP, and to call witnesses in his defence. If it was found that the food was unfit, the JP could order its destruction or disposal so as to prevent it being used for human consumption, but if the food was not found to be unfit the council had to compensate its owner for any depreciation resulting from the seizure and removal. Similar powers of examination and seizure were granted by section 11 in relation to vehicles or containers that were suspected of containing unfit food.

4.28 An ‘authorised officer’ of a council was defined by section 73 to mean an officer authorised in writing either generally or specifically to act in matters of a specified kind, and – for the purposes of taking samples – also included a police constable authorised by the police authority. No council officer could be authorised to act in relation to the examination and seizure of meat unless he had the qualifications prescribed in Regulations made by Ministers. In relation to meat, the requirements of the Authorised Officers (Meat Inspection) Regulations 1978 had to be met.

4.29 Authorised officers were also able to examine the contents of vehicles and containers that contained food intended to be sold for human consumption, or that were in the course of a delivery after the sale of food intended for human consumption, subject to some exemptions. These exemptions included any vehicles belonging to listed transport authorities, and instances where the duties of a customs and excise officer had not been wholly discharged.

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279 The basis upon which a meat inspector might determine that meat was unfit for human consumption was set out in the Meat Inspection Regulations of 1963 and 1987 – see Chapter 3 of this volume

280 That is, the Royal Society of Health Certificate of Meat Inspection or a Diploma in Environmental Health or a BSc (Hons) Degree in that subject
4.30 Enforcement of the unfit food provisions of the Act was the responsibility of district councils, metropolitan district councils and London borough councils.

Hygiene

4.31 Section 13 of the Food Act gave the Minister the power to make Regulations in relation to the sale, importation, preparation, transport, storage, packaging and wrapping of food intended for human consumption, to secure the observance of sanitary and clean conditions and practices, and to protect public health. The Food Hygiene (General) Regulations 1970 and the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966 had effect as if made under this section.

4.32 The Food Hygiene (General) Regulations required that no food business should be carried out at any insanitary premises or any place, or in any condition or situation where that food was exposed to the risk of contamination. The term ‘food business’ was defined in Regulation 3 as any trade or business in which any person engages in the handling of food. The Regulations stated that any articles or equipment which came or were liable to come into contact with food should be kept clean, and also restricted the preparation and packaging of food on domestic premises.

4.33 Part III of the Regulations required any person who handled food to take all steps reasonably necessary to protect the food from risk of contamination (Regulation 9), keep as clean as reasonably practicable (Regulation 10) and wear the appropriate overclothing (Regulation 11).

4.34 Part IV required the premises on which food was handled to maintain certain standards in relation to sanitary conveniences, water supply, facilities for washing food and equipment, lighting, ventilation and general cleanliness and repair. Regulation 27 listed the temperatures at which food was to be kept.

4.35 Any person guilty of an offence under the Regulations could be liable for a fine and/or a term of imprisonment. Further, if the person convicted held a licence under section 1 of the Slaughterhouses Act 1974, a further penalty might be the cancellation of that licence if the offence was committed on the premises for which the licence was held. Enforcement of the Regulations was the responsibility of the local authority – that is, the district councils and London borough councils.

4.36 The Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966 were very similar to the 1970 Regulations. They too were enforced by local authorities, and the penalties for any person found guilty of an offence under them were identical to those in the 1970 Regulations.

4.37 Section 14 of the Food Act 1984 gave the court the power to disqualify a caterer for a period of up to two years if he or she were convicted of an offence under section 13, subject to the gravity of the offence and any previous convictions under section 13.

4.38 Section 15 of the Act gave local authorities the power to make bylaws to ensure the observance of sanitary and clean conditions and practices in connection
with the handling, wrapping and delivery of food intended for sale for human consumption.

**Registration of premises and licensing of vehicles**

4.39 Section 16 required that premises used for the sale, or manufacture for the purpose of sale, of ice cream, or for the storage of ice cream intended for sale, or for the preparation or manufacture of sausages or potted, pressed, pickled or preserved food intended for sale, had to be licensed by the local authority. Section 17 enabled Ministers by Order to extend this requirement to other businesses specified in the Order. Preserved food was deemed to include the preparation of any meat by the process of cooking. A person who used any premises in such a manner without being registered was guilty of an offence and could be fined and/or imprisoned. Further, the Secretary of State for Social Services could institute proceedings for offences under this section.

4.40 Section 18 of the Act set out the requirements of registration and section 19 those situations where registration might be refused or cancelled by the local authority. For registration to be refused or cancelled, either the requirements listed under section 13 must not have been met, or the premises must have been considered to be unsuitable for the use or purpose applied for. Further, under section 20 of the Act the Minister could make Regulations enabling local authorities to issue licences for the use of vehicles, stalls, or places other than premises for the preparation, exposure or offer for sale of food for human consumption. However, no Regulations were made under this section.

**Control of food premises**

4.41 Section 21 provided that if a person was convicted of an offence under section 13 that included the carrying on of a food business at any premises or stall which was insanitary and where the food was exposed to the risk of contamination, the court could, on application by the local authority, make a closure order, if it was satisfied that the preparation, storage, sale or offering or exposure for sale was continuing or was likely to continue and the condition of the premises or fittings or equipment was such that the continuance of a food business would be dangerous to health. The authority had to give at least 14 days’ notice of its intention to apply for such an order and it had to specify what measures should be taken to remove any danger to health.

4.42 However, under section 23 the court could make an emergency order if it was satisfied by the evidence of the local authority – and after the person against whom the order would be made had been given an opportunity to give evidence – that the preparation or sale of food would be a danger to health. In emergency order cases, only three days’ notice was required of the local authority. Such an order prohibited the use of the premises until either the local authority was satisfied that there was no longer any risk of danger to health or the proceedings which gave rise to the order had been determined. Under section 23, if the court was satisfied that there had not been an imminent risk of danger to health and that loss had been occasioned, it could order compensation to be paid. Section 24 granted rights of appeal to the Crown.

281 An application had to specify the purpose or purposes for which registration was sought and all rooms or accommodation that were proposed to be used.
Court for both the local authority and the person to whom the application for a closure order was given.

4.43 Under section 25, a person who contravened a closure order or an emergency order was liable on a summary conviction to a fine.

**Food poisoning**

4.44 Section 31 of the Act allowed a ‘proper officer’ of a local authority to issue a notice to the person in charge of the food if he had reasonable grounds for suspecting that the food was likely to cause food poisoning. While the notice was in effect, the food or any specified portion of it was not to be used for human consumption, and it was not to be removed except to a place specified in the notice. If it was found that the food was likely to cause food poisoning, it had to be dealt with as food falling under section 9 of this Act. However, if the officer was satisfied that the food could be safely used for human consumption, he could withdraw the notice and the local authority had to pay compensation to the owner of the food for any depreciation in value resulting from the action taken by the officer.

**Sampling and analysis**

4.45 The Act required every food and drugs authority to appoint one or more food and drugs analysts who possessed qualifications prescribed in Regulations or otherwise approved by Ministers, and provided that county councils or local authorities could provide facilities for examining samples of food and drugs. It also empowered authorised officers of councils to purchase samples of any food or substance capable of being used in the preparation of food, or to take such samples if it appeared to them that the food or substance:

i. was intended for sale or had been sold for human consumption; or

ii. was found by them on or in any premises, stall, vehicle, ship, aircraft or place which they were authorised to enter to enforce the Act.

4.46 They were to deal with samples in the manner prescribed in schedule 7 to the Act and submit them to be analysed by the public analyst for the relevant area. Having analysed a sample, the public analyst was required to give the authorised officer a certificate specifying the result, in a form prescribed in Regulations. A local authority could also arrange for the examination of food that had not been and was not intended to be sold, at the request of the person who had it in his or her possession. Finally, public analysts were required to report quarterly to the local authority which had appointed them on the number of ‘articles’ they had analysed during the preceding three months and the results of those analyses.

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282 A ‘proper officer’ in relation to any purpose meant the officer appointed for that purpose by the council – see section 132(1) of the 1984 Act
283 Section 76
284 Section 77
285 Section 78
286 Section 80
287 Section 79(4). The sample could be passed to the analyst for another area if the office of public analyst for the relevant area was vacant or if that analyst decided that he could not perform an effective analysis
288 Section 79
289 Section 85
290 Section 86
Policy responsibilities for food safety

Ministry of Agriculture, Fisheries and Food (MAFF) and Department of Health (DH)

4.47 Because the 1984 Act and its predecessors gave the powers of making secondary legislation to two Ministers jointly (or in Wales, three), it was necessary to have arrangements in place to enable this to work smoothly in practice. Such arrangements had developed over many years. An interdepartmental Working Group concluded in 1989 that:

The effect was to make the Ministry of Health the central department responsible for food hygiene work in England and Wales and for health advice on food matters, although many specific responsibilities, including those for the hygiene of meat, milk and eggs, remained with MAFF.291

4.48 Regulations under the Food Act were often jointly signed by both the Minister of Agriculture and the Secretary of State for Social Services (and for Wales in that country), and preparatory work or consultation would often involve both Departments. The Working Group noted that ‘some sections of the Act, for example sections 2 and 8, have been used for offences relating to physical, chemical and biological contamination of food’. But a system of lead responsibilities had been agreed between the two Departments so that one or the other would undertake to draft and guide the secondary legislation, according to which of them would subsequently assume the responsibility for implementation and monitoring once this was in effect.

4.49 The lead responsibilities of relevance to BSE were allocated as follows:

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<tr>
<th>Food Act 1984</th>
<th>Lead</th>
<th>Topic</th>
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<tbody>
<tr>
<td>Sections 1–7</td>
<td>MAFF</td>
<td>Composition and labelling of food</td>
</tr>
<tr>
<td>Sections 8–11</td>
<td>DH</td>
<td>Food unfit for human consumption</td>
</tr>
<tr>
<td>Sections 12</td>
<td>MAFF</td>
<td>Products of knacker’s yards</td>
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<tr>
<td>Sections 13–15</td>
<td>DH</td>
<td>Hygiene of food</td>
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<td>Sections 16–20</td>
<td>DH</td>
<td>Registration of premises and licensing of vending vehicles</td>
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<tr>
<td>Sections 21–26</td>
<td>DH</td>
<td>Control of food premises</td>
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<tr>
<td>Section 31</td>
<td>DH</td>
<td>Inspection and control of infected food</td>
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<tr>
<td>Sections 32–47</td>
<td>MAFF</td>
<td>Milk, etc</td>
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291 M11 tab 3 p. 4 para. 2.5. The Group’s terms of reference were to review the allocation within central government of responsibilities for public health, particularly those for food safety, and the relationship between central government and local authority environmental health and trading standards departments in relation to food safety, and to make recommendations for improvements, including consideration of possible improved coordination arrangements.
The relationship between DH and local authority Environmental Health Officers (EHOs)

4.50 MAFF had an inspection/advisory/enforcement arm, the State Veterinary Service (SVS), to liaise with local authorities. DH did not have an equivalent to this. There was no centrally employed food inspection service or trading standards service. Local authorities had complete autonomy over the way in which they exercised their enforcement duties in respect of environmental health or trading standards.

4.51 Besides having medical staff and scientists in his command, the Chief Medical Officer (CMO) had a Chief Environmental Health Officer (CEHO) who, with his staff, advised on the policy areas for which DH had responsibility and on the development of policy on food safety. However, these EHOs had no professional or management responsibility for or control over local authority EHOs. DH told the Inquiry that its CEHO was not necessarily the channel for the advice provided to environmental health departments in local authorities (EHDs), although some of the advice included letters, sent out ‘on an ad hoc basis’, relating to enforcement issues.292

Overall responsibility

4.52 The 1984 Act laid down general standards for food intended for human consumption, and regulated its composition, preparation, presentation and sale. The requirements of the 1984 Act in principle applied to all types of businesses throughout the food chain, but the Act did not require food businesses to be registered or licensed. In Part I of its 1990 Report, the Committee on the Microbiological Safety of Food293 said that:

We are concerned that there is currently little control over the operation of food businesses and that any individual can, without training, open almost any type of food business and start trading. Thus the local food enforcement agency (the local environmental health department and its officers, the Environmental Health Officers) may only become aware of a new food business through routine monitoring of their areas or, on occasion, because of complaints from members of the public. In our view such a situation is very unsatisfactory.294

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292 BSE Memo DH 8/98 – DH01 tab 10 para. 17
293 Chaired by Sir Mark Richmond. Part 1 of its report: The Microbiological Safety of Food (HMSO February 1990) is to be found at M22 tab 3
294 M22 tab 3 p. 81 para. 9.4
4.53 The 1990 Gwynn Report on the functions and structure of the Department of Health noted that:

Environmental health covers risks to health from all aspects of the environment, including food, air, water and soil pollution, radiation in the environment, housing, transport. Secretary of State has a strategic as well as operational remit: he has a role in encouraging research, advising Local Authority Environmental Health Departments (which are generally responsible for enforcement) and ensuring that they are providing the proper service, and in issuing advice and warnings to professionals and the public as appropriate. 295

4.54 Hence, several central government departments were responsible for the policy areas where functions and duties were carried out by local authority Environmental Health Departments. Those departments, which included the Department of the Environment and the Department of Transport, 296 were responsible for providing advice about their policies and legislation. They did so through the issue of circulars, or liaison meetings with local authorities and their representative bodies – ie, the local authority associations and the Institution of Environmental Health Officers (IEHO) acting on behalf of the profession. But no single central government department had oversight of the whole of the work of Environmental Health Departments or of any particular issue with which they dealt.

Compliance problems in food premises

4.55 In 1990, the report 297 of the Richmond Committee discussed compliance problems that had been identified in relation to food safety standards, enforcement and surveillance. It drew on the results of a National Food Premises Condition Survey conducted by the Audit Commission in cooperation with the IEHO, which covered more than 5,000 premises inspected by EHOs in nearly 300 local authorities in England and Wales.

4.56 The survey suggested that, in the judgement of EHOs, almost one in eight food premises in England and Wales presented a significant or imminent health risk, one-third of these either warranting prosecution or being closed down. Large metropolitan areas had significantly more high-risk premises than the rest of the country. The survey also suggested that most high-risk premises were in poor physical condition. 298 Although physical condition of premises did not necessarily cause a health risk, the survey established a link between the two: the worse the condition, the higher the health risk. 299

4.57 The Richmond Committee noted on the basis of these results that:

i. one in eight butchers posed imminent or significant health risks; and

ii. with butchers, the risk of cross-contamination from poor practices or equipment was a particular problem; there was also concern over
inadequate hand-washing facilities, ineffective monitoring of
temperature, and hygiene awareness.\textsuperscript{300}

The Committee concluded that:

In-depth analysis of [recent salmonella outbreaks] revealed considerable ignorance of proper food safety procedures, particularly in relation to the need for proper cooking and the avoidance of cross-contamination. These findings are borne out by the Audit Commission survey which found that, in relation to butchers’ premises, the factors most likely to lead to significant or imminent health risk were unhygienic practices and lack of awareness by staff and management of basic food hygiene. We therefore emphasise the need for particular attention to be paid to such premises by enforcement authorities, and for steps to be taken to ensure adequate training of management and staff, with thorough monitoring of hygienic practices.\textsuperscript{301}

4.58 The Richmond Committee also commented:

Very many catering outlets operate as small independent businesses with one branch or maybe a few branches in a locality. In common with other small businesses in the food industry . . . these enterprises are unlikely to have technical expertise within the company or to have access to research associations, professional bodies or trade associations who might provide some help. Frequently advice on food safety comes only from the local authority EHO. Although the regulatory function is of vital importance, we think that the environmental health departments should not neglect their role as a source of advice and information.\textsuperscript{302}

4.59 Problems relating to EHOs were also identified. On the frequency of EHO inspections, the Audit Commission survey had indicated that almost 46 per cent of the food premises visited had not been inspected within the last year, a quarter of these had not been visited within the last three years, and a further 5 per cent had never been visited at all.\textsuperscript{303} In Part 1 of its Report, the Richmond Committee stated:

We have also been told that a significant number of EHO posts are currently vacant because of limited financial resources within local authorities coupled with a shortfall in qualified personnel. We feel that this is a highly unsatisfactory situation.\textsuperscript{304}

4.60 The Committee recognised difficulties caused by the wide-ranging responsibilities that EHOs had for food law enforcement, responsibilities which constituted only part of their duties. In respect of EHO food-based disease responsibilities, the Committee stated:

We have been told that only a minority of EHOs in a given authority area would have a specialist knowledge of epidemiology and microbiology though all would have had some relevant professional training in these subjects.\textsuperscript{305}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{300} M22 tab 4 pp. 16–17 para. 1.3.9
\item \textsuperscript{301} M22 tab 4 p. 120 para. 8.48
\item \textsuperscript{302} M22 tab 4 p. 137 para. 9.53
\item \textsuperscript{303} Clay’s Handbook of Environmental Health 16th Edition (Chapman and Hall 1992) (M 43 tab 11) p. 424
\item \textsuperscript{304} M22 tab 3 p. 25 para. 4.9
\item \textsuperscript{305} M22 tab 3 p. 25 para. 4.8
\end{itemize}
\end{footnotesize}
4.61 Stating that ‘legislation is only effective if enforced’, the Committee made a number of recommendations aimed at ensuring that training of EHOs, in particular, adequately took account of the need for: evenness of enforcement; effective and coherent action to control food poisoning outbreaks; knowledge of arrangements for overseeing public health at local level and for the notification of communicable disease; knowledge of food microbiology, food technology and food control systems including the Hazard Analysis Critical Control Point (HACCP) system; and knowledge of the requirements of small food processing enterprises and of the principles involved in operating refrigerated vehicles.\footnote{\textsuperscript{306} M22 tab 4 p. 157 para. 11.16}

4.62 To ease the burden on EHOs of this ‘extensive if not positively daunting’ list, the Committee recommended the development of specialist food technician posts:

One practical and resource-sparing measure which we believe would enable enforcement authorities to achieve more adequate levels of monitoring than they do at present would be to encourage the development of a new cadre of specialist food technicians who would be available to assist EHOs . . . The EHO training is very broad-based and takes a number of years to complete; food technologists could be trained more speedily on courses focusing more sharply on food-related problems.\footnote{\textsuperscript{307} M22 tab 3 pp. 83–4 para. 9.15}

4.63 The Richmond Committee noted the proposals of the European Commission – described in Chapter 3 – to extend the regulatory requirements that applied to export slaughterhouses to all red meat plants. It considered that the staffing and training of the meat inspection systems, and their overall supervision, needed to be addressed, and recommended that:

. . . a dedicated programme of training and continuing in-job development is required . . .\footnote{\textsuperscript{308} M22 tab 4 p. 57 para 4.17b}

for meat inspectors, veterinary surgeons and Environmental Health Officers engaged in meat inspection.

4.64 With respect to epidemiological data on related human illness and animal contamination, the Richmond Committee recommended that, while the present reporting systems provided much useful information, they needed to be overhauled so as to improve the identification and reporting of infections; and that closer coordination was needed between the Communicable Disease Surveillance Centre (CDSC)\footnote{\textsuperscript{309} Part of the Public Health Laboratory Service} and its human database and the State Veterinary Service (SVS) and its animal database; and between the CDSC and the Central Public Health Laboratory’s Division of Enteric Pathogens (DEP). It also recommended that the Public Health Laboratory Service should be given a formal responsibility to collate information from human and veterinary sources.\footnote{\textsuperscript{310} M22 tab 3 pp. 21–2 paras 3.39–3.42 and 3.46}

4.65 In relation to microbiological surveillance, the Committee recommended the establishment of a national microbiological surveillance and assessment system; it also recommended that local authorities and DH should encourage EHDs whenever possible to target their surveillance work more precisely in future, and to carry out
surveys that provided good quality information as a basis for decision-making. The Committee concluded that such a nationwide system for the surveillance of food, together with epidemiological data on related human illness and animal contamination, would provide the factual basis, which was currently lacking, for public health actions, for policy decisions and for advice to industry.\textsuperscript{311}

4.66 The Richmond Committee concluded:

\ldots we see the present level of foodborne illness in the UK as reflecting many different causes and as part of an international problem. Factors relevant in increasing the risk of foodborne illness range from changes in agricultural practice, changes in the pattern of food consumption, changes in the way food is processed and handled and changes in the lifestyle of consumers. No one of these areas is predominant: no one category of participants in the food chain has sole blame or sole responsibility. All those involved in the food chain have their part to play in minimising the risks.\textsuperscript{312}

The Food Safety Act 1990

Introduction

4.67 The Food Safety Act 1990\textsuperscript{313} repealed Part I of the Food Act 1984, which dealt with the composition and labelling of food, unfit food, hygiene, the registration of premises and licensing of vehicles, control of food premises and inspection and control of infected food; it also repealed sections 76–86 which dealt with sampling and analysis. It re-enacted most of these provisions with some amendments, and introduced certain other requirements.

Defence of due diligence

4.68 The 1990 Act replaced the range of defences that could be offered in response to proceedings for various offences under food safety and hygiene legislation with a single defence that all reasonable precautions had been taken and all due diligence exercised to avoid the commission of the offence.\textsuperscript{314} In oral evidence to the Inquiry, Mr Stephen Ridge, a quality assurance executive for Somerfield Stores, said that

\ldots we have a liability under the Food Safety Act to sell safe food. If at any time we did not believe the product was safe we would have no alternative but to remove it from sale.\textsuperscript{315}

and that

\ldots customers are looking for reassurance from us that the product they are going to buy is safe. We are trying very hard to ensure that the product we

\textsuperscript{311} M22 tab 3 p. 39 paras 5.17, 5.19 and 5.21
\textsuperscript{312} M22 tab 4 p. 23 para. 2.18
\textsuperscript{313} L1 tab 2
\textsuperscript{314} Section 21
\textsuperscript{315} T63 p. 128
are supplying is safe. We were taking whatever sensible precautions can be taken.316

He and other witnesses representing food retailers described steps their companies had taken in this respect; for example, they had required their suppliers to remove spinal cord from cuts of in-bone beef as one of a number of components that they would not accept.317

**Registration, licensing, inspection**

4.69 The Act also extended the existing provisions on the registration of certain premises. It enabled Ministers to make Regulations requiring premises used or proposed to be used for the purposes of a food business to register with or be licensed by enforcement authorities, and to prohibit them from being used for that purpose unless they were registered or licensed.318 The licensing requirement was to apply only where Ministers considered this necessary or expedient for the purpose of:

i. securing that food complied with food safety requirements or in the interests of public health, or

ii. protecting or promoting the interests of consumers.319

4.70 The Act re-enacted the earlier powers given to authorised officers to inspect food and to seize it. However, the criterion for seizure was widened. Previously, the authorised officer had to be of the opinion that the food was ‘unfit for human consumption’. Under the 1990 Act, an authorised officer had to be of the opinion that it failed to comply with food safety requirements;320 ie, if

i. it had been rendered injurious to health by adding articles or substances, or using articles or substances as ingredients, or abstracting any constituents, or subjecting the food to any other process or treatment;

ii. it was unfit for human consumption; or

iii. it was so contaminated that it would not be reasonable to expect it to be used for human consumption in that state . . .321

4.71 Authorised officers could also seize food if, otherwise than on such an inspection, it appeared to them likely to cause food poisoning or any disease communicable to human beings.322

4.72 Also re-enacted were earlier powers given to authorised officers to inspect food premises and to purchase or take samples. Such inspections were intended to identify contraventions of the legislation or of Regulations or Orders made under it. They enabled authorised officers to identify risks arising from the activities carried out and to assess the effectiveness of food businesses’ own assessment of hazards and control of risks.
4.73 If an authorised officer had ‘reasonable grounds’ for believing that the proprietor of a food business was failing to comply with any relevant regulations, he could serve an improvement notice setting out the grounds for concern, the shortcomings, and proposed remedial measures which had to be taken within a specified period. If a proprietor did not comply, he was guilty of an offence. If he was convicted, the court could issue a prohibition notice; i.e., prohibit the use of the offending process or treatment or the use of the premises or equipment. If an enforcement officer was satisfied that an imminent risk to health was posed, he could issue an ‘emergency prohibition notice’. Such notices had to be confirmed by a court within three days.

4.74 Under Article 14 of the Official Control of Foodstuffs Directive (89/397/EEC), the UK Government was required to provide the European Commission with information including the number of inspections carried out and the enforcement action consequent upon those inspections.

**Labelling**

4.75 The 1990 Act re-enacted with minor amendments the provisions of the Food Act 1984, described in the ‘Composition and labelling of food’ section earlier in this chapter, relating to the description and presentation of food, including labelling and advertisements. The Food Labelling Regulations 1984 continued in force, subject to amendments introduced by the Food Labelling (Amendment) Regulations 1989 and 1990. Among other changes, the 1990 Regulations replaced provisions permitting the use of a ‘sell by’ date with a requirement that a ‘use by’ date be indicated for microbiologically highly perishable foodstuffs.

**Food Hygiene Regulations**

4.76 The detailed requirements which EHOs had to enforce were set out in food hygiene Regulations relating to issues such as hygiene, fitness, labelling, composition, storage, shelf-life, processes, premises, and vehicles. Examples were:

- the Food Hygiene (General) Regulations 1970 – described in paragraph 4.32 – to which the butchery of meat for the UK market only had to conform;
- the Food Hygiene (Amendment) Regulations 1990, which controlled the temperature of perishable food on display in retail outlets and distribution and catering operations, and also implemented a two-tier requirement for perishable foodstuffs under chilled storage, requiring them to be held at particular temperatures depending on their risk from pathogens, including during transportation and up to and including retail;
- the Food Hygiene (Market Stalls and Delivery Vehicles) Regulations 1966 – mentioned in the ‘Hygiene’ section earlier in this chapter – which contained ‘very basic requirements regarding cleanliness’ in respect of domestic transport; and

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323 Section 10
324 Section 11
325 L11 tab 11 Regulations 3–10
326 The Microbiological Safety of Food Part II (Report of the Committee on the Microbiological Safety of Food chaired by Sir Mark Richmond (1991) (M22 tab 4) p. 105 para. 7.10
the Food Hygiene (Docks, Carriers etc) Regulations 1960 which, among other things, set out requirements applying to dock workers and other food handlers in respect of the handling of food generally and meat in particular.327

Section 40 Codes of Practice

4.77 Section 40 of the Food Safety Act 1990 enabled Ministers to issue codes of recommended practice on the execution and enforcement of the Act and the Regulations made under it, and every food authority had to have regard to any relevant provision of any such code and had to comply with any direction given by Ministers. Some 20 Codes of Practice have been issued under section 40:

No: Title:
1. Responsibility for enforcement of the Food Safety Act 1990
2. Legal matters
3. Inspection procedures – general
4. Inspection: detention and seizure of unfit food
5. The use of improvement notices
6. Prohibition procedures
7. Sampling for analysis or examination
8. Food standards inspections
9. Food hygiene inspections
10. Enforcement of the temperature control requirements of the Food Hygiene Regulations
11. Enforcement of the Food Premises (Registration) Regulations
12. Quick-frozen foodstuffs division of enforcement responsibilities; enforcement of temperature monitoring and temperature measurement
14. Enforcement of the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992
15. Enforcement of the Food Safety (Fishery Products) Regulations 1992
17. Enforcement of the Meat Products (Hygiene) Regulations 1994
19. Qualifications and experience of Authorised Officers and Experts
20. Exchange of information between Member States of the EU on routine food control matters.

4.78 An Implementation Advisory Committee (IAC) was established in 1990, to draw up these Codes of Practice and to ensure the consistent enforcement of food safety legislation on a nationwide basis. The Codes were revised to reflect

327 These related to the personal cleanliness of food handlers and their clothing
subsequent changes to the legislation, and reissued. They served two purposes; they reiterated the key relevant duties and powers contained in the 1990 Act, and set out how these should be fulfilled and enforced.

4.79 For example, *Code of Practice No. 3* set out the powers of entry possessed by an authorised officer, when detention and seizure powers should be used, and how unfit food should be destroyed or disposed of. *Code of Practice No. 7* stated that samples should be taken by officers who had been properly trained in the appropriate techniques and were qualified or experienced in food law enforcement. It described how samples should be divided for analysis, transported and stored.

4.80 *Code of Practice No. 9: Food Hygiene Inspections* (as revised in September 1995) stated that such inspections had two purposes. Firstly, they were to identify risks arising from the activities of food businesses and the effectiveness of their own assessments of hazards and control of risks. The emphasis was on control of raw materials and processes rather than on final product testing and consideration of the structure and layout of the premises. Secondly, inspections were to identify contraventions of the 1990 Act and relevant Regulations and seek to have these corrected.

4.81 Premises which posed a higher potential risk were to be inspected more frequently than lower-risk premises. The Code’s Inspection Rating Scheme used the following categories:

1. Potential Hazard:
   a. Type of Food and Method of Handling
   b. Method of Processing
   c. Consumers at Risk

2. Compliance:
   a. Food Hygiene and Safety
   b. Structural


4.82 Within these categories, points were assigned on the basis that the greater the perceived risk, the more points were scored. The total number of points determined the minimum inspection frequency, as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Points range</th>
<th>Inspection frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category A</td>
<td>91–175</td>
<td>Inspection at least every six months</td>
</tr>
<tr>
<td>Category B</td>
<td>71–90</td>
<td>Inspection at least every year</td>
</tr>
<tr>
<td>Category C</td>
<td>41–70</td>
<td>Inspection at least every 18 months</td>
</tr>
<tr>
<td>Category D</td>
<td>31–40</td>
<td>Inspection at least every 2 years</td>
</tr>
<tr>
<td>Category E</td>
<td>21–30</td>
<td>Inspection at least every 3 years</td>
</tr>
<tr>
<td>Category F</td>
<td>under 21</td>
<td>Inspection at least every 5 years</td>
</tr>
</tbody>
</table>

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328 Which were considered in detail in Annex 1 to the Code
4.83 Food authorities were to regard these frequencies as the minimum and could inspect more frequently if they considered this appropriate. They were not required to use the Scheme, but any alternative had to operate on similar principles and result in at least the same minimum inspection frequencies.