3. Introduction of the ban on Specified Bovine Offal

Introduction

3.1 In vol. 4: The Southwood Working Party, 1988–89 we have carried out a detailed review of the Southwood Report. The Southwood Working Party considered the possible risk to human health posed by the entry into the food chain of potentially infective tissues from cattle infected with BSE but not yet showing symptoms. We refer to cattle incubating the disease in this way as subclinicals. The Working Party concluded that the risks from subclinicals were not such as to call for any precautionary measures for human food other than a recommendation that manufacturers of baby food should avoid using ruminant offal and thymus.

3.2 Our review concluded that this suggestion was not founded on a firm scientific base, but reflected a value judgement based on scanty evidence. While this was not a fact that the Working Party sought to conceal, it was not apparent from a reading of their Report, for they did not set out the reasoning underlying their conclusion.

3.3 We explain in Volume 4 our reasons for concluding that the advice given by the Working Party in respect of subclinicals did not reflect a proper application of the common sense principle that action should be taken to reduce the risks to human health so that they were as low as reasonably practicable (the ALARP principle). There were practical measures available to reduce the potential risk. It was appropriate to consider such measures under the ALARP principle.

3.4 Four months after the Southwood Report was submitted to Ministers, those Ministers decided to take such measures. They announced that the Government would ensure that certain Specified Bovine Offal (SBO) should be rejected at slaughterhouses for all cattle so that they could not be used for human consumption in any way (‘the SBO ban’).

3.5 In oral evidence to the Inquiry the then Deputy Chairman of the Spongiform Encephalopathy Advisory Committee (SEAC) described the SBO ban as an important measure to protect public health. Sir Richard Southwood told us that the policy of compulsory slaughter of clinically affected cattle may have been of equal or greater importance. He added that it may very well be that all those who have so tragically caught variant Creutzfeldt-Jakob disease (vCJD) were infected by eating contaminated beef prior to the compulsory slaughter policy. For our part, we do not doubt that the SBO ban was important. It was not a perfect solution. We shall see later in this chapter that difficult issues arose when considering the extent of the ban, and we discuss in subsequent chapters problems that arose in its implementation. If we are lucky enough to achieve the optimistic outcome canvassed by Sir Richard, that may be because the SBO ban had been introduced and gave humans additional protection beyond that offered by compulsory

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333 T9 p. 124
334 S1E Southwood para. 4
slaughter of clinically affected cattle. Unfortunately, delay in appreciating that an SBO ban was appropriate, and deficiencies in its implementation, may have diminished our chances of achieving such an outcome. In this chapter we shall:

- give an overview of events in 1989;
- give an account of events leading up to the publication of the *Southwood Report* on 27 February 1989, and of the announcement of its publication;
- discuss the extent of Government review of the *Southwood Report*;
- give an account of the consideration of issues concerning baby food and cull cows, the external pressures on Government to take action in relation to subclinicals, and further developments which led to the decision to ban SBO in all human food;
- discuss what was said about the reasons for the ban;
- give an account of the preparation of the regulations intended to give effect to the ban. Here we describe the division of responsibilities between MAFF and the Department of Health (DH), and within MAFF, the choice of legislation, and the course of events generally, before turning to particular types of offal where issues arose, the exemption for calves under 6 months, issues concerning mechanically recovered meat (MRM) and heads, consideration of enforcement of the ban, and the making of the regulations themselves (including the debate in Standing Committee); and
- discuss the preparation of the regulations, looking at general questions before turning to particular types of offal, the exception for calves under 6 months, the consideration given to MRM (in the course of which we shall summarise evidence given to the Inquiry about the operation of removing the spinal cord) and consideration that was given to enforcement.

3.6 Further consideration was given to the protection of human food during the period from January 1990 to 20 March 1996, and this is dealt with in Chapters 4–7 of this volume. Consideration of a ban on SBO in animal feed is dealt with in vol. 5: *Animal Health, 1989–96*. The ban on export of SBO is described in vol. 10: *International Trade*.

### Overview of events in 1989

3.7 The ban on the use of SBO in human food was a result of a chain of events that began on 9 February 1989, when the *Southwood Report* was delivered to Ministers. By this time all cattle showing clinical signs of BSE were being compulsorily slaughtered, and their carcasses destroyed. Paragraph 5.3.5 of the Report stated (among other things):

- If the BSE agent were to be present in an animal, it was likely to be in the spleen and lymphatic tissues in the early stages of infection, and as the disease progressed in brain and neural tissue.

- It had been suggested that products containing brain and spleen should be labelled, to enable the consumer to make an informed choice.
INTRODUCTION OF THE BAN ON SPECIFIED BOVINE OFFAL

- The Working Party believed that risks as currently perceived would not justify this measure.

- They noted that current regulations that required content of processed food to be listed permitted the generic terms ‘meat’ and ‘offal’.

- The Working Party considered that manufacturers of baby food should avoid the use of ruminant offal and thymus.

The last of these points is referred to in this volume as the ‘baby food recommendation’. The Report was made public on 27 February 1989.

3.8 The Committee on the Microbiological Safety of Food (Richmond Committee) was set up on 21 February 1989, to advise Health and Agriculture Ministers on matters relating to the microbiological safety of food and such other matters that it considered needed investigation. Although it was initially thought within DH that the Richmond Committee might consider certain aspects of BSE, it was agreed to be inappropriate to revisit the matter in the absence of new developments since the Southwood Report.

3.9 Between February and June 1989 there was growing media interest in the question of whether human food was adequately protected from possible risks associated with subclinical cattle. Against this background MAFF officials responded to concerns raised by one of the Department’s junior Ministers, Mr (later Sir) Donald Thompson, and there was much discussion within MAFF, and to some extent in DH, about how to implement the baby food recommendation.

3.10 On 13 June 1989 MAFF and DH announced the Government’s intention to ban SBO in all human food. Following this announcement, on 16 June 1989, the Pet Food Manufacturers’ Association announced a voluntary code of practice under which its members would not use certain bovine materials of UK origin.

3.11 Also in June 1989, the Consultative Committee on Research into Spongiform Encephalopathies (Tyrrell Committee), which had been set up in response to an interim recommendation of the Southwood Working Party, delivered its Report. Paragraphs 2.3 and 2.4 of the Report noted that practical measures taken had been based on the analogy between BSE and scrapie, and that specific studies on BSE itself were needed; for the most part, instant answers would not be possible. Their Report is discussed further in vol. 11: Scientists after Southwood.

3.12 On 26 July MAFF issued a consultation document on the proposed specified offal ban, seeking views by 13 September. MAFF gave further consideration to the ban in the light of the comments received and after further consultation with independent experts and DH.

3.13 The European Commission on 28 July 1989 adopted Decision 89/469/EEC.335 The Decision noted that BSE could be considered to be a new serious contagious or infectious animal disease whose presence might constitute a danger to cattle. Article 1 of the Decision banned the UK from sending to other Member States live cattle born before 18 July 1988 (the date when the ruminant feed ban came into effect) or born to dams in which BSE was suspected or had been officially confirmed.

335 L18 tab 14
3.14 The SBO ban was given effect in England and Wales by the Bovine Offal (Prohibition) Regulations 1989. These Regulations were made on 8 November and came into force on 13 November 1989. Equivalent Regulations for Scotland and Northern Ireland were made in January 1990.

3.15 It is convenient at this point to note that during 1989 there were changes to the ministerial teams in MAFF and DH, as well as to the officials in those Departments:

MAFF Ministers:

- Mr John Gummer took over from Mr John MacGregor as MAFF Secretary of State on 24 July 1989.
- On 25 July 1989 Mr David Maclean and Mr David Curry replaced Mr Donald Thompson and Mr Richard Ryder as MAFF Parliamentary Secretaries.

DH Ministers:

- Mrs Virginia Bottomley replaced Mr David Mellor as Minister of State (Commons) in October 1989; Lord Trafford was Parliamentary Under-Secretary (Lords) from July to September 1989, when Baroness Hooper took over.

MAFF officials:

- Mr Robert Lowson replaced Mr Robert Suich as Head of the Animal Health Division in April 1989.
- Mr Duncan Fry was Head of Branch C Meat Hygiene Division until October 1989, when Ms Bronwen Jones succeeded him.

DH officials:

- Dr Jeremy Metters was Director of Research Management and Deputy Chief Scientist until January 1989 when he became Senior Principal Medical Officer (Senior PMO) in MED SEB (later MED ISD), the DH Medical Division responsible for international health and scientific services. Dr Pickles, as PMO in this Division, reported to him until August 1989 when he was promoted to Deputy Chief Medical Officer and was succeeded by Dr Gerald Jones.
- Dr Diana Walford was the Senior PMO in charge of MED IMCD, the DH Medical Division responsible for (among other things) microbiology of food and the environment and communicable disease policy, until September 1989 when she was made a Deputy Chief Medical Officer and Director of Health Care.
- Dr Eileen Rubery was a PMO in MED IMCD, where she was responsible for microbiological aspects of food safety and aspects of CJD as a communicable disease until August 1989, when she was promoted to Senior PMO, and became head of Microbiological and Communicable Diseases Division (MCD Division).
Events leading up to the publication of the *Southwood Report* on 27 February 1989

**Receipt of the Report**

3.16 On 6 February 1989 Dr Hilary Pickles PMO (DH), sent the Chief Medical Officer (CMO), Sir Donald Acheson, a copy of her informal note of the Southwood Working Party’s final meeting on 3 February 1989. She said that the Report should be with him in a day or two, that the plan was for the Report to be presented to the DH and MAFF Ministers later that week, and that it was hoped that the Report would be published quickly. She also said:

> In my view, DH can be very pleased with the way the report has turned out. Sir Richard and his team are to be congratulated.\(^{338}\)

3.17 On 7 February 1989 Mr Alan Lawrence (MAFF, Animal Health Division) minuted Mr (later Sir) Derek Andrews (MAFF Permanent Secretary) and others in MAFF regarding the final meeting of the Working Party. On the likely timetable of events Mr Lawrence commented:

> It is likely that the final version of the Report will be submitted to our respective Ministers by the end of this week. Sir Richard Southwood will then seek an early meeting with Ministers to consider publication and how it should be presented to the media. Urgent consideration will, therefore, need to be given to the Minister’s response. I think we should certainly point out the need for time to digest its contents and consider the recommendations. On the other hand there is a case for moving fairly quickly to minimise the chance of leaks or speculation about its contents.\(^{339}\)

3.18 The *Southwood Report* was delivered to Mr Kenneth Clarke, the Secretary of State for Health, and to Mr John MacGregor, Minister for Agriculture, Fisheries and Food, on 9 February 1989.\(^{340}\) The Report made a number of specific recommendations with implications for human health. Of these the response to the recommendation on potential occupational risks from BSE is dealt with in Chapter 8 of this volume. The recommendation on medicinal products is covered in vol. 7: *Medicines and Cosmetics* and the recommendation on CJD surveillance is covered in vol. 8: *Variant CJD*.

3.19 The Southwood Working Party’s advice that manufacturers of baby food should avoid the use of ruminant offal and thymus started a chain of events that led to the eventual introduction of a ban on Specified Bovine Offal (SBO). This advice was not in the section of the Report on the Working Party’s recommendations, but was included in the section on transmission of BSE in paragraph 5.3.5:

> . . . the risk of transmission of BSE to humans appears remote. Nevertheless, because the possibility that BSE could be transmitted orally cannot be entirely ruled out, known affected cattle should not enter the human food chain and action now undertaken ensures this. What evidence there is does

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\(^{338}\) YB89/2.06/3.1

\(^{339}\) YB89/2.07/1.2

\(^{340}\) YB89/2.08/5.1; YB89/2.09/10.1
not suggest that milk can transmit any of the spongiform encephalopathies. Nevertheless, to be consistent with the earlier recommendation that cattle known to be infected with BSE should not be offered for human consumption, we have recommended that milk from cows suspected as having BSE should be destroyed. Action has also been taken here. Finally if the BSE agent were to be present in an animal it is most likely to be in the spleen and lymphatic tissues in the early stages of infection, and as the disease progresses in the brain and neural tissue. It has been suggested, although clinically affected cattle are being slaughtered and destroyed, that consideration should be given to products containing brain and spleen being so labelled, to enable the consumer to make an informed choice. The Working Party believes that the risks as at present perceived would not justify this measure. We note that current regulations\textsuperscript{341} that require contents of processed food to be listed permit the generic terms “meat” and “offal”. We consider that manufacturers of baby foods should avoid the use of ruminant offal and thymus; the latter can currently be described on food labels as meat.\textsuperscript{342}

3.20 The Report provided no definition of what was meant by ‘ruminant offal’. The reasoning behind the Working Party’s comment on baby food is considered in vol. 4: The Southwood Working Party, 1988–89.

**Sir Donald Acheson submits the report to Mr Clarke**

3.21 In his covering minute to Mr Clarke of 9 February 1989 enclosing a copy of the Report, Sir Donald Acheson identified that the key issue in respect of human health was whether the disease could be transmitted to man through the consumption of meat, brain or milk of infected animals. He described the Report as a ‘thorough study of the problem with sound and balanced conclusions’ and recommended that it be published as soon as possible. However, he cautioned that careful handling was required given the possible public anxiety that might arise as a result of its publication.\textsuperscript{343}

3.22 Sir Donald noted that the Working Party had concluded that it was most unlikely that BSE would have any implications for human health. He continued:

> A difficult aspect of the problem is that if transmission did occur it would be several years before the cases began to appear as the incubation period is very long.

> On the evidence given in the Report I accept that the risk to man has been extremely small and that (with one possible exception . . .) every reasonable step has already been taken to minimise any theoretical risk of transmission by destruction of affected cattle.\textsuperscript{344}

3.23 The exception to which Sir Donald referred related to medicinal products. As to these Sir Donald stated:

\textsuperscript{341} The Regulations were noted at the foot of that page in the Report to be the Food Labelling Regulations 1984 and the Meat Products and Spreadable Fish Products Regulations 1984
\textsuperscript{342} IBD1 tab 2 para. 5.3.5
\textsuperscript{343} YB89/2.09/5.1
\textsuperscript{344} YB89/2.09/5.2–5.3
. . . I am also putting work urgently in hand to satisfy myself that everything possible has been done to ensure . . . that transfer of the BSE agent in human and veterinary medicinal products does not occur.345

3.24 Sir Donald had been alerted to concerns about medicines by Dr Pickles, as appears from a minute that he sent to Dr E L Harris (Deputy CMO, Medicines Division, DH 1988–89) on the same day. The minute stated:

My attention has been drawn to a sentence in Dr Pickles’ draft of a submission to the Secretary of State on this matter. It reads: “At the present time we can’t give any complete guarantee of safety for human medicines that use bovine materials in manufacture such as most vaccines.” Having looked at the [Southwood] report I am not able to find any statement which supports this statement of concern. I have, however, therefore spoken to Dr Pickles on the telephone and she reports to me that for some considerable time she has had serious concern about the safety of bovine-based vaccines in the light of the fact it has been discovered that contamination with placental material (which is known to be heavily infected with the BSE particle) is a distinct possibility in the preparation of material for human vaccines derived from foetal serum. This matter as described to me by Dr Pickles gives me sufficient cause for concern to ask you to look into it urgently together with Medicines Divisions.346

3.25 The response to the passages in the Southwood Report dealing with medicines is considered in vol. 7: Medicines and Cosmetics.

Mr Lawrence presents the report to MAFF Ministers

3.26 In a covering minute dated 9 February 1989 presenting the Report to MAFF Ministers, Mr Lawrence identified four main areas of particular interest to MAFF. These were the recycling of animal waste, biological medicinal products, research, and the use of ruminant offal in baby food. It was noted that ‘presumably DOH will have to lead on any possible health implications’. Mr Lawrence copied his minute and the Report to interested divisions within MAFF and requested that ‘they provide, very urgently, a preliminary assessment of the Report’s contents.’347

Initial discussions between MAFF and Sir Richard Southwood

3.27 Following receipt of the Report on 9 February 1989, Mr MacGregor and Sir Richard Southwood met on 14 February to discuss the Report’s recommendations, timing of publication, and handling. Others present included Mr Donald Thompson (Parliamentary Secretary, MAFF), Mr Derek Andrews, Mr Keith Meldrum (Chief Veterinary Officer), Mr Alistair Cruickshank (Under-Secretary, Animal Health Group, MAFF), Mr Lawrence, Sir Donald Acheson and Dr Hilary Pickles.
3.28 The briefing note for the meeting prepared for Mr MacGregor by Mr Lawrence noted that the Working Party’s advice on baby food was not a specific recommendation, and outlined a number of points:

- thymus was not used in the preparation of baby food;
- kidney and liver were used in baby food preparation, but no other offal was; and
- non-ruminant liver and kidneys could be used as ingredients. 348

3.29 Mr Lawrence recommended that the Ministry should contact baby food manufacturers as a matter of urgency about avoiding the use of ruminant offal and thymus. 349

3.30 The minute describing the meeting recorded that MAFF would contact the baby food industry on how it might restrict the use of ruminant offal and thymus. It also noted that Mr MacGregor had observed that the baby food recommendation ‘was likely to be the focus of press attention’, and in the discussion which followed Sir Richard:

... commented that the point relating to baby food was not a specific recommendation. He could only say that the likelihood of problems arising through the use of these products in baby food was very low indeed and the suggestion was a counsel of ‘extreme prudence’. 350

3.31 The minute also noted that officials ‘should prepare papers to circulate to MISC 138 as soon as possible’. MISC 138 was the Cabinet Ministerial Group on Food Safety, chaired by the Prime Minister, Mrs Thatcher, which had been constituted on 2 February 1989 to review current issues on food safety, including the adequacy of research programmes and possible requirements for legislation. 351

Initial views within MAFF about the suggestion on baby food

3.32 Meanwhile Mrs Attridge, then Head of the Emergencies, Food Quality and Pest Control Group at MAFF, 352 had received a copy of the Report. The Chief Veterinary Officer (CVO) had recommended that she be consulted on ingredients of baby food. 353 Mrs Attridge minuted Mr Cruickshank on 15 February 1989:

Liver and kidney, which are the major element of offal likely to be found in baby food, constitute an important part of the diet particularly for certain vitamins which babies need when they are moving on to solid food. Certain ethnic groups cannot eat pigs’ liver and there could therefore be a risk of malnutrition if the rather vague recommendation in the Southwood report were to lead to the removal of cow and sheep liver and kidney from baby food. Moreover, the question would be asked whether it was safe for adults.

348 YB89/2.13/2.4
349 YB89/2.13/2.1–2.6
350 YB89/2.14/5.2–5.3
351 Chaired by the Prime Minister the meetings were attended by the Secretaries of State for Wales, Northern Ireland, Scotland and Health, the Minister of Agriculture, the Chief Secretary, Chancellor of the Duchy of Lancaster and the Lord President. In addition, the Chief Medical Officer and the Chief Veterinary Officer were also regularly invited to attend
352 Mrs Attridge was head of that group from 19 August 1985 until 3 December 1989. She then took up post as Head of Animal Health Group from 4 December 1989. This group was later the Animal and Health Veterinary Group and Mrs Attridge continued as its head from autumn 1990 until 8 August 1991
353 YB89/2.13/8.1
Presentationally it would be difficult for the Department of Agriculture to raise these points when it goes public on the Southwood report but I suggest that they are of sufficient importance for us to take up the matter with the CMO and to put in the press notice being issued on the Southwood report something on the lines:

‘I understand the Committee did not have the opportunity to examine thoroughly all the scientific evidence relating to offal, particularly liver and kidney in human and baby food and I am therefore proposing to refer [I have therefore referred] the matter to the CMO to seek his advice before taking any further action.’

This would enable us to assess more fully what the actual risks are and what the risks are of any ban on liver and kidney in baby foods.

We do not wish to create problems for young children and ethnic minorities simply on the basis of poorly substantiated speculation. On the other hand, if there is clear evidence this must be taken into account. My understanding is that the evidence is not clear-cut and does need further consideration.354

3.33 Mrs Attridge’s comments reflected views communicated to Food Standards Division by Dr M L Woolfe of the Food Science Division. In a subsequent minute, which was copied to Mr Charles Cockbill (Head of Food Standards Division, 1983–95, MAFF), Dr Woolfe observed:

The Committee’s conclusion on baby foods does not appear to have been well thought out, and I am pleased that the matter may be referred to the CMO. The concern for baby foods derives from evidence that very young calves are more susceptible to the BSE agent than older ones. Comparing bovine and human life spans, it would appear more consistent to be concerned about young children and adolescents and not just babies . . .

The report reflects further concern in the use of certain offal in meat products and calls for its separate labelling. This is an issue which needs pursuing as a preventive measure. At present the Meat Products Regulations allow thymus to be used and described as meat in the ingredient list of any meat product. Brain, spleen and spinal cord can only be used in cooked meat products and will be labelled as the generic term ‘offal’.

There are two approaches to achieving a change in these particular aspects of the regulations. Standards Division are reluctant to amend the regulations on this point because these are several problems which need resolving in the regulations and this could prolong amendment for a considerable time. The approach left is a voluntary one. The Southwood Report claims that provided safeguards are taken, BSE might be brought under control within 10 years. The Ministry could approach the various trade associations and request a voluntary ban on the use of ruminant thymus, spleen, brain and spinal cord either sold fresh or in meat products. Failing this their use could be allowed, but a voluntary request to label products indicating the presence of these organs. Although this would give the consumer an informed choice, it could

354 YB89/2.15/2.1. This minute was copied to Mrs Stagg (Private Secretary to Mr MacGregor), Mr Meldrum, and Mr Capstick
also create unnecessary anxiety in the public as recent food scares have shown.\textsuperscript{355}

**Preparation of advice to the Cabinet on the Southwood Working Party Report and the Government’s proposed response**

3.34 As part of the preparations for publication of the Report of the Southwood Working Party, MAFF took the lead in drafting a paper for the Cabinet Ministerial Group on Food Safety, MISC 138. On 17 February 1989 Mr Cruickshank minuted Mr MacGregor attaching a draft paper, a draft announcement and a draft Question and Answer (Q&A) brief prepared for the meeting of the Cabinet Group.

Mr Cruickshank sent the same drafts to Mrs Dora Pease (Under Secretary, Health Services Division, January 1989–July 1992, DH) inviting her comments. Mrs Pease referred the documents for advice to Dr Pickles and Mr G T Weir (Head of Health Services Division, HS4, 1987–90).\textsuperscript{356}

3.35 The draft paper gave the background to BSE, the establishment of the Southwood Working Party, its recommendations and the Government’s proposed response. The draft paper noted that:

> The Working party concludes that from present evidence it is likely that cattle will prove to be a ‘dead-end host’ for the disease agent and most unlikely that BSE will have any implications for human health.\textsuperscript{357}

3.36 The draft paper also noted that, despite the Working Party’s general conclusions, they had made a number of recommendations aimed at minimising any possible risk to human health. On baby foods the draft paper stated:

> The Working Party considers that the manufacturers of baby foods should, as a precautionary measure, avoid the use of ruminant offal and thymus. Sir Richard Southwood has told the Minister of Agriculture, Fisheries and Food that the likelihood of problems arising through the use of these products in baby food is very low indeed and that this suggestion is counsel of ‘extreme prudence’. In practice thymus is not used in the preparation of baby foods but kidneys and liver are because of their nutritional value. Officials will contact manufacturers urgently to seek their reaction to the suggestion.\textsuperscript{358}

3.37 On the same day, Mr Cruickshank replied to Mrs Attridge’s minute of 15 February, noting that he had received her minute only after he had circulated the draft paper for the Cabinet Group. He commented that consequently the draft paper did not include her suggested insertion on baby food. His response expressed some reluctance to go as far as Mrs Attridge proposed:

> I do, however, wonder whether it would be appropriate to give as much prominence as you suggest to our doubts about the wisdom of excluding liver and kidney from baby foods. I fear that if we imply now that we think Southwood was mistaken in the advice he gave on this point we shall be
exposing ourselves to considerable criticism by the media – regardless of the merits of the argument. I wonder if it might not be better to play this issue as slowly as possible. As suggested in para 7 of the MISC 138 paper, the first step might be for officials to contact the manufacturers; if their reaction is that the risk to health through removing cow and sheep liver and kidney from baby food outweighs the risk of transmitting BSE, it would then perhaps be appropriate for us to go back to the CMO.  

3.38 On 20 February 1989 Mrs Attridge minuted Mr Cruickshank expressing concern about the proposed line to take on baby food in the draft paper to the Cabinet Group and in the announcement. The minute was also copied to the offices of DH and MAFF Ministers, Mr Derek Andrews and Mr Richard Gueterbock (MAFF Special Adviser), Mr Capstick, Mr Meldrum, Mr Lawrence and others. In the minute, Mrs Attridge again raised her concern that MAFF would be asked why action should be taken on baby food, but not other food. She stated:

Unless we have some definitive answers to these questions we will be accused once more of spreading the maximum amount of uncertainty over products which have very considerable nutritional advantages for all sectors of the population on a scientific base which on current evidence does not appear to be clear-cut.

Further development of the draft papers for the Cabinet Group in the light of Mr MacGregor’s comments

3.39 Mr MacGregor’s comments on the 17 February draft Cabinet Group paper were sent to Mr Cruickshank on 20 February. These included:

Paragraph 7 – add in to the end of the paragraph on baby foods – ‘This however will be a sensitive area as soon as the report is published and will need careful handling.’ . . .

A considerable amount of further thought needs to go into this particularly in light of Mrs Attridge’s recent minute on the subject.

3.40 Mr MacGregor accepted Mrs Attridge’s recommendation that the matter should be referred to the CMO. He recalled in oral evidence:

I think that it was when Mrs Attridge raised the liver and kidney point that I realised we had an issue here that was quite a problem, and we needed to get further advice and further sorting of it out.

3.41 Dr Pickles recorded the following in a minute to Dr Diana McInnes (Private Secretary to the CMO):

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359 YB89/2.17/7.1. This minute was also copied to the offices of Mr MacGregor, Mr Andrews, Mr Capstick and Mr Meldrum (among others)
360 YB89/2.20/1.1
361 Mr Edward Smith (MAFF Deputy Secretary), Professor Ronald Bell (MAFF Chief Scientific Adviser), Mr Hadley, Mr Stephen Wentworth (MAFF Under Secretary) Mr Myers, Mr James Coe (MAFF Head of Information), Mr John Stuch (MAFF Animal Health Division) and Mr Scollen
362 YB89/2.20/1.1
363 YB89/2.20/2.1–2.2
364 T104 p. 88
365 This minute was copied to Mr Cunningham, Mr Weir and Mr Dawson
1. We spoke about MacGregor’s concern about baby food and how, if asked about beef liver and kidney, he was proposing replying:

I understand that the committee (Southwood’s) did not have the opportunity to examine thoroughly all the scientific evidence relating to offal particularly liver and kidney in human and baby food. I therefore propose to refer the matter to the CMO to seek his advice before taking any further action.

2. Whilst we agree this was clearly passing the buck, I guess it’s the best MacGregor can do. If CMO were content with this line, I could seek the appropriate information and advice – including from Sir Richard although I don’t think it would be necessary to recall his group – and put together a paper on what information and opinions are available. Inevitably, it would mostly be based on what is known about the distribution and oral transmissibility of scrapie. It may be that little could be said without further research.366

3.42 On 21 February Mr Cruickshank circulated to MAFF Ministers and relevant officials a revised draft of the MISC 138 paper which had been amended in the light of MAFF Ministers’ views. In particular it now included Mrs Attridge’s suggestions about seeking advice from the CMO about liver and kidney in baby foods. Paragraph 7 of the revised draft paper stated:

The Working Party did not in fact examine all the scientific evidence relating to offal, particularly liver and kidney in baby food. The Chief Medical Officer will therefore be considering this further and advising on any action required.367

3.43 The Q&A brief attached to the draft paper circulated by Mr Cruickshank had been expanded to bring in substantial extra contributions from DH. It included the following:

Q. Why does Southwood suggest baby food manufacturers should avoid the use of ruminant offal and thymus?

A. Sir Richard has said that the likelihood of problems arising through the use of these products in baby food is very low indeed, and the suggestion (it is not a recommendation) is counsel of extreme prudence.

Q. What will Government do about this?

A. The Chief Medical Officer will consider and advise.368

3.44 On 21 February Mr Cruickshank sent the revised draft paper and attachments to DH and asked for their final comments to enable MAFF to complete the draft before submission to the Prime Minister and other members of the Cabinet Group MISC 138.369
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Consideration by the Cabinet of the Southwood Working Party’s Report and proposed Government response

3.45 On 22 February 1989 Mr MacGregor submitted the finalised paper, including the text of the proposed announcement and briefing material, to the Prime Minister, Mrs Thatcher, and other members of the Cabinet Group MISC 138. His covering letter made reference to the very ‘difficult presentational issues’ arising from some of the recommendations including the recommendation on baby foods. Mrs Thatcher decided that the Southwood Report should be considered by the full Cabinet, rather than MISC 138.

3.46 On 23 February the full Cabinet discussed the Southwood Working Party’s Report. The minute records that Mr MacGregor opened the meeting by stating that:

The working party had presented its report on 9 February and, in view of the intense current public interest in food safety and the risk of the working party’s findings being leaked, it was necessary to publish the report with as little delay as possible. It would, however, raise a number of difficult issues that required the most careful handling.

3.47 Mr MacGregor explained that the Southwood Working Party had concluded that on present evidence it was most unlikely that BSE would have any implications for human health. However, it had made a number of recommendations aimed at minimising any possible risk to humans of which the baby food recommendation would require particular care. He went on to report his conversation with Sir Richard Southwood on this topic, and the latter’s remarks that this suggestion on baby food represented a ‘counsel of extreme prudence.’ Mr MacGregor added that:

The problem was, therefore, that the working party’s ultra-cautious approach might have the effect of stimulating disproportionate public alarm, but it would not be feasible for the Government to appear to be disregarding the working party’s advice.

3.48 The minutes recorded that, following Mr MacGregor’s remarks, Mr Kenneth Clarke said:

. . . the working party’s comments on baby food were the main problem. In view of the extreme sensitivity of this topic and of the tentative nature of the working party’s comments he had considered that the best way forward might have been for the Chief Medical Officer to be asked to consider the matter in greater depth. However, the Chief Medical Officer had that morning told him that he did not think it would be right for him to do other than accept the working party’s finding. That being so, the Government had no alternative but to accept the working party’s conclusions on baby food and to be seen to act on them. He agreed that publication of the report should not be long delayed.

3.49 The minutes recorded that in discussion the following views were expressed by individual members of the Cabinet:

370 YB89/2.22/16.1–16.21
371 YB89/2.23/9.1–9.5
372 YB89/2.23/9.3
373 YB89/2.23/9.3–9.4
a) The *Southwood Report* appeared to be less precise than might have been expected of a report by eminent scientists on a matter of such moment, and its comments might well have an enormous impact on the public and on industry. Nevertheless, once such expert advice was commissioned by the Government it was not feasible for Ministers to appear to substitute their own judgement for it. Unless the Government’s own professional advice pointed in another direction, there was no option but to accept the Report’s findings as the basis for policy.

b) Although it might well be that the Government was left with little room for choice in this particular matter, it was unsatisfactory that policy decisions should in effect be put into the hands of specialised experts. The *Southwood Report*’s findings on baby foods, which were not even cast in the form of a clear recommendation, were based on assumptions at the most remote edges of probability, and it was not clear that the action proposed was in proportion to the risk. In logic, the working party’s comments on baby foods would extend with equal validity to the feeding of any ruminant kidney or liver to young children. Hitherto, liver had been generally considered one of the best foods for children and it was extraordinary that it should so suddenly be questioned. It was clear, furthermore, that the proposals would have implications for the meat industry as a whole, and not simply for baby food manufacturers.

c) On the other hand, the working party’s caution and the tentative nature of some of their comments were only to be expected. Scrapie had existed in sheep for 200 years, but it was only known to have crossed to another species very recently. Two years ago there were no affected cows, whereas now there were nearly 3,000. It would be an appalling tragedy if the disease were to cross a further species boundary and affect humans. It was not unreasonable for the working party to have contemplated all possible precautions.

d) Even if the Government accepted the *Southwood Report*’s findings on baby food, there was a range of possible action. Prohibition of the manufacture of baby foods containing ruminant offal would be the most extreme step, and this might necessitate consultation under the Food Act. On the other hand, the food manufacturers themselves would almost certainly want to be seen to cease the manufacture of such baby foods as a consequence of the Report’s publication. The position on imported baby foods would need to be considered, as would the advice that should be offered on the use of existing stocks of baby foods and on food for older children. There should be a clear line on all these points before an announcement was made.374

The summing-up of the Cabinet meeting

3.50 In her written evidence to the Inquiry, Lady Thatcher recalled that most of the discussion on the Working Party’s recommendations related to the issue of baby foods. She confirmed the account given in the minutes of her summing up at the end of the meeting:

374 YB89/2.23/9.4–9.5: the minutes do not record the names of the individuals in question
I cannot now recall who made particular points, but I believe that it was in the context of the discussion we had had about baby food that I said in summing up, that the report was likely to raise considerable alarm, and that some of the recommendations and suggestions in it were not based on precise and firm evidence. I went on to say that there were manifest difficulties in handling the situation, but it had to be borne in mind that the disease’s recent crossing of the species boundary from sheep to cattle was a new phenomenon and it was not known whether a further crossing of the species boundary to humans was possible. In these circumstances the guiding principle was that the Government should be seen to act on properly qualified advice, and the Chief Medical Officer had a crucial role in this. On that basis, the Minister of Agriculture, Fisheries and Food and the Secretary of State for Health should urgently prepare a clear and accurate statement of the Government’s position in relation to the report, taking account of the points made in discussion. The announcement should be made as soon as possible, in a way that involved Sir Richard Southwood himself, the Chief Medical Officer and the Chief Veterinary Officer as well as Ministers.375

Sir Richard Southwood ‘clarifies’ the definition of offal

3.51 On 23 February 1989 Sir Donald Acheson telephoned Sir Richard Southwood to clarify the meaning of ‘offal’.376 It was established that it ‘referred only to spleen, brain, spinal cord and intestine’.377

3.52 Mr Clarke and Mr MacGregor met later on 23 February, accompanied by officials from DH and MAFF, including Sir Donald Acheson, Mr Cruickshank and Dr Pickles.378 The purpose was to discuss two outstanding concerns on baby food and vaccines. The note of the meeting recorded it had been understood that the term ‘offal’ used in the Southwood Report included liver and kidneys. However, it was confirmed that Sir Donald Acheson had established with Sir Richard Southwood that it referred only to brain, spinal cord, spleen and intestine. Sir Donald Acheson said that he was confident that these tissues and thymus were not used in baby food. Nonetheless, written assurances had been sought from UK baby food manufacturers. It was recorded:

Now that it was clear that the offal in question and thymus were not currently used in baby food, it was felt appropriate for the Government to take legislative steps to ensure that they would not be used for this purpose in the future.379

3.53 On the afternoon of 23 February, Sir Donald Acheson wrote to Sir Richard Southwood, advising of the discussions with MAFF, and stating they had ‘agreed on a line concerning baby foods’. A copy of part of the proposed press announcement was included for Sir Richard Southwood’s approval:

In his report Sir Richard Southwood says:

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375 S401 Thatcher para. 16
376 T128 p. 51; YB89/2.23/1.1
377 YB89/2.23/3.1
378 YB89/2.23/3.1–3.3
379 YB89/2.23/3.1
‘We consider that manufacturers of baby foods should avoid the use of ruminant offal and thymus.’

What does he mean and what are the implications?

The term ‘offal’ mentioned in the report refers to brain, spinal cord, spleen and intestine, as defined in the regulations quoted. The CMO is satisfied that none of these nor thymus is currently used in the manufacture of baby food. CMO also advised that mothers ought not to feed these materials to infants. With regard to other meats which people sometimes refer to as offal, like kidney, liver and heart, the evidence in relation to a theoretical risk is so slight that there is no need for concern. These are extremely nutritious foods which are beneficial.380

3.54 Later, on the same day, Mr J D Garnett (Food Policy Division, MAFF) minuted Mr MacGregor.381 His minute stated that the meaning of ‘ruminant offal and thymus’ had been clarified with Sir Richard Southwood.

The Working Party had intended this to refer to offal as described in Schedule 2 part II of the Meat Products and Spreadable Fish Products Regulations, 1984, plus thymus (which appears in Schedule 2 Part I of the same regulations). This means that items such as liver, kidney and heart, which the housewife might regard as ‘offal’, would not be restricted by the Working Party’s advice.382

3.55 The minute then stated that UK baby food manufacturers did not, and did not wish to, use thymus or offal as defined by the Southwood Working Party. They had confirmed a written undertaking would be provided to this effect. The minute concluded:

We can thus say without reservation that thymus and ‘offal’ (as referred to in the Report) are not used in baby foods; and we can be reassured that CMO’s advice, cleared with Sir Richard Southwood will be that we need not be concerned at the inclusion in infant diets of kidney, liver and heart . . .383

3.56 On 24 February 1989 Sir Richard Southwood sent a fax to Sir Donald Acheson. He confirmed the interpretation of offal, as provided in the draft press announcement:

The committee had before it many samples of baby foods; we noted that though ‘beef’ or ‘meat’ were listed as ingredients, offal was not, and we doubted if manufacturers would include it. We did note however that under the relevant labelling regulations, thymus could be included as meat, but expected that manufacturers would be able to respond to our report by assuring you that they would not include it. The enquiries you have made obviously confirmed these assumptions, though it would be prudent to alter the labelling regulations so that thymus cannot be included in meat.
Thus, I would conclude that there is absolutely no reason for concern with respect to meat products; as you advise, items strictly classified as offal (that is not including heart, liver or kidney) ought not to be fed to infants, though on present evidence, any risk is very small.\textsuperscript{384}

### Publication of the Report

#### The announcement

3.57 On 27 February 1989 the publication of the *Southwood Report* was announced by Mr MacGregor in a written Parliamentary Answer and was later the subject of a joint press conference by MAFF and DH. The Government publicly welcomed the Report and its recommendations and thanked the Working Party for its efforts.

3.58 The announcement dealt with the matter of baby food as follows:

The report suggests, however, that the manufacturers of baby food should avoid the use of bovine thymus and offal.

Sir Richard Southwood has confirmed that the term ‘offal’ as it is used in the report (as defined in the regulations quoted) refers to brain, spinal cord, spleen and intestines (tripe). The chief medical officer is satisfied that none of these, nor thymus, are used in the manufacture of baby food and advises that mothers ought not to feed these materials to infants of, say, under 18 months. As a precautionary measure, I am however taking steps to ensure through secondary legislation that it will be illegal for anyone to sell baby food containing such products in future. With regard to other meats which people sometimes refer to as offal – such as kidney, liver and heart – the chief medical officer advises there is no need for concern. These are extremely nutritious foods which are beneficial.\textsuperscript{385}

#### Concerns raised on publication of the Report

3.59 As soon as the *Southwood Report* was published, concerns were raised as to the risks posed by potentially infective tissues in subclinicals.

3.60 Dr Helen Grant, a consultant neuropathologist at Charing Cross Hospital, appeared on the BBC’s nine o’clock television news on 27 February 1989 (the day the *Southwood Report* was published). She was asked, among other things, to comment on the possible human hazard of BSE and she warned that she thought there was a risk because cattle brains were going into the food chain. Dr Grant added: ‘Who knows? Some of us may be incubating it already.’\textsuperscript{386}

3.61 On the following day in the House of Commons, Mr John Evans, a member of the Opposition, asked Mrs Thatcher, the Prime Minister:
If, as appears likely to the Secretary of State for Health, BSE is a threat to humanity, why not ban the use of this offal for all human consumption? If according to the Minister of Agriculture, it is not a danger, why was it banned for consumption for babies?

3.62 We set out Mrs Thatcher’s response in our discussion section below.

**Discussion of the extent of the Government review of the Southwood Report**

3.63 MAFF took the lead in preparing papers for members of the Cabinet on the publication and handling of the *Southwood Report*.

3.64 Mrs Attridge’s minute of 15 February (see paragraph 3.32) put in question the reasoning behind the baby food recommendation in the *Southwood Report*. On the one hand, no adequate reason had been given for thinking liver and kidney were not safe for babies; on the other hand, if it were not safe for babies, why was it nonetheless safe for adults? The *Southwood Report* itself gave no explanation as to why manufacturers were advised not to include offal in baby food, nor why this recommendation was aimed at manufacturers only (as opposed to anyone feeding offal to babies) and why no precautionary measures were considered necessary in respect of the consumption of offal by children and adults.

3.65 Mrs Attridge’s suggestion that the Government response to the baby food recommendation should be to say that the matter was being referred to the CMO was agreed by the CMO himself.387 Up to this point it does not appear that the matter had received consideration by the DH Secretary of State, Mr Kenneth Clarke.

3.66 Mr Clarke is an astute politician and we believe that, when he learned what was proposed in relation to the Southwood baby food recommendation, he at once concluded that it was politically untenable.

3.67 He told us that in the Cabinet meeting which took place on 23 February he expressed the view that:

> The Government would be in serious difficulty if we turned round and said we do not believe this is based on adequate evidence and we are not going to issue any warnings on baby food.388

3.68 When asked whether the Government could not have taken further advice before reaching a decision on policy, Mr Clarke retorted:

I would regard that as pretty pathetic if I had had to put that up – to say we are publishing the *Southwood Report*, the Government is making no recommendations, it is taking no action, it is going to have some more work done. I would have loved to have been in the Opposition if some Minister [had made a] half-baked statement of that kind. You do have to make your mind up what you are going to do. We had no sensible advice that we should...
not take the action recommended by Southwood on baby foods. People would have had our guts for garters if we said we were going away to commission some more work. 389

3.69 Mr Clarke told us that he anticipated that some of his Cabinet colleagues would resist publishing the Southwood Report and accepting the baby food recommendation because it would make sensational headlines if it were not handled extremely carefully. 390 The problem was how to persuade the Cabinet that the best course was to put out the Report on baby food. He told us that before the Cabinet meeting he had gone round to try to persuade other members of the Cabinet of this in order to get a few allies in advance. One ally that he recruited was Mr MacGregor, who supported him in urging that the Report should be accepted and published. 391

3.70 We asked Mr Clarke about the reference in the minutes of the Cabinet meeting to the CMO advising him that morning that it would not be right to do other than accept the Southwood Working Party’s findings. Sir Donald Acheson had not told us about this meeting and Mr Clarke suggested that he had probably forgotten about it. 392 Mr Clarke himself did not have a clear recollection of the meeting. He told us that the discussion came to the conclusion that the CMO ‘could not possibly give me advice that we should set aside the recommendation on baby foods and do nothing about baby foods whilst a further review took place’. 393

3.71 In a Supplementary Statement Sir Donald said this about his meeting with Mr Clarke on the morning of the Cabinet meeting:

As far as the discussion with Kenneth Clarke on 23 February 1989 is concerned, all I am able to remember is that he approached me on the issue of offals in baby foods and advised me that there was concern about the baby food suggestion (it was not a recommendation) for presentational reasons. He asked me whether I thought that the Working Party could be persuaded to remove the suggestion from its Report before publication. I advised him that it would be inappropriate, and indeed improper, for me to try to persuade the Working Party to remove a conclusion from its Report for presentation reasons [see paragraph 65 of my earlier statement WS 251A]. The Inquiry have also heard from Kenneth Clarke in oral evidence that I told him that I could not advise him to reject the suggestion relating to baby food. 394

3.72 Mr Clarke has responded to this evidence in a Supplementary Statement:

I spoke to Sir Donald to make sure I would be on sound ground in telling the Cabinet that we could not reject this part of the Working Party’s Report. The advice he gave me was precisely that which I expected he would give. I was not suggesting that he should try to persuade the Working Party to remove the suggestion from their Report. I would have been astonished if he had suggested that we could. I cannot recollect the terms that were used, but it merely confirmed my opinion that he had reviewed the Report and felt

389 T113 pp. 105–6
390 T113 p. 81
391 T113 pp. 83–5
392 T113 pp. 95–6
393 T113 p. 85
394 S251D Acheson para. 15
strongly that the baby food suggestion was an integral part of the Report with which he agreed.395

3.73 With recollections of both Sir Donald Acheson and Mr Clarke unclear so long after the event, it is not possible to reach a conclusion about the details of their conversation. What we think is clear is that Mr Clarke sought and obtained Sir Donald’s support for publication of the Report and immediate acceptance of its suggestion about baby food rather than deferring that matter for further consideration. We are inclined to think that Mr Clarke persuaded Sir Donald to support his own conclusion that the baby food recommendation should be accepted. Mr Clarke told us that he would have had a last word with Sir Donald before going into Cabinet because he needed to be able to strengthen his argument. It was a discussion that took place for tactical reasons to try to ensure that he was armed with the right arguments for Cabinet.396

3.74 In the Cabinet meeting on 23 February Mr Clarke encountered the resistance that he had anticipated. His colleagues were concerned that the baby food recommendation would result in supermarkets sweeping all baby food off their shelves and a tremendous panic about what was being fed to babies. They had in mind the consequences of previous food scares in respect of listeria in cheese and salmonella in eggs.397

3.75 In the event Mr Clarke’s views prevailed. The conclusion was that the Government would publish the Southwood Report and announce that it was acting on its recommendations. The Prime Minister said that the CMO and also Sir Richard and the CVO should be consulted in order to sort out the line that the Government was going to take. The idea was to publish the Report, to act on it and to try to present it in a way which was scientifically accurate and did not cause unnecessary public alarm.398

3.76 As we have noted, on the afternoon of the Cabinet meeting, the CMO phoned Sir Richard Southwood about the baby food point and established that liver and kidney should not be treated as falling within the term ‘offal’ in the baby food recommendation. Liver and kidney could safely be fed to babies.399

3.77 It was not clear to us whether Sir Richard changed his mind about liver and kidney or whether it had never been the intention of the Working Party that liver and kidney should fall within the recommendation. Mr Cruickshank thought that the Working Party had changed their minds.400 Dr Pickles’ belief was that the Working Party had never intended that the baby food recommendation should embrace liver and kidney.401

395 S295B Clarke para. 3
396 T113 pp. 87–8
397 T113 p. 91–2
398 T113 p. 108
399 S251A Acheson para. 68; YB89/2.23/3.1
400 T105 p. 61
401 T116 pp. 39–43
3.78 We have difficulty with Dr Pickles’s suggestion. In the first place it does not accord with Sir Richard’s own evidence (see vol. 4: The Southwood Working Party, 1988–89). Nor does it accord with Sir Richard’s actions in the period leading up to the Cabinet meeting: he received a draft of the Q&A brief and amended a sentence stating that internal organs such as liver and kidney ‘may carry the agent’ to read ‘may carry low levels of the agent’. The probability is, in our view, that Sir Richard was correct when he told us that the Working Party originally intended the baby food recommendation to embrace liver and kidney but subsequently had second thoughts about this. We do not believe the issue to be one of great importance. It suggests, however, that Mrs Attridge was correct in her conclusion that the status of liver and kidney merited further consideration.

3.79 Once Sir Richard had stated that the baby food recommendation was not intended to apply to liver and kidney, the concerns expressed by members of the Cabinet that the baby food recommendation would lead to a food scare were allayed. The Government was able to reassure the public that the type of offal to which the baby food recommendation related was not, in any event, incorporated in baby food. Thus the recommendation did not cast doubt on the safety of baby food on the shelves of the supermarkets.

3.80 The baby food recommendation had, however, demonstrated that the Working Party had concerns about the safety of certain tissues of clinically healthy animals. The question that Mrs Attridge had identified – if these were not safe for babies why were they safe for adults – remained unanswered. Nor does the contemporary evidence suggest that any explanation was sought, or given, as to why the Working Party had concluded that sick animals should be destroyed but that, the baby food recommendation apart, there was no need for precautionary measures in relation to any of the tissues of animals incubating BSE.

3.81 Despite the lack of contemporary evidence, we were assured by witnesses from DH that a review was carried out to check that the recommendations of the Southwood Working Party appeared to be soundly based. We turn to consider that evidence.

Extent to which DH reviewed the Southwood Report

3.82 After we had raised with Sir Donald Acheson the question of whether the Southwood Report was reviewed by DH, he submitted a written statement which included the information that an independent evaluation of the Report was carried out for him personally, at his request, by ‘the relevant DCMO [Deputy Chief Medical Officer], Dr Ed Harris’. Later in his statement he expanded on this:

In my time in the civil service (1983–1991) there was no established procedure within DH to subject the work of an independent expert committee to critical or independent review other than that undertaken as a matter of course by appropriate members of my staff. In this case, as Dr Pickles had been personally involved in drafting the Southwood Report, I asked my colleague the late Dr Ed Harris, CB, who was the Deputy Chief Medical Officer accountable to me for communicable disease, medicines
and medical equipment and pharmaceuticals (including vaccines and blood products) and international health, to evaluate it for me... Although no relevant papers have yet come to light, I have a clear recollection that Dr Harris’ evaluation was favourable and that he had no substantive criticisms. 405

3.83 We have referred to the limited instructions given by Sir Donald Acheson to Dr Harris on 9 February 1989 in relation to bovine-based vaccines (see paragraph 3.24). Dr Pickles described this as a request ‘not so much to look at medicines but to speed up the action that should have been taken by the Medicines Division’. 406 Apart from this, she could not remember any review of the Southwood Report by Dr Harris. She did not recall him asking her about the factors which led to the Working Party reaching its decision. 407 Dr Metters had no recollection of Dr Harris being asked to evaluate the Southwood Report, although he commented ‘it does not surprise me in the least that Donald asked Ed to look at the medicines aspect’. 408

3.84 Mr Clarke had no recollection of Dr Harris carrying out a review. 409

3.85 We cannot accept that Sir Donald Acheson’s recollection that he sought and obtained a review of the Southwood Report from Dr Harris is correct. Had he done so we think it almost inconceivable that there would not have been some indication of this in the contemporary documents. Nor is it likely that neither Dr Pickles, nor Dr Metters, nor Mr Clarke would have any recollection of such a review.

3.86 It seems to us that had Dr Harris carried out a review of the Southwood Report he would almost certainly have asked for some assistance from Dr Pickles in identifying the reasoning behind the Working Party’s approach to the potential hazards posed by clinically affected and subclinically infected animals.

3.87 On the central issue of the risk posed by BSE to man, the Working Party had not set out the reasoning behind a number of conclusions and recommendations:

- The risk posed by BSE to humans was ‘remote’.
- Clinically affected animals should be slaughtered and their carcasses destroyed.
- No precautionary measures were justified in relation to the risk posed to adults and children from eating tissues of subclinically infected animals.
- Manufacturers of baby food should avoid the use of ruminant [NOTE: not bovine] offal and thymus.

3.88 To review the Southwood Report it was necessary to ascertain the reasons for these conclusions and recommendations and then to consider their validity.

3.89 Dr Pickles had suggested to the CMO steps that she could take to assist in a review of the baby food recommendation (see paragraph 3.41). Had Dr Harris reviewed the Report, we would have expected him to seek such assistance. In the
event he did not approach Dr Pickles and she was not aware of any review carried out by him.

3.90 On the first occasion that he gave evidence, Sir Donald commented that the Working Party were the best people in the country to make a judgement and that in the end one had to accept that judgement.410 Our conclusion is that, while Sir Donald sought limited assistance from Dr Harris in relation to medicines, he did not ask him to carry out a full review of the Report.

3.91 When giving oral evidence Mr Clarke accepted that a careful and thorough review and assessment of the scientific reasoning and conclusions of the Southwood Report should have been carried out by his Department in conjunction with MAFF. He told us that he was satisfied that this had indeed occurred.411 He painted a picture of a series of meetings involving himself, Mr Freeman, the CMO and other senior and relevant officials which had constituted ‘a long and tortuous process’ leading to a policy decision on how to respond to the Southwood Report.412 The meetings were informal and not documented. Mr Clarke was critical of the Inquiry for paying too much attention to documentary evidence:

        . . . what is happening is you are wandering through this maze of documents as though you have the picture in front of you. With great respect, you do not seem to have the picture in front of you at all about how the decision was taken.413

3.92 We were particularly interested to know whether there had been discussion about the reasoning that had led the Southwood Working Party to recommend slaughter and destruction of clinically sick animals but to make no recommendation in relation to subclinical animals. Mr Clarke assured us that such discussion had taken place. He described the process as follows:

        This submission has been put in my box covering the Southwood Report, and it sets out some of the background. Next step, the Secretary of State reads the Southwood Report. Next step, we start having some serious discussions about what is in the Report and what we should do about it. It certainly includes, obviously, the advice, the medical and scientific of the officials who are reviewing what the Southwood Report has put to them. Certainly, I cannot claim after over ten years to remember, you know, phrases used, location of meetings, all this kind of thing but it would certainly cover the subject you have just touched upon and quite a lot of others as well.414

3.93 A little later in his evidence he said that it was his clear recollection that there was a very great deal of copious review, correspondence and discussion. Just because it could not be found in a document did not mean that it did not take place.415
3.94 So far as interdepartmental discussion was concerned, Mr Clarke said that it seemed to him and to Mr MacGregor that there had been an amazing quantity of exchanges going on between their Departments.\textsuperscript{416}

3.95 Lord Freeman dealt with the position of Ministers on receipt of the \textit{Southwood Report} in a written statement to the Inquiry:

When external advice was commissioned, it was not appropriate for Ministers to set in motion a review of that advice unless:

i) Some deficiency in the advice was brought to their attention by officials, once the advice had been considered by those officials;

ii) More unusually, Ministers were themselves in a position to identify some deficiency in the advice received.

In the case of the report of the Southwood Working Party, Ministers expected to listen to and if necessary act upon the advice of the Chief Medical Officer. As a non-scientist, it would have been inappropriate for me to subject a scientific report to detailed scrutiny in an attempt to identify possible deficiencies in that report.

The view of the CMO in relation to the report of the Southwood Working Party was as follows:

‘I regard it as a thorough study of the problem with sound and balanced conclusions. On the evidence given in the Report I accept that the risk to man has been extremely small and that (with one possible exception mentioned below) every reasonable step has already been taken to minimise any theoretical risk by destruction of affected cattle . . .’

(Minute dated 9 February 1989 to the Secretary of State, copied to me.)\textsuperscript{417}

I was not aware of any contrary view having been expressed, either by the Chief Medical Officer or by others.

I had every confidence and trust in the Chief Medical Officer. He had always struck me as professional and diligent.

In summary, the Chief Medical Officer had indicated that he was content with the Report and there was no reason for Ministers to dissent from that advice. Nor was there any reason for Ministers to take the view that the Southwood Working Party was not in a position to give authoritative scientific advice. In the circumstances, it would have been inappropriate for a review of the Report to have been set in motion.\textsuperscript{418}

3.96 In oral evidence he explained that he was there dealing with a formal review under which a number of officials would be given a specific collective task to take the Report and review it. While that did not take place, there were ongoing informal discussions with the CMO about the issues that had to be dealt with subsequent to

\textsuperscript{416} T113 p. 22
\textsuperscript{417} YB89/2.09/9.1–9.4
\textsuperscript{418} S296A Freeman paras 5–9
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the receipt of the Report. He could not remember whether these discussions included the reasons for distinguishing between clinically affected and subclinically infected animals.

3.97 We can readily accept that informal and un-minuted meetings took place within DH between Mr Clarke, Mr Freeman, the CMO and officials. We do not believe, however, that these discussions can have included a reasoned analysis of the baby food recommendation in particular, and the distinction drawn between clinically affected and subclinically infected animals in general. We so conclude primarily because a reasoned discussion would not have been possible without first establishing the reasons why the Working Party had advised as it did. Had these matters been discussed, DH would have been in a position to make a constructive contribution when MAFF drew attention to the problems raised by the baby food recommendation, rather than simply agreeing that the matter should be referred to the CMO.

3.98 On our analysis the response of DH to the receipt of the Southwood Report was as follows:

i. From May 1988 until the summer of 1991 Dr Pickles held lead responsibility in DH for assisting the CMO in matters relating to BSE. Until 1990 there was no administrative branch with parallel responsibilities for BSE in DH, so that Dr Pickles carried that responsibility as well. As the focal point of BSE intelligence she acted to coordinate the exchange of information on BSE throughout DH.

ii. Sir Donald Acheson explained why he gave Dr Pickles these responsibilities:

   Her strong scientific background and credibility together with her record of success in tackling the AIDS crisis, and her remarkable energy and capacity for work made her an ideal candidate.

iii. Dr Pickles worked closely with the Southwood Working Party. She sat in on their deliberations and wrote much of their Report on the basis of the views that they expressed. She told us how impressive she had found it watching a group of people like the Southwood Working Party debating the question of the potential hazard posed by BSE. Her understanding was that the Working Party considered it a very borderline question whether tissues from subclinicals counted as a real risk for humans or not. She felt that there were good scientific reasons for drawing the borderline between babies and other human beings. The Working Party felt comfortable, looking particularly at the scrapie evidence, and knowing that the highest titres were being removed from the food chain, that the tissues of the incubating animals could remain part of the human diet. The Working Party had given their best judgements on the very limited evidence available at the time. The urgent matter was to try to get some more hard evidence. Nobody could have gone much further at the time with the very limited evidence available.
iv. Dr Pickles remained firmly convinced that the conclusions of the Southwood Working Party were sound and that tissues of subclinicals represented no risk to human health, until her perception changed a year or more after the Working Party reported.426

v. Dr Pickles’s involvement in the drafting of the Report meant, of course, that she was not an appropriate person to review it.

vi. Dr Pickles’s confidence in the judgement of the Southwood Working Party was reflected in her note of 6 February, which informed Sir Donald that he would receive a copy of the Report in a day or two and commended it to him (see paragraph 3.16).

vii. Encouraged by Dr Pickles’s approbation, we believe that Sir Donald simply accepted the Southwood Report’s recommendations as constituting the best possible advice without seeking to explore the reasoning behind them. Apart from the question of medicines, the recommendations in the Report were considered to be the concern of MAFF rather than DH, and MAFF was left to take the lead in handling the Report. When MAFF raised the problem of the baby food recommendation and especially liver and kidney, Mr Clarke took a political decision that the Report should be accepted, even though the reasoning behind the baby food recommendation was not clear. When Sir Richard Southwood resolved one difficulty by indicating, on 23 February, that the baby food recommendation did not embrace liver and kidney, DH did not further question the implications of the recommendations.

Extent to which MAFF reviewed the Southwood Report

3.99 The circulation of the Southwood Report to ‘interested divisions’ within MAFF (see paragraph 3.26) invited recipients to provide an initial assessment of the Report’s contents. Mrs Attridge drew attention to the baby food recommendation. Her concern was that this would lead to the withdrawal of liver and kidney from the diet of babies although these were nutritious. She was not convinced that there was a sound scientific basis for so doing. Her recommendation was that the matter should be referred to the CMO. She observed that ‘this would enable us to assess more fully what the actual risks are’.427

3.100 Mr MacGregor rightly observed that this was a good example of MAFF raising questions and analysing the Southwood recommendations.428 When she raised the matter he realised that they had an issue that was quite a problem and they needed to get further advice to sort it out.429

3.101 However, when on 23 February Sir Richard Southwood stated that the baby food recommendation did not apply to liver and kidney, no further review was carried out as to the reasoning underlying the recommendation. Earlier when discussing the Q&A brief, Mrs Attridge had remarked, ‘We will be asked why should we take action on baby food and not on hamburgers . . . ’?430 That question did not receive further consideration at this stage.
Adequacy of review of the *Southwood Report*

3.102 In the course of the discussion in Cabinet, one Minister is recorded to have remarked that it was unsatisfactory that policy decisions should in effect be put into the hands of specialised experts. The terms of reference of the Working Party were widely drawn, enabling it to advise on both the risks posed by BSE to humans and animals and on measures that should be taken to address those risks. The Report was to be published and, because of the public interest in its subject, the Government was under pressure to do so promptly. There was little time to consider its recommendations before publication. Once it was published the Government had, as Mr Clarke recognised, little alternative but to accept its recommendations unless very good reason could be demonstrated for not doing so. Mr MacGregor made the same point to us and observed that he did not have a lengthy period in which to carry out a scientific analysis of the reasoning of the Working Party.

3.103 We accept that the Government could not be seen to question recommendations in the *Southwood Report* without being able to demonstrate good reason for so doing. We also accept that the pressure to publish the Report may not have permitted adequate time for review before publication. We are in no doubt, however, that whether before or after publication the Departments concerned needed to review the Report so as to satisfy themselves that the reasoning underlying its recommendations was clear and supported the recommendations. This was accepted by Mr Clarke (see paragraph 3.91). Sir Derek Andrews also accepted that it was part of the responsibility of Government on receiving the *Southwood Report* to consider whether there were any reasons for wanting to question the advice in it and that, for this purpose, it was necessary to know the reasons for the advice. Where Government acts on the basis of expert advice it needs to be in a position to explain the reasons underlying that advice and to review, as time passes, whether these reasons remain valid.

3.104 In recommending measures to address the possible risks posed by BSE to human health, the Southwood Working Party drew the line between the clinically sick animal, calling for the draconian measure of slaughter and destruction, and the subclinically infected animal, in respect of which its advice was that all tissues could go into the food chain. But the line was not clear-cut. As noted at paragraph 3.80, concerns held by the Working Party about the safety of certain tissues of clinically healthy animals were demonstrated by the recommendation that manufacturers of baby food avoid ruminant offal and thymus. In a written statement Mr Cruickshank summarised the position as follows:

. . . the recommendation on baby foods seemed to make good sense when it was received; when difficulties with it emerged, a way was quickly found of avoiding these difficulties without calling into question the Working Party’s advice as a whole (in which we still had complete confidence).

3.105 In our view, paragraph 5.3.5 of the Report raised questions as to the reasoning of the Working Party which needed exploring. This fact was highlighted when Mrs Attridge drew attention to the baby food recommendation. The removal of liver and kidney from the recommendation left the questions unanswered. DH
and MAFF needed to review the reasoning of the Working Party in order to be satisfied that their recommendations on risk management appeared sound.

3.106 Later in the story Dr Pickles was to inform Mr Cockbill (Head, Food Standards Division, MAFF) that the justification for excluding offal from baby food and not all food was ‘based on uncertain data’. 435

3.107 How should the review of the Southwood Report have been brought about? Mr Meldrum told us that, so far as doubts about the baby food recommendation were concerned, he was not in the lead, it was a matter for Mrs Attridge and the DH. 436 He said that it was clearly the responsibility of Mrs Attridge to ask the question ‘if there is a need to take out these “high risk” tissues from baby food, why not take them out from the food of adolescents?’ 437 He emphasised that, while he would have done his best to assist Mrs Attridge if asked, this area was not his responsibility. He did not have responsibility for assessing risk to human health. That was for the CMO, assisted in this instance by the Southwood Working Party. 438

3.108 Mr Capstick told us that the question of the implications for adults of the baby food recommendation was primarily a matter for DH, but that to some extent it fell within Mrs Attridge’s area of concern. 439

3.109 Mrs Attridge was head of the Emergencies, Food Quality and Pest Control Group. In a written statement she referred to the division of responsibilities in respect of food between DH and MAFF laid down by the Whetnall Report (see paragraph 3.344 and Chapter 4). The matters on which MAFF had the lead included meat hygiene and the composition of food. Her Group was not concerned with meat hygiene. It was, however, concerned with composition of food. In relation to BSE her Group advised on labelling aspects, consumer perceptions and Single European Market issues. 440 Mrs Attridge said that her Group was concerned with the baby food recommendation inasmuch as its impact might reduce the nutritional value of baby food. It was not concerned with the wider question of whether adult food might be rendered unsafe if it contained the types of offal that were not safe for babies. 441 It was for the CMO, for the veterinary side and for others to look at the wider issues. 442 In particular, it was the Animal Health Group and the State Veterinary Service which were responsible for animal diseases that could affect humans. 443

3.110 Paragraph 5.3.5 of the Southwood Report addressed the problems of risk evaluation and management in relation to potentially infective tissues in subclinicals. This was a human health problem and thus of direct interest to DH. It was also, it seems to us, a problem of direct interest to the Animal Health Group (AHG) at MAFF, in that it arose out of a potential zoonosis, and to Mrs Attridge’s Group, as it raised questions as to the safety of the components of food. The issues raised required input from veterinarians and we believe that they fell within the area of responsibility of the CVO.

435 YB89/4.13/2.2
436 T120 p. 157
437 T120 p. 170
438 T120 pp. 158, 162
439 T119 p. 8
440 S78B Attridge paras 3–4
441 T117 p. 45
442 T117 p. 33
443 T117 p. 11
3.111 Mrs Attridge is to be commended for first drawing attention at a senior level to the problems raised by the baby food recommendation. These problems had been identified by Dr Woolfe, who shares in that commendation. We consider, however, that Mrs Attridge should have continued to urge the need to review the reasoning behind this recommendation after liver and kidney had been withdrawn from its ambit. The Report still did not answer the question why no precautionary steps were advisable to address the possible risk to children and adults from eating tissues that were considered potentially hazardous to babies.

3.112 We have considered whether Mr Cruickshank should have seen that steps were taken to ascertain the answer to this question. He told us that veterinary colleagues had advised him that young calves were more susceptible to BSE than older ones and that it seemed reasonable to expect that if any humans were at risk from BSE, the risk would be greatest for babies. He commented that the Working Party did not consider that the risks presented by material from subclinically infected animals were sufficiently serious to justify any action in relation to adults, but he considered that this did not mean it was unreasonable to propose certain very limited action in relation to the category of humans for whom the risk was greatest.

3.113 We do not consider that this reasoning should have satisfied Mr Cruickshank that there was no need to obtain a more specific explanation of the Working Party’s reasoning. If MAFF was to base its policy on a distinction between babies and other humans, and between clinically affected and subclinically infected animals, it needed to know the precise premises which the Working Party believed justified those distinctions for two reasons. First, so that it could decide whether the Working Party’s conclusions were soundly based on those premises; secondly, so that it could keep those premises under review.

3.114 Mrs Attridge had recommended referring the baby food recommendation to the CMO, commenting, ‘This would enable us to assess more fully what the actual risks are’ (see paragraph 3.32). Mr Cruickshank has described to us the problem raised by Mrs Attridge as ‘a loose end in the Report’ in respect of which he had agreed that the CMO should be asked to give further consideration. He suggested that the option of getting the CMO’s advice was closed off by the CMO’s decision not to give such advice. We do not understand that there was any refusal on the part of the CMO to help to explore the question ‘Why baby food and not hamburgers?’ DH was not asked to address that question. It is one that we consider Mr Cruickshank should have pursued.

3.115 We have also considered whether this was a question that Mr Meldrum should have pursued. Mr Meldrum was adamant that it was not. He accepted that where advice of a scientific committee was given in an animal health context he would want to know the reasons for that advice and to look at its soundness and its applicability. In oral evidence, however, he said that it was not his responsibility to review the reasoning of the advice given in paragraph 5.3.5 of the Southwood Report; that responsibility devolved on Mrs Attridge’s Group and on DH. We cannot accept this argument. In correspondence with the Inquiry, Mr Meldrum accepted that the CVO had a responsibility for ensuring that relevant veterinary matters were drawn to the attention of the CMO, and for providing information and advice to him on veterinary matters based on which he could form an opinion on

444 YB89/2.15/2.1  
445 T120 pp. 151–2
food safety. Even on this narrow view of the CVO’s responsibility, it was in our view necessary for Mr Meldrum to consider whether there were any veterinary issues relevant to the advice given by the Southwood Working Party. The distinction drawn by the Southwood Working Party between animals showing clinical symptoms of BSE and infected animals in the subclinical state raised issues that clearly fell within the province of the veterinarian.

3.116 When, as a result of public pressure, the question arose as to the adequacy of the precautionary measures recommended by the Working Party, it was to Mr Meldrum that Mr MacGregor turned for advice. As we record below, Mr Meldrum told us that it was at that stage that it became clear that the baby food recommendation lacked some logic. The illogicality would have been identified earlier if, as we believe he should, Mr Meldrum had considered whether there were any veterinary issues relevant to the advice given by the Southwood Working Party. He would have found that a review was needed in order to ascertain, and assess the soundness of, the reasoning of the Working Party in relation to the risks to the human food chain posed by cattle incubating BSE. Even on the limited view of his responsibilities which he has advanced, Mr Meldrum should have realised that there was a need for such a review.

3.117 Before moving on, we wish to refer in a little more detail to submissions made on behalf of Mr Meldrum about the role of the CVO. The following is an extract from those submissions:

Mr Meldrum had a responsibility as CVO for ensuring that relevant veterinary matters were drawn to the attention of the Chief Medical Officer, and for providing information and advice to him on veterinary matters based on which he could form an opinion on food safety.

During his tenure as CVO, Mr Meldrum was never asked, and would not have expected to be asked, to give advice to the CMO on the assessment of any risk to human health arising from BSE or any other zoonoses or potential zoonoses.

Once any such veterinary matters have been drawn to the attention of the CMO (whether by the CVO or his colleagues within MAFF), which occurred on a number of occasions only some of which were related to BSE, the CVO has fulfilled his duty. It is then entirely within the responsibility of the CMO and those who share in the CMO’s responsibility for the assessment of food safety and human health, as to how those veterinary matters, together with all other relevant information in the CMO’s possession, are taken into account. The ultimate decision as to what, if any, the human health risks might be and any judgement on the adequacy of the assessment by which the decision is reached, is within neither the responsibility nor the capability of the CVO.

3.118 We have had, and we still have, great difficulty in practice between drawing the line between ‘advising on veterinary matters’ and ‘advising on the assessment of any risk to human health arising from a zoonosis’. It is one thing to say that ‘the ultimate decision’ on human health risks was for the CMO and another to say that it was never part of the CVO’s duty to give advice about risks to human health.
3.119 In this context we can draw attention, without leaving the confines of this chapter, to occasions on which Mr Meldrum’s advice on veterinary matters was couched in terms of risk to human health. The preparation of the human SBO Order required identification of those tissues which should be proscribed because of their potential infectivity. This was a joint task of MAFF and DH. Mr Meldrum’s advice was repeatedly provided in the form of evaluation of whether a particular tissue would pose a risk to human health: eg,

- In the preparation of black tripe the mucosa is likely to be removed and for that reason abomasum should not present a human health hazard when used as either black tripe or casings (see paragraph 3.433).

- We suggest that we can separate types of offal for practical purposes on the basis that those with macroscopically visible lymphoid tissues would be banned while others would be excluded (see paragraph 3.460).

- The intestines contain significant amounts of lymphoid tissue and are thus a ‘risk’ organ. However, in the processing of casings for sausage manufacture the lymphoid tissue in the mucosa is removed when the intestines are scraped, cleaned and washed. On this basis we have concluded that we could not justify a ban on intestines so processed for use as casings (see paragraph 3.493).

- We conclude that the human health risk from casings is extremely low particularly in view of the fact that so little intestinal tissue is used for casings, that the product is fully cooked and we believe that it is common practice for the casings to be discarded at the table (see paragraph 3.508).

- The risk to man is extremely remote since the calves would not have been fed meat and bone meal (see paragraph 3.528).

3.120 It is not our task, in the abstract, to delineate the duties of the CVO in relation to advice given about risk to human health from a zoonosis. We recommend, however, that this is a topic which should be explored between MAFF and DH, with input from both the CMO and the CVO so that no misapprehension can arise in the future.

3.121 Mr Andrews received a copy of Mrs Attridge’s minute of 20 February, though not that of 15 February (see paragraphs 3.38 and 3.32). Thus he was alerted to the problems arising out of the baby food recommendation, including Mrs Attridge’s comment that MAFF would be asked why action should be taken on baby food but not other food. He told us that he believed that any uncertainties about the reasoning underlying the Southwood Report would have been clarified in inter-departmental discussions:

The issue did of course come out in the very detailed discussions over a period of, I do not know, a fortnight, between officials in the Ministry of Agriculture and officials in the Department of Health, and of course there were discussions at ministerial level. These issues were pretty thoroughly explored and discussed. I was not involved in all those discussions but I was aware that they were going on. The records do not show everything that happened during this period of time, but I have no doubt that by the time the Southwood Report was published, insofar as there was a need to clarify the
It must have been clear to Mr Andrews that such discussions had not resolved
the reasoning behind the baby food recommendation, for right up to the morning of
the Cabinet meeting the plan was that this should be referred to the CMO for advice.
The problem about liver and kidney was resolved, but the question remained
outstanding as to why babies needed protection against the residual types of offal,
but adults did not. We consider that Mr Andrews should have raised with
Mr MacGregor the need to see whether there was a satisfactory answer to this
question.

Mr MacGregor had, however, already been alerted by Mrs Attridge to
concerns which included the fact that questions would be asked as to why action
should be taken on baby food but not on food for adults. He had concluded that ‘a
considerable amount of further thought’ needed to go into the matter
(see paragraphs 3.39 and 3.40) While the major cause for concern was the removal
of liver and kidney from the diet of babies, the wider question of ‘Why babies and
not adults?’ also needed to be pursued, and he should have seen that it was.

Mr MacGregor has asked whether there was anywhere he could have turned
to for a review of the Report. We have already indicated that the first step would
have been to ascertain the reasoning of the Working Party. Mr Lawrence and
Dr Pickles could have assisted with this, and veterinary issues would then have been
identified. The Central Veterinary Laboratory (CVL) would then have been an
obvious source of advice.

We have considered whether criticism should attach to Mr Lawrence or
Mr Capstick for failure to point out the need for a review of this aspect of the
Southwood Report. We have concluded that it should not. This initiative was
properly to be sought at a higher level than Mr Lawrence. Mr Capstick was
promoted Deputy Secretary in January 1989. He had a very wide portfolio and told
us that in his first 10 or 11 months he had nothing to do with, and knew nothing
about, BSE.

We turn to DH. We consider first the position of Sir Donald Acheson. Our
first concern is that he had not himself obtained a satisfactory explanation from Sir
Richard Southwood of the distinction between the possible dangers posed by
clinical and subclinical victims of BSE.

On 24 November 1988 Sir Donald met Sir Richard and Mr MacGregor and
MAFF officials. One of the topics discussed was the possible risk involved in
eating brains from subclinically infected cattle. Sir Richard indicated that he was
not persuaded that it was necessary to ban the use of cattle brains in food, though it
might be appropriate to impose a labelling requirement. When Sir Donald gave
evidence he was asked whether Sir Richard explained the reason for responding so
differently to ox-brain in a clinical animal and in a subclinical animal.

Sir Donald replied that on some occasion, and he could not say whether or
not it was at the meeting on 24 November, Sir Richard told him that titres of scrapie

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446 T124 pp. 28–9; incorporating revisions proposed in S481E Andrews D
447 T41 p. 10
448 YB88/11.24/5.1
rose very steeply a very short time before the animal became sick. Quite apart from the uncertainty as to when Sir Donald received this information, it does not seem to us that it sufficed to justify taking no precautionary measures against the risk from eating ox-brain from a subclinical animal. When it was pointed out to him that the information he described would raise a question about dealing with the animals that were being slaughtered just before they became sick, Sir Donald said:

Well, it depends how many animals are slaughtered just before they become sick. Honestly I never considered that. It seemed to me it was reasonable, in the circumstances of the way he described it to me, that – at the time, in the light of knowledge at the time and in the light of the fact that nvCJD had not occurred, that it was quite reasonable for him to pursue the policy that he did or to advise on it. In any case I go back to my opening statement, and say that I was a generalist; and I did not enter into discussions with expert advisers, except to inform myself. And I would not have regarded myself as in a position to advise the acknowledged experts – very rare – experts in this disease – to change their advice.449

In all the other things I had a consultant adviser to whom I could turn when it came to evaluating the report. But in the case of the Southwood Report I did not have one. So my own evaluation of these things was the only thing I could rely on, apart from my colleagues in the Department, of whom Ed Harris and Hilary Pickles were the obvious people.450

We are satisfied that Sir Donald Acheson was not given, and should have sought, a clear explanation for the distinction between clinically affected and subclinically infected animals.

3.129 This leads to our second concern, which is Sir Donald’s failure to have the Southwood Report reviewed. For the reasons that we have given, we find that he did not do so. He should have done, and should not have commended the Report to Mr Clarke in the terms in which he did without a review.

3.130 After Sir Donald had commended the report to Mr Clarke, MAFF’s concerns about the baby food recommendation led Dr Pickles to offer to ‘seek the appropriate information and advice – including from Sir Richard . . . and put forward a paper on what information and opinions are available’. Sir Richard’s clarification that ‘offal’ did not include liver and kidney still left outstanding the question of why the remaining types of offal posed no threat to humans. This Sir Donald should have pursued.

3.131 In April 1989 Dr Pickles was to list a number of questions related to food ‘that might be regarded as still being unresolved’ for possible consideration by the Richmond Committee (see paragraph 3.177). Significantly these included:

Should the ban of offal in baby food be extended to include (i) pancreas (sweetbread), oxtail (rich in peripheral nerves) and possibly even liver and kidney and/or (ii) to all processed food for human use or even (iii) to a total ban on sale for human consumption of some beef offal?

449 T128 pp. 36–7; incorporating revisions proposed in S251G Acheson
450 T128 pp. 37–8
3.132 Sir Donald was opposed to reopening matters covered by the *Southwood Report* in the absence of new developments as this would imply a lack of confidence in the Working Party’s conclusions (see paragraph 3.179). The problem with this approach was that the reasoning underlying those conclusions had not been reviewed.

3.133 Turning to Mr Clarke, we consider that, as Secretary of State for Health, he needed to be in a position to answer the question ‘If offal is unsafe for babies, why is it safe for adults?’ Because there had been no review of the Working Party’s reasoning, he was not in a position to do so. DH’s position was reflected by the Prime Minister’s response to Mr Evans on 28 February. We noted in our narrative section that Mr Evans asked why, if bovine offal were not a danger, it was banned for consumption by babies. We quote the response:

The Prime Minister: We set up a committee of experts under Professor Southwood. We published the report in full. We referred it to the Chief Medical Officer of Health and we accepted the recommendations of both, precisely. There is no point whatsoever in setting up a committee of experts, in having a Chief Medical Officer of Health, in receiving their advice and then not accepting it. We would rather accept their advice than that of the hon. Gentleman.451

3.134 Mr Clarke should have ensured that the reasoning of the *Southwood Report* was ascertained and reviewed. He was taking a close personal interest in BSE and, in these circumstances, we do not consider this criticism falls to be shared by his junior Minister, Lord Freeman.

**Some comments with hindsight**

3.135 It is time to ask a ‘what if’ question. What if MAFF and DH had sought and ascertained details of the reasoning underlying the *Southwood Report*? What if they had been given the list of factors that the Working Party told us led to their decision not to recommend the banning of ox-brain? What if it had been made clear to them that, when describing the risk as remote, the Working Party intended to indicate that precautionary measures should be taken to reduce the risk as low as reasonably practicable (ALARP)? DH and MAFF would then have appreciated that the recommendations that distinguished between tissues from clinical and subclinical animals were based on analogies with slender scientific evidence relating to scrapie. They would have appreciated that in considering practicable precautionary measures there might be relevant matters of which the Working Party was unaware.452

3.136 Had the assistance of CVL been sought by way of review of the Working Party’s conclusions, Mr Raymond Bradley (Head of Pathology Department, CVL) might have produced the advice that he was to provide to Dr William Watson (Director of CVL, July 1986–March 1990)453 in April and which may not, it seems, have reached a wider audience:

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451 YB89/2.28/8.1
452 T106 p. 58
453 Dr Watson was also a member of the Tyrrell Committee and has been a member of SEAC since its inception in April 1990
It is quite clear that in an infected animal in the late pre-clinical phase . . . lymphoreticular tissues [and] certain other tissues including some endocrines and gut plus CNS [central nervous system] are highly likely to be infected to a high titre of significance to humans if the agent is transmissible to them . . .

It is a big step to take to try to eliminate certain items from the food chain. However it would be relatively simple to reduce risks considerably by sending for rendering or incinerating specified easily identifiable organs . . . 454

3.137 Government would then have been in a position to take an informed policy decision as to whether to take additional precautionary measures to those proposed by the Working Party.

3.138 In the event there was public concern raised as to the risks posed by tissues from subclinicals and no convincing answer could be found to assuage that concern. The result was the decision in June 1989 to introduce the SBO ban. We shall shortly explore the course of events that led to that decision. The manner in which it was reached was haphazard and led many to believe that the ban was not a precaution with a sound scientific base. This impression might have been avoided and several precious months saved had the Southwood Report been reviewed by the two Departments to which it was made.

3.139 Before concluding our discussion of the extent to which the Southwood Report was reviewed by Government, we record that two glosses were placed on the Report in Government publicity.

3.140 On 27 February MAFF and DH issued a joint news release setting out ‘The Government’s Response to the Southwood Report on BSE’. This took the form of a written reply by Mr MacGregor to a Parliamentary Question. It included the following information on the contents of the Report:

The Report concludes that the risk of transmission of BSE to humans appears remote and it is therefore most unlikely that BSE will have any implications for human health. It points out that the related disease scrapie in sheep has been present in the UK for over 200 years and there has been no evidence of transmission to man. The Report also concludes that from present evidence it is likely that cattle will prove to be a ‘dead-end host’ for the disease agent. However, the Working Party point out that if their assessment proves incorrect the implications would be serious. 455

3.141 We note the removal of the word ‘extremely’ which had qualified the word ‘serious’ in the Report.

3.142 The news release continued:

The Working Party have greatly welcomed the speed with which the Government acted to ban the use of the animal feed rations in question and also to implement their interim recommendations. These measures include
the compulsory slaughter of cattle suspected of having BSE and the removal from the food chain of their milk and carcasses. The Working Party believe that the risks as at present perceived would not justify special labelling requirements for products containing either bovine brains or spleen. The Report suggests, however, that manufacturers of baby foods should avoid the use of bovine thymus and offal. Sir Richard Southwood has confirmed that the term ‘offal’ as it is used in the Report (as defined in the Regulations quoted) refers to brain, spinal cord, spleen and intestines (tripe). The Chief Medical Officer is satisfied that none of these, nor thymus, are used in the manufacture of baby foods and advises that mothers ought not to feed these materials to infants of say under 18 months. As a precautionary measure I am however taking steps to ensure through secondary legislation that it will be illegal for anyone to sell baby food containing such products in future.456

3.143 Dealing with the Government’s response, the news release stated:

Although the risk of transmission to humans is very remote there are several further actions the Government proposes to take as a matter of extreme prudence in response to the other recommendations in the Report. These add up to a comprehensive response to all the Working Party recommendations.457

3.144 We note the addition of the adverb ‘very’ to the description ‘remote’ used in the Report.

3.145 The news release went on to deal with steps taken in response to the Report by the Committee on Safety of Medicines (CSM), the Veterinary Products Committee and the Health and Safety Executive (HSE). Finally, it referred to CJD surveillance, research and the ruminant feed ban.

Consideration of baby food and cull cows

Initial discussions in MAFF

3.146 The Food Standards Division in MAFF had responsibility for advising on and preparing the legislation for the proposed baby food offal ban. On 28 February 1989 Mr Cockbill noted that the prohibition was to be limited to processed foods, and that there was no intention to restrict the sale of offal itself at retail level. He suggested that instructions to MAFF’s Legal Department should propose freestanding Regulations, rather than an amendment to the Meat Product Regulations.458

3.147 On 3 March 1989 Dr Woolfe of Food Science Division minuted Mr Cockbill about baby food. He said that the Southwood Working Party had in effect been advising that any offal at risk of transmitting BSE should not be used in baby foods. On this basis, other organs such as endocrine and pituitary glands should be

456 IBD1 tab 3 p. 2  
457 IBD1 tab 3 p. 3  
458 YB89/2.28/6.1
included in the definition of ‘offal’. He also suggested that it would be logical to extend the prohibition to products derived from these types of offal.\textsuperscript{459}

3.148 Mr Cockbill replied to Dr Woolfe on 8 March 1989. He agreed with Dr Woolfe that it was necessary to ensure that all the potential carriers of the ‘virus’ were covered by the Regulations. However, he added:

We need however to be wary of casting the net too wide in case we catch products for which there is no justification on restricting them. What I have in mind here is your suggestion that we should also cover all products produced from offals.\textsuperscript{460}

MAFF’s consideration of removing cull cows from the food chain

3.149 Meanwhile, on 21 March 1989, the Parliamentary Secretary, Mr Donald Thompson, asked Mr Lawrence to consider the possibility of a measure requiring that cull cows (and possibly old bulls, rams and ewes) be excluded from human consumption. He also asked for advice on whether legal powers existed to do this, and whether the ‘economic consequences’ (compensation) would be welcome. The minute from his Private Secretary said:

His reason for suggesting this is that these animals could be culled before they start to display the external symptoms of BSE which would, in other animals, mean that they were not sent for human consumption. Mr Thompson appreciates that this would be an ultra-precautionary measure.\textsuperscript{461}

3.150 In oral evidence Sir Donald said he had always been worried about subclinical animals whose brains might have been infected before clinical symptoms were exhibited. He was concerned that these cattle might have been entering the human food chain:

If the disease was subclinical, and the disease was subclinical, it seemed to me that the place it would gather was in the brain. So we had always – I had always – worried about subclinical animals whose brains were affected.\textsuperscript{462}

3.151 Mr Meldrum, in his evidence to the Inquiry, commented that Mr Thompson’s initial query was one of the ‘factors contributing to the gradual thinking process’ that led to the eventual SBO ban.\textsuperscript{463}

3.152 On 29 March 1989 Mr Lawrence minuted Mr Cruickshank in response to Mr Thompson’s query about cull cattle.\textsuperscript{464}

2. Presumably the logic behind the proposition is that older animals will have been incubating the disease for some years but will not have quite reached the stage where clinical signs become manifest. The counter argument is that

\begin{itemize}
\item 459 YB89/3.03/8.1–8.2
\item 460 YB89/3.08/2.1
\item 461 YB89/3.21/5.1
\item 462 T100 p. 12
\item 463 S184E Meldrum para. D13; T69 p. 75
\item 464 This minute was copied to Mr Meldrum, Mr Maslin and Mr Wilesmith (CVL), among others
\end{itemize}
they would have exhibited clinical disease prior to the point when they are culled, if disease were to be present in the animal. This is on the basis that the majority of clinical cases are occurring in the 3–5 age bracket and that a significant proportion of cull cows are over 5 years of age when slaughtered.465

3.153 He noted that the Southwood Working Party had considered subclinical cattle entering the food chain, and concluded that it was unlikely that BSE would have any implications for human health:

4. For the reasons described I see no human health reasons for taking measures which would keep cull cows and old bulls out of the food chain. In the case of scrapie in sheep the point has been made that a link between the disease and CJD has not been established. Neither is there any evidence that scrapie, which has been present for over 200 years in this country, has ever posed a human health risk. Again I see no grounds for taking the suggested measures in relation to cull rams or ewes.466

3.154 On 30 March 1989 Mr Meldrum minuted Mr Lawrence, saying:

I agree with the thrust of your minute of 29 March and that the Parliamentary Secretary should be advised that his suggestion should not be pursued.

In particular:

1. We can hardly now go farther than the Southwood recommendations.

2. If we were to go further we would have to consult Southwood and this would be presentationally extremely difficult.

3. To remove all cull ruminants would be seen as a gross over-reaction and would run counter to the line that we have taken previously, e.g. there is no known hazard from either scrapie or BSE to human health.467

3.155 Mr Meldrum also commented that Mr Andrews was concerned about some of the adverse publicity MAFF was receiving about the use of brains in human food and intended to raise this with Mr MacGregor. He added that Mr MacGregor might wish to reopen the issue and possibly seek a voluntary restraint on the use of brains and spinal cords in human food. He therefore advised Mr Lawrence that it might be wise to ‘knock the cull scheme on the head’ but ‘leave the door open fractionally on the end use of brains and spinal cords originating from adult cattle and sheep’.468 At this time, it does not appear that Mr Thompson was notified of Mr Meldrum’s and Mr Lawrence’s opinions on his suggestion.

3.156 At a meeting with Mr Thompson on 3 April 1989, representatives from Compassion in World Farming expressed concern that offal was being banned from baby food but not from meat pies and other meat products.469
Mr Meldrum requests a draft paper on cull cattle

3.157 On 5 April 1989 Mr Thompson and Mr Meldrum discussed the disposal of brains and spinal cords of adult cattle and sheep. Mr Meldrum noted that Mr Thompson’s concerns about cull animals related to the remote risk associated with the consumption of brain and spinal cord derived from cows, bulls, ewes and rams at the end of their working lives.

3.158 On 10 April 1989 Mr Meldrum asked Mr Lawrence to prepare a draft paper on the issue of removing cull cattle from the food chain, in consultation with Mr Bradley. Mr Bradley and Dr Watson received a copy of this minute. Mr Meldrum explained that Mr Thompson recognised that such a change of direction would be presentationally difficult and that it would almost certainly involve approaching Sir Richard Southwood for his view. Mr Meldrum added:

We shall need to assess the available evidence on the presence of the scrapie agent in various materials, to remind ourselves of the Southwood recommendations and to outline the presentational difficulties that would occur were we to change our line at this time. It would certainly indicate that we were far more concerned than we were at the time of the publication of the Southwood Report and would be presentationally extremely difficult. 470

3.159 On the same day Mr Lawrence put forward advice to Mr Thompson noting that the Southwood Working Party’s recommendation that clinically affected animals should be destroyed was made purely as a precautionary measure. He reiterated that there was no evidence that scrapie had posed a risk to human health and noted:

The legal position in relation to this proposal is that in the absence of any evidence that the cull animals are diseased or any reasonable suspicion that they may be diseased and, furthermore, in the absence of any evidence that if such animals were diseased that it could be transmitted to humans from the meat or offal obtained from them, any prohibition on the consumption of such material would be ultra vires. 471

3.160 The economic effects of excluding cull cows and ewes from the food chain were noted as being very significant. Mr Lawrence concluded:

7. Clearly, of paramount concern, is human health. In this context, for the reasons given, there would not appear to be human health grounds for taking such action. Southwood made no such recommendations and I can see no reason to take further measures. If we were to consider doing so we would presumably need to consult Sir Richard again, and that would be presentationally very difficult. In view of this and the legal, economic and practical problems which would arise, the firm advice is not to take this any further. However, if the Parliamentary Secretary is still concerned about this he may wish to discuss the whole issue with officials. 472

3.161 See paragraphs 3.204–3.206 for an account of the submission that eventually went forward to Mr Thompson in May 1989.

470 YB89/4.10/2.1
471 YB89/4.10/1.1–1.2
472 YB89/4.10/1.1–1.2
Mr Bradley’s note to Dr William Watson on ‘BSE – Disposal of brains and spinal cords from aged-cull cattle and sheep’

3.162 On 12 April 1989 Mr Bradley sent a note to Dr Watson in response to Mr Meldrum’s minute of 10 April 1989. He made the following point:

1. BSE is a notifiable disease and in theory no clinically affected animals should enter abattoirs. Brain and cord will however be infected pre-clinically though not to such a high titre as in clinically affected animals. It is even more important to recognise that spleen and lymphoid tissues and gut will be infected in the pre-clinical stage. Why is there no concern about this?

3.163 He noted from personal experience the problem of carcasses being split in a manner that caused serious contamination of the meat from spinal cords and risks to abattoir workers of exposure to the BSE agent. He also said:

In sheep natural scrapie agent is detectable in gut and spleen at 14 months and brain at 25 (Hadlow 1983). Richard Kimberlin may think less. Based on this information we can expect lymphoreticular infection in cattle during the second year of life and brain soon after. It can therefore be anticipated that even in infected BSE animals destined to get clinical disease at say 4 years infectivity will certainly be in lymphoreticular tissue and possibly also in brain and cord even at normal slaughter age.

3.164 Mr Bradley discussed scrapie, and noted that ‘since 1985 BSE infected material via rendered products may have been exposed to sheep . . . If BSE is a danger to humans, however unlikely, we must assume 1989 scrapie (or rather an unknown proportion of it) is also a potential risk.’ He then continued:

7. In dealing with the problems presented in the CVO’s minute (and there is clearly some earlier information which is not presented) we are required to make some form of risk assessment. Two points arise:–

(a) Inherent risk in known (scrapie) or assumed (BSE) infected tissues; and

(b) Cross contamination of otherwise ‘clean’ or low risk tissues by standard abattoir and butchers techniques.

It is quite clear that in an infected animal in the late pre-clinical phase (ie that which concerns the Parliamentary Secretary) that lymphoreticular tissues, certain other tissues including some endocrines and gut plus CNS are highly likely to be infected to a high titre of significance to humans if the agent is transmissible to them. Muscle however is likely to be safe except if it is cross-contaminated.

It is a big step to take to try to eliminate certain items from the food chain. However it would be relatively simple to reduce risks considerably by sending for rendering or incinerating specified easily identified, organs and ensuring the necessary training and adjusted slaughter and butchering procedures to reduce cross-contamination. Spleen, uteri (assuming a pregnancy and fetal membrane infection), all endocrines, heads (unopened
but after removal of muscular tissue) and spinal cord from sheep over 1 year
and cattle over 2½ years could be designated unsaleable for human
consumption.

I specifically recall advising Dr Martin on the infectivity of spleen and
lymphoid tissue and this is reported in paragraph 5.3.5 of Professor
Southwood’s Report. The report states the risks as currently perceived do not
justify even labelling of food containing brain and spleen so why has the
concern increased since the publication of the report only a few weeks ago?

3.165 Mr Bradley discussed the problem of cross-contamination of ‘clean’
carcasses with potentially infected material. He concluded:

9. Scientifically, there is no doubt a risk that scrapie/BSE agent is present in
abattoirs and butchers. The risk factors to humans are presumed but not
actually known to be low. We either must stick to our guns on the basis
scrapie has been safe for 200 years (for humans) and ‘forget’ sheep and deal
with cattle on the same basis or adopt some precautionary measures. This
might be done on prohibiting certain specified organs to be used for human
food but by ignoring potential cross-contamination. Extreme measures
might be possible but are likely to be very costly, impractical and result in
over-reaction. Another technique would be to give information and guidance
to the public but let them (and the individuals) make their own judgement.
On balance there would not be much less to elimination (on an age basis) of
specified tissues from adult cattle alone (ie those Mr Thompson is concerned
with). If brain and spinal cord alone were identified it would be illogical to
not also include spleen (and placenta).

10. It would seem sensible that the vertebral column (including perhaps
because of its proximity the pelvis) is not permitted to be used for human
food (eg bone broth/gelatin) since it is highly likely to be seriously
contaminated in an infected animal exposed in calfhood. You might consider
not permitting recovery of meat scraps from vertebral column. 473

3.166 We have set out this note in detail, for much of it was highly relevant to issues
which were to arise later. It was a manuscript note and Mr Bradley did not know
what Mr Watson made of it. 474 Mr Lawrence could not remember whether he saw
the note or discussed its contents with Mr Bradley. 475

MAFF contacts DH for advice on which types of high-risk
offal to ban in baby foods

3.167 On 28 March 1989 Mr Cockbill had sought advice from Dr Pickles on high-
risk types of offal which might be subject to the proposed baby food regulations. He
also commented that opinions were already being expressed that a similar offal ban
should be introduced for meat products consumed by adults and older children. 476
3.168 Dr Pickles responded to Mr Cockbill’s request for information on 13 April after seeking advice from Dr Richard Kimberlin (an independent consultant on transmissible spongiform encephalopathies (TSEs), who had been Director of the NPU. 477 She noted that she was not persuaded that this was a matter in which the CMO should be involved. Dr Pickles recommended that while the spleen, intestines, spinal cord and thymus should be subject to the Regulations, pancreas and tailmeat should not be included. She considered this meat safe and not susceptible to the BSE agent, although she acknowledged that it should be recognised that the level of suspicion about these types of offal was higher than other tissue.

3.169 In relation to the offal ban involving baby food, but not other food, Dr Pickles said:

The justification for exclusion of these tissues from baby food and not all food is based on uncertain data. There is suspicion that the young of a species are more susceptible to spongiform encephalopathies than adults, but it is difficult to separate out the confounding factors of differential relative exposure and life expectancy from true susceptibility . . . I think you have no alternative but to restrict the regulations to food promoted for use by babies. If we were persuaded that the risk was appreciable, then more rigorous steps would have been taken to promulgate advice against feeding of offal to babies. Whilst we are being low key on this, extension of regulations – say to label other offal-containing food as unsuitable for babies – might be seen as overkill. Nevertheless, I would favour full disclosure about offal and thymus content on all food and gentle persuasion to food manufacturers to look to other ingredients. So if public pressure, or new scientific evidence, means this position needs to be modified in future, manufacturers are well prepared. 478

3.170 On 18 April 1989 Miss C Bowles (Private Secretary to Mr Thompson, 1988–89) minuted Mr Lawrence to say that Mr Thompson wanted advice on the removal of the brain and certain types of offal of cull cows from the human food chain, not the whole animal. 479 MAFF officials had already persuaded him to abandon the idea of the latter in Mr Lawrence’s submission of 10 April. 480

3.171 On 20 April 1989 Mr Cockbill sent a minute to Mr Lawrence giving detailed information which he had acquired as to the extent to which types of bovine offal were used in foodstuffs. 481 He explained why this information had been obtained:

When we were instructed following acceptance of the Southwood Report to prepare regulations prohibiting the use of offals in baby foods it was evident to us that it was a very short side step from that position to questions being asked about the use of offals in meat products designed for the general population but which could well be consumed by young children or adolescents. We particularly recognise such products as burgers and sausages which are both currently controlled by the Meat Products and Spreadable Fish Products Regulations 1984. Our thoughts along these lines were in fact echoed by some press articles which have suggested that if it is

477 S115 Pickles para. 45.4  
478 YB89/4.13/2.1–2.3  
479 YB89/4.18/1.1  
480 YB89/4.10/1.1; T100 p. 70  
481 YB89/4.20/4.1–4.2
necessary to ban offals in baby foods it should perhaps be necessary to ban offals in all meat products. In the light of that it was clear to us that when the proposed regulations prohibiting offals in baby foods were circulated for comment, as they have to be under the terms of the Food Act, we needed to be prepared to answer questions about similar action against meat products generally . . .

We are not seeking to amend the Meat Products Regulations but as indicated above it is necessary to forearm ourselves against reactions to the baby foods proposal. I would certainly agree that if as a result of the consultation on the baby foods proposals Ministers were forced to consider the question of offals in meat products generally we would need to go back both to the Department of Health and to Prof. Sir Richard Southwood for views before considering proceeding along that particular track.\(^{482}\)

The Committee on the Microbiological Safety of Food (the Richmond Committee)

3.172 Health and Agriculture Ministers set up the Committee on the Microbiological Safety of Food, under the chairmanship of Sir Mark Henry Richmond\(^{483}\) (hereafter referred to as the Richmond Committee), on 21 February 1989. The Committee’s terms of reference were:

To advise the Secretary of State for Health, the Minister of Agriculture, Fisheries and Food and the Secretaries of State for Wales, Scotland and Northern Ireland, on matters remitted to it by Ministers relating to the microbiological safety of food and on such matters as it considers need investigation.\(^{484}\)

3.173 The joint secretaries to the Committee were Mr Chris J Ryder (of MAFF’s Food Safety, Fertilisers and Feedingstuffs Standards Division) and Dr Eileen Rubery, PMO at DH.

3.174 On 14 April 1989 Dr Pickles raised with Dr Rubery the question of whether the Richmond Committee should be invited to consider BSE. She enclosed a draft paper for the Committee, which included a number of questions relating to food ‘that might be regarded as still being unresolved’.\(^{485}\)

3.175 On the same day Dr Rubery told the Richmond Committee Shadow Group that Dr Pickles felt that there were some loose ends on BSE that the Richmond Committee ought to follow up.\(^{486}\) This suggestion was rejected by Mrs Attridge, Mr Crawford and Mr George Thomson (Department for Agriculture and Fisheries for Scotland – DAFS), who considered that the idea was ‘pointless so soon after the Southwood Report and likely to undermine for no good reason the assurances Southwood gave to the public.’\(^{487}\) Mr Cruickshank subsequently endorsed this view.\(^{488}\)
3.176 Shortly after 14 April, Dr Rubery drafted a letter to Sir Mark Richmond which stated that there was no substantial new information since the Southwood Report, but that:

There are clearly a number of unresolved questions on which more information is needed before any sensible judgement can be made.489

3.177 These were the questions that had been identified by Dr Pickles. Dr Rubery had set them out as follows:

1. How much evasion of the slaughter order is taking place (compensation is only 50%) and consequently how many clinically affected animals are still being eaten?

2. Should CMO’s recommendation that offal not be fed to babies be promulgated more widely?

3. Should the ban of offal in baby food be extended to include (i) pancreas (sweetbread), oxtail (rich in peripheral nerves) and possibly even liver and kidney and/or (ii) to all processed food for human use or even (iii) to a total ban on sale for human consumption of some beef offal?

4. Should we be more cautious about scrapie in sheep, particularly since we cannot be sure that the agent has not increased in virulence in recent years, hence leading to BSE?

5. Since the ruminant feed ban came into effect, even more potentially BSE- and scrapie-infected material is being fed to poultry and pigs. Should this worry us? (poultry have been shown able to carry the infection of TME [Transmissible Mink Encephalopathy]).490

3.178 The draft letter closed with the suggestion that consideration of these issues should await the results of further research.491 This letter was not sent to Sir Mark Richmond, as Mr Chris J Ryder objected to it.492

3.179 Later, on 30 April 1989, Sir Donald Acheson minuted Dr Diana Walford, a Senior PMO in DH:

I understand that various issues relating to BSE are being proposed for discussion at Richmond. My view is that unless there are very good reasons, BSE should not be discussed at that Committee so soon after the Southwood Report. I would wish personally to clear any question which was felt to be sufficiently important to justify re-opening the issue at this stage.493

3.180 Sir Donald Acheson discussed this decision in his written evidence.

I advised that as the Southwood Report had been published only three months previously, it was premature to reopen the matter unless there were
very good reasons (ie new developments) to do so. In the absence of those it would imply a lack of confidence in the Working Party’s conclusions if the Richmond Committee were to consider BSE. This was not, in my view, warranted.\footnote{S251 Acheson para. 68}

\subsection*{3.181} The Richmond Committee accepted Mr Ryder’s suggestion that, in the absence of further data, consideration of BSE was inappropriate.\footnote{YB89/4.28/6.2}

### Circulation of draft baby food regulations

\subsection*{3.182} On 24 April 1989 Miss Alison Reeves (Food Standards Division, MAFF) circulated the proposed draft regulations on baby foods to colleagues and to officials in DH and in health departments in Scotland, Wales and Northern Ireland. The draft regulations included a draft covering minute and submission to the Parliamentary Secretary, Mr Richard Ryder (now Lord Ryder), on the need for the regulations. The draft covering minute included the following paragraph:

> Ministers asked officials to prepare draft regulations following the announcement of their response to the \textit{Southwood Report} on BSE . . . It is proposed that the number of different types of offal to be banned should be greater than that identified by the Southwood Working Party in order to include the organs which are considered “high risk” in terms of the presence of BSE or scrapie agent.\footnote{YB89/4.24/9.8}

\subsection*{3.183} The schedule to the draft regulations noted the types of offal to be banned: brains, feet, large and small intestines, lungs, oesophagus, rectum, spinal cord, spleen, stomach, testicles, thymus and udder.\footnote{YB89/4.24/9.6}

\subsection*{3.184} On 25 April Dr Pickles contacted Miss Reeves regarding the above submission. She noted that:

> In fact, you are not proposing to ban more offal than those suggested by Southwood, and any suggestion that in some way his recommendations needed later qualification would be unfortunate.\footnote{YB89/4.25/7.1}

\subsection*{3.185} On the same day Dr Pickles also minuted Mr Tait (Health Services Division, HS4, DH) commenting as follows:

> I had been consulted direct by MAFF on the content of the regulations and I am content. They are consistent with the commitment given at the time the \textit{Southwood Report} was released. I do not believe we could justify any extension to the prohibition.\footnote{YB89/4.25/6.1}

\subsection*{3.186} In evidence to the Inquiry Dr Pickles described her position, and what she regarded to be the position of DH, with regard to the Southwood Working Party’s advice on offal. She said, ‘. . . we set up an expert working party and we accepted
and welcomed their views500 and ‘the general principle throughout [was] that we should follow the advice from our independent experts’.501

Further consideration by MAFF as to the implications of the baby food recommendation

3.187 Circulation of the draft baby food regulations led to further consideration by MAFF as to their wider implications. On 5 May 1989 Mr Bradley sent a note to Dr Watson expressing his concerns about the proposed baby food legislation. The note opened with the comment: ‘For info – and to ensure that we do not get the blame for legislation that can be criticised on a scientific basis.’502

3.188 He continued:

An important omission is lymph node. This was not identified specifically in previous regulations but is a high-risk tissue if BSE follows the line of scrapie though titres are lower than for terminal hind brain. In regard to baby food the decision has apparently been made that it is excluded from use because ‘it is not normally used for human consumption.’ This may be true for baby food as currently prepared in the UK but not necessarily for imported food where “offal” may be variously interpreted and perhaps lymph nodes may be eaten. Even in this country in adult food prepared from bovine carcasses such items may be found in sausages and meat pies unless positive steps are taken to remove them.

3.189 He concluded that:

Any decision on baby food would have repercussions for adult food bans and pet foods – matters Alan Lawrence is dealing with.503

3.190 It is convenient at this point to turn to developments on pet foods.

Actions taken by pet food manufacturers and their impact

3.191 The pet food industry first became aware of BSE in mid-1987.504 In the months that followed, the UK’s larger manufacturers of pet foods, such as Pedigree Pet Foods and Spillers, took a number of steps in response to the perceived risk posed by BSE.

3.192 In July 1988 Spillers stopped using bovine spleen in its products and replaced it with liver. At the same time, it changed its specification for ground bone to exclude the use of bovine heads and backbones with the intention of eliminating brains and spinal cord.505 In October 1988 Spillers stopped using meat and bone meal (MBM) which originated in the UK and replaced it with poultry meal, imported pork meat meal and prairie meal (derived from maize).506
3.193 In July 1988 Pedigree Pet Foods commissioned Dr Kimberlin as an independent consultant to advise them on BSE.\textsuperscript{507} In particular, Dr Kimberlin was asked to review the state of scientific knowledge, advise on whether Pedigree’s raw materials did or might carry the BSE agent, consider what level of risk attached to Pedigree’s current recipes, and be available for consultation on any other aspect of BSE.\textsuperscript{508}

3.194 In February 1989 the Report of the Southwood Working Party stated that domestic pets could be susceptible to BSE: ‘were the agent to reach them in an adequate dose by an appropriate route’. However, the Report also suggested that pets such as cats and dogs might not be susceptible to oral infection and that the high temperatures used in the canning process might have destroyed any infectious agent present.\textsuperscript{509}

3.195 In early 1989 Dr Kimberlin submitted his advice to Pedigree Pet Foods. In essence this advice was that certain bovine raw materials which Pedigree Pet Foods were then using did carry a potential risk, which could be avoided only if their use was discontinued.\textsuperscript{510} In evidence to the Inquiry, Dr John Malin (Pedigree Masterfoods) explained that Dr Kimberlin was unable to be definitive, but nonetheless recommended that a limited number of risk materials which they were using should no longer be included in their raw material purchasing programme and recipes.\textsuperscript{511}

3.196 By March 1989 MAFF was aware that most companies manufacturing pet food were ‘avoiding UK cattle nerve tissue, spleen and brains’ in favour of sheep and in some cases poultry meat.\textsuperscript{512} On 13 April 1989 Mr Donald Thompson met Mr John Garnett, Head of Food Policy Division, MAFF, 1986–90, to discuss BSE in pet food. At the meeting Mr Garnett\textsuperscript{513} explained that Pedigree Pet Foods had commissioned research on BSE and were reviewing and collating research from other sources. He also advised the Parliamentary Secretary that Pedigree Pet Foods were prepared to let MAFF have the results of their research.\textsuperscript{514}

3.197 On 25 April 1989 Mr Garnett minuted Mr Meldrum that he was arranging a meeting with Pedigree Pet Foods for the purpose of discussing their research on BSE in pet foods with interested parties in MAFF.\textsuperscript{515} In a statement to the Inquiry, Mr Garnett said:

5.2 My minute of 25 April 1989 records that arrangements were under way to settle on a suitable date for Dr Kimberlin and others to meet MAFF representatives to discuss the outcome of his research. I remember being contacted by the PFMA [Pet Food Manufacturers’ Association] a week or so later (I cannot recall whether it was by their Secretary or by the then President) with the news that Dr Kimberlin had reached some conclusions from his work which were potentially valuable beyond the petfoods context and that he felt we should try to fix the meeting sooner rather than later. I was asked if I could arrange a meeting between Dr Kimberlin and the MAFF

\textsuperscript{507} S163 Malin para. 3
\textsuperscript{508} S163 Malin para. 4
\textsuperscript{509} IBD1 tab 2 p. 13
\textsuperscript{510} M49 tab 6
\textsuperscript{511} S163 Malin para. 5
\textsuperscript{512} YB89/3.13/6.1
\textsuperscript{513} Later Mr Garnett became Head of Financial Management Division (August 1990–March 1991) and then Director of Resource Management Strategy (March 1991–March 1996) within MAFF
\textsuperscript{514} YB89/4.14/1.1
\textsuperscript{515} YB89/4.25/1.1
scientists and experts as soon as possible. This led directly to the meeting on 16 May 1989.\footnote{516}

**Meetings between MAFF, Pedigree Pet Foods and Dr Kimberlin on 16 May 1989**

**3.198** On 16 May 1989 Mr Meldrum, Mrs E Owen (Food Standards Division, MAFF), Mr Garnett and Dr Woolfe had a meeting with Dr Kimberlin and Mr Donald Orm of Pedigree Pet Foods.\footnote{517} After this a further meeting was held between Mr Meldrum, Dr Kimberlin and Mr Orm. Mr Meldrum states that at this second meeting Dr Kimberlin gave him copies in confidence of the five papers he had prepared for Pedigree Pet Foods.\footnote{518}

**3.199** The first meeting was essentially a presentation by Pedigree Pet Foods of a substantial amount of work which had been carried out to try to assess the risk of using, in pet food, animal protein which might be infected by BSE. In her note of the meeting, Mrs Owen did not attempt to summarise all that had taken place at the meeting; instead she referred to the papers written by Dr Kimberlin as being a full account of proceedings.\footnote{519} Mrs Owen’s minute noted:

> From all this there would seem to be no great cause for concern about the way Pedigree are working to protect pet food. From the information presented there would appear to be more to worry about in the potential risk for the ultimate consumer particularly from MRM [mechanically recovered meat] and spinal cord used in some meat products. My first thoughts were that it would seem prudent to do a similar risk assessment exercise for human food. This would undoubtedly involve FSc [Food Science], Meat Group, Standards and Food Safety Divisions.\footnote{520}

**3.200** Mr Meldrum made some handwritten notes of his discussion with Dr Kimberlin.\footnote{521} Detailed background information was provided on scrapie and, in particular, on the work of Dr William Hadlow on the infectivity of tissues from cases of natural scrapie. Dr Kimberlin then described the work that he had done on the quantitative risk assessment for particular bovine tissues for BSE, placing brain and spinal cord in the highest risk category and ileum, lymph nodes, colon, spleen and tonsil in the second category as demonstrated in the table below.\footnote{522}
Table 3.1: Natural scrapie in sheep and goats: summary by titre categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Titre Range (Log_{10}/30 mg)</th>
<th>Tissues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sheep</td>
<td>Goats</td>
</tr>
<tr>
<td>I</td>
<td>3.8–4.1</td>
<td>4.6–5.0</td>
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<tr>
<td>II</td>
<td>2.7–3.2</td>
<td>3.0–3.6</td>
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<tr>
<td>III</td>
<td>0.8–1.6</td>
<td>1.8–3.4</td>
</tr>
<tr>
<td>IV</td>
<td>&lt;0.8</td>
<td>&lt;0.8</td>
</tr>
</tbody>
</table>

3.201 Dr Kimberlin also discussed other matters such as the importance of the route of exposure and the species barrier. Mr Meldrum said in his evidence that he found the meeting invaluable in the discussions that he had within MAFF and with Ministers on the proposed SBO ban. Indeed, he described his meeting with Dr Kimberlin as ‘critical’ because of the very detailed discussion about the categorisation of tissues in scrapie-affected sheep. It was clear to him that Dr Kimberlin thought it was a good idea to keep the more infective types of offal out of the human food chain.

3.202 On 22 May 1989 Dr Woolfe forwarded Mrs Owen’s minute of the meeting with Pedigree to Dr William Denner (Head of Food Science Division II, 1989–92, MAFF) with Mrs Owen’s minute attached. Having considered the work of Dr Kimberlin, Dr Woolfe commented:

3. I have thought very hard about whether the Branch should carry out a similar exercise with meat and meat products for human foods. On balance I do not think we should undertake it, but a final decision has not been taken and you may wish to discuss this further. The reason for my reluctance is that I would have to use the same data as Dr Kimberlin, who has used as his basis, infectivity titres of different organs from sheep and goats with scrapie. The infectivity levels were determined by intracerebral injection into mice. The different organs can be placed in four categories of decreasing infectivity. For the purposes of human and pet foods only two and possibly three categories are important. Category I consists of brain and spinal cord and has the highest titres. Category II contains spleen and lymph nodes with an order of magnitude of titres lower. Category IV contains all the remaining organs, which had levels below the level of detection, and include heart, liver, kidney, skeletal muscle etc. In suggesting infectivity levels for different organs from preclinical and clinical animals for quantitative assessment, Dr Kimberlin has had to make intelligent guesses at the fact that even though the assay, which has an interspecies barrier, has not detected the agent, it might still be present in Category IV organs. In fact when all the effects are built in to figures, the infectivity levels are not insignificant in this Category.

4. Thus if one discounts the consumption of Category I organs, the determination of exposure of humans to the agent will therefore rest on
consumption of Category IV parts of the carcasses. In the case of Pedigree, they have a heat process which can reduce levels of infectivity. But most human consumption of meat and meat products involves a cooking process which would not give any deactivation at all. Therefore, there would be no way of reducing such a calculated exposure of BSE agent to the public without recommending certain restrictions to Ministers. However, if challenged, the basis of our conclusions would still be intelligent guesswork rather than hard facts and would be difficult to substantiate.

5. I think that close contact should be maintained with Dr Kimberlin to see how his assessment is progressing and what conclusions can be drawn from the exercise. On the other hand, I think that the Ministry should be taking certain steps in the short term to allay public fears and the media interest, which has intensified the past week. These steps should ensure that spinal cord, brains and spleen should not be entering the human food chain either directly or through MRM, and will be given an adequate heat process if sold for animal feed.

Voluntary offal ban by major pet food manufacturers

3.203 We mentioned at paragraph 3.192 the steps taken by Spillers in 1988. In May 1989, following receipt of advice from Dr Kimberlin, Pedigree Pet Foods decided to remove certain bovine materials from its pet foods. In particular, it ceased purchasing from UK sources both spleen and those parts of the vertebrae which might include spinal cord. Dr John Malin (Head of Research and Development, Pedigree Masterfoods) told the Inquiry:

The materials did not represent a major part of Pedigree’s raw material supply and could be relatively easily and inexpensively replaced. Pedigree decided in May 1989 no longer to include them in its recipes, and told the [Pet Food Manufacturers Association] and MAFF of its decision.

Mr Lawrence’s submission on cull cattle

3.204 On 22 May 1989, after consultations within MAFF, Mr Lawrence sent to Mr Thompson the submission Mr Meldrum had asked him to prepare, but now limited to the disposal of brains and certain types of offal of all cull cows at the end of their working life. By way of background, Mr Lawrence explained that if the agent was present in cull cows with pre-clinical BSE it would most likely be found in the brain, spinal cord, spleen, lymph nodes and intestines. The submission continued: ‘However the agent if present in such animals would be at a much lower level than that found in animals suffering from the disease.’

3.205 The submission went on to explain that brain, spinal cord, spleen and intestines were prohibited from use in uncooked meat products, but could be used in cooked meat products under the generic title ‘offal’ on an ingredients list. However, if sold in a butcher’s shop such types of offal would need to be sold under their individual names. Mr Lawrence stated that the Bacon and Meat
Manufacturers’ Association (BMMA), whose members produced about 80 per cent of the meat products sold in the UK, had advised MAFF informally that brain, spleen, spinal cord and thymus were not actually used in meat products. Some intestines were used for sausage casings but the mucosal surface, including lymphatic tissue (which might harbour the agent), was removed before use and ‘such materials, therefore, must be considered a very low risk indeed’. 530

3.206 The submission noted that a ban on the sale or use of such offal would not cause any problems to the trade but, unless any new information on BSE came out of the research projects being undertaken, there would not appear to be any reason to take further action at this stage, ‘particularly since Southwood did not recommend it’. 531 Mr Lawrence cited Southwood’s conclusion that the risk to humans from BSE as presently perceived would not justify a labelling requirement for products containing brain and spleen. He advised that to take action would probably invite criticism as to why it was not taken earlier. Rather than reassure, it might alarm the public. Mr Lawrence continued:

10. Before any action were taken it would also be logical to seek the views of Sir Richard Southwood. The Department of Health would also need to be consulted. This may open up the door for further debate about scrapie and why similar measures are not being taken in relation to sheep and goats as well. The general public may also latch onto this aspect . . .

Conclusion

12. It would seem that action to prohibit the use of certain offals as uncooked or cooked meat products, either by statute or through a voluntary agreement with the meat trade, would have little impact on the industry. Even so, the Parliamentary Secretary will wish to consider whether action should be taken in the light of the fact that Southwood did not make such a recommendation and would need to be consulted about it, as would DoH; the prospect that, rather than reassure, it might alarm the public and re-open questions about the consumption of beef in general and, indeed, sheep meat and offal as well. The trade implications would also need to be considered very carefully. However, one positive step forward might be to ask the BMMA whether they intend to take any action in the light of the recent media attention on this issue. It is clearly in their interests to at least put the record straight, if their members do not in fact use these offals in the preparation of meat products. 532

Proposed consultation arrangements for the draft baby food regulations

3.207 On 23 May 1989 Mr Cockbill put up to Mr Andrews a covering minute and a submission enclosing consultation proposals for the intended Baby Food (Prohibited Offals) Regulations to be forwarded, if Mr Andrews approved, to the Parliamentary Secretary, Mr Richard Ryder. 533
3.208 The submission sought approval for the draft regulations to be circulated for public comment as required by section 118(6) of the Food Act 1984, before being submitted to Parliament. The Regulations would make it an offence to use or permit to be used any prohibited offal in baby food products or to sell baby food containing any prohibited offal. Prohibited offal would comprise the brain, spinal cord, spleen, thymus, feet, oesophagus, intestines, stomach, testicles, udder, lungs or rectum or any product deriving from these products. Mr Cockbill proposed that for ease of enforcement and consistency with other regulations under the Food Act, the list of prohibited offal be made wider than those described in the Southwood Report.534

3.209 The covering minute to the Parliamentary Secretary explained:

2. . . . All the organs considered ‘high risk’ in terms of the likely presence of BSE agent in sub-clinical infection (based on the analogy of scrapie) have been included in the ban, as recommended by the Southwood Report. Other offal listed has been included for the sake of consistency with existing regulations specifying offal. For this same reason, the draft regulations would control the use of mammalian offal and not just ruminant offal as addressed by the Southwood Working Party.

3. The proposals are unlikely to be controversial as offal (other than heart, kidney and liver which are not being banned) is not used in the manufacture of baby foods. However, the proposals are likely to attract a lot of public interest following the extensive media coverage given to this subject at the end of February and may stimulate suggestions that the ban should be extended to all meat products. We shall of course report the results of the public consultation to the Parliamentary Secretary.535

3.210 In his minute to Mr Andrews, Mr Cockbill reported:

I have already had some informal discussions with colleagues in Animal Health Division about possible reactions should the public consultation exercise result in suggestions for extension of the prohibition to all meat products. We have agreed that we must endeavour to ensure that, in the absence of any further scientific evidence which the public consultation exercise would be unlikely to reveal, we do not by any actions appear to cast doubt upon the conclusions of the Southwood Report.536

3.211 On 25 May 1989 Mr Cruickshank minuted Mr Andrews. He had received a copy of a newsletter of the BMMA dated 18 May 1989 which indicated that the Association was advising its members to exclude bovine pancreas, thymus, brain, intestine, spinal cord and spleen from their products. He commented on Mr Cockbill’s minute of 23 May:

I agree with the advice in Mr Cockbill’s minute of 23 May that it would be best not to go beyond the recommendations of the Southwood Report. If we were to depart from the principle of basing our action on the best available scientific advice, it would be difficult to draw a line thereafter in the face of further pressures from the media.
If, however, Ministers are minded to take tougher action than Southwood recommended as a means of reassuring the public, it would appear to be possible to do so . . . without inflicting significant damage on the meat products industry.537

3.212 On 26 May 1989 Mr Andrews forwarded Mr Cockbill’s submission of 23 May to Mr MacGregor.538 In his covering minute he advised:

If we consult on the basis proposed we have to expect pressure to extend the prohibition to the use of offals in human foodstuffs generally, and not just baby food. If we were to respond to such pressure we should of course be going beyond what Southwood said and opening ourselves to possible further pressures not based upon the scientific advice. On the other hand, if we were to judge that a concession to the pressure will be unavoidable it would be preferable to extend the scope of the consultation document rather than be forced to move later.539

3.213 Mr Andrews advised that Sir Richard Southwood and Sir Donald Acheson would need to be consulted before any decision on extending the ban on types of offal in baby foods was taken. He added that he had discussed the matter with Mr Meldrum, who would be putting forward his technical advice on the implications of going further.540

3.214 On the same day Mr Meldrum sent to Mr MacGregor the minute that Mr Andrews had told him to expect. His minute stated:

4. I am becoming increasingly concerned that Ministers are being forced to consider a ban on the use for human consumption of certain offals, such as brain, spinal cord and spleens, derived from both cattle and sheep, even though there is no scientific evidence to support such action. The argument for prohibiting the use of such material derived from adult cattle is more persuasive since we are dealing with a new condition in cattle and cannot be certain that the agent could not jump yet another species barrier and affect man. On occasions the agent will be present in brain of apparently healthy cattle that are in the incubative stage and the agent is also likely to be present on occasion in other materials such as spleen, lymph glands and nerves.

5. If the Minister feels we must do more than is suggested in the submission I believe we should consult Professor Southwood at the earliest opportunity. It could be argued that the brain, spinal cord and spleen of adult cattle should be removed from the human food chain for the reasons expressed above but to go further and extend this to sheep would re-open the whole of the scrapie issue and would signal that we were concerned about the human health aspects of that disease. In passing it should be noted that to remove the spinal cord from sheep carcass would present severe practical difficulties since few are split at the time of slaughter.

6. If we were to go further than Professor Southwood recommended it would create presentational difficulties and would demonstrate our willingness to

537 YB89/5.25/1.1
538 Copies were sent to Mr Cockbill, Mrs Attridge, Mr Meldrum, Mr Cruickshank, Mr Lowson and Mr Denner
539 YB89/5.26/1.1
540 YB89/5.26/1.2
move even further should there be sufficient public pressure to do so. Therefore we need to come to a firm decision now as to what materials should be banned for human consumption and thereafter hold the line until there is new scientific evidence leading to a further review.\textsuperscript{541}

\section*{External pressures}

3.215 During mid-to late May 1989 the issue of banning types of offal from human food was discussed in the House of Commons and in the press, and various groups lobbied the Government to introduce such a ban. An account of these external pressures is given in this section.

\subsection*{The House of Commons debates BSE}

3.216 On 18 May 1989 the House of Commons debated the issue of BSE for the first time.\textsuperscript{542} The debate was led by the then junior Opposition spokesman, Mr Ron Davies, who presented his concerns about the Government’s handling of the disease. In his opening remarks he said, ‘The fact that this is the first debate on the subject to be held in the House shows the complacency with which the Government are viewing the problem.’\textsuperscript{543} Later on in the debate, Mr Davies said:

\begin{quote}
By consistently refusing (my) demands for the banning of the sale of all those organs that are known to carry the disease, the Minister is ensuring that our citizens go on eating products which are infected with a potentially fatal contagion.\textsuperscript{544}
\end{quote}

\subsection*{Articles in the press}


3.218 The first, entitled ‘Meat from diseased cattle may be on sale to public’, described senior pathologists and veterinary surgeons accusing the Government of not doing enough to prevent BSE-infected cattle being processed. It claimed that these critics, who included Dr Helen Grant and Dr Hugh Fraser, both neuropathologists, had changed their own eating habits because of the possible health risk.

3.219 Dr Francis Anthony (Chairman, British Veterinary Association’s Farm Animal Committee) was quoted as saying:

\begin{quote}
I think it would go a long way to alleviating the present concern if the Government were to impose a general ban on the use of these organs in food manufacturing.\textsuperscript{545}
\end{quote}
3.220 The second article was entitled, ‘Are we mad to eat sausages?’, and included the following:

Sausages and meat pies are now so great a health risk that no one would eat them if they knew what they contained, according to some health campaigners. Their arguments have force for brain and spinal tissue from cows dying of a horrifying and always fatal brain disease are included in many meat products. And it is possible that the disease can be transmitted from animals to humans through food. 546

3.221 It quoted the Southwood Working Party’s Report, and its conclusion that it was ‘most unlikely that BSE will have any implications for human health. Nevertheless if our assessments of these likelihoods are incorrect, the implications would be extremely serious.’ The article commented that ‘Whitehall watchers see these carefully crafted words as an attempt to conceal real fear that BSE will transmit to humans.’ 547

3.222 On 20 May 1989 a leading article in The Times noted under the headline ‘Sausage Sinister’:

Leading experts in animal disease have admitted to changing their habits at mealtimes. They have stopped eating sausages and pies that may contain the brains, spleens, lymph nodes and spinal cords of cows.

Certain products in baby food have also been banned. The use of some animal feeds has been prohibited in Britain as dangerous, though they may still be exported.

The Ministry of Agriculture says there is no further cause for the public to worry about the hundreds of cattle dying from bovine spongiform encephalopathy – a mysterious disease about which almost nothing is known.

No one knows whether it could cause disease in humans. Two human diseases, however, seem to follow a similar pattern. The risk is not inconceivable and, for the price of keeping a small part of the cow off the plate, does not seem worth taking. If BSE does affect humans it is likely to be as maddening and fatal to them as it invariably is to cows and sheep.

The Government’s defence is that it commissioned a report from Sir Richard Southwood, Professor of Zoology at Oxford University, and has scrupulously followed his recommendations. He quantified the risk to humans as ‘remote’, an estimate with which other authorities do not disagree.

But the Ministry of Agriculture appears to have reacted as if that absolved it from further anxiety. If the Government does not wish to ban the use in food of potentially infected organs, butchers and other food retailers ought to see the benefits in doing so of their own accord. 548

546 YB89/5.19/4.1–4.2
547 YB89/5.19/4.2
548 YB89/5.20/1.1
Mr Foxcroft’s letter to Meldrum

3.223 On 22 May 1989 Mr Paul Foxcroft (Sales Director of Prosper De Mulder Ltd, a major rendering company) wrote to Mr Meldrum on the implications for renderers of BSE-contaminated material. In the course of his letter he commented:

. . . it is obvious to anyone that undiagnosed/sub-clinical BSE animals are slaughtered normally, not to mention Scrapie infected sheep! . . .

It appears to (me) that inevitably there will have to be a restriction on the use of ruminant brain and spinal cord materials in human food products and I repeat our suggestions of last year that these materials should be diverted at the point of slaughter from the by-product cycle.549

DH meets Geoffrey Cannon

3.224 On 22 May 1989 a meeting took place between Mr Freeman, Parliamentary Under-Secretary of State for Health, and Mr Geoffrey Cannon, a journalist who was Secretary to the Guild of Food Writers at that time, to discuss the position of DH on baby food.550 At this meeting Mr Cannon suggested that some neurologists and, he thought privately, some members of the Southwood Working Party held the view that the Government should go further than the Southwood recommendations by banning, for example, the sale of all food containing ruminant offal and thymus. He argued that the Government was reluctant to consider genuine differences of scientific opinion on issues such as BSE.551

3.225 Mr Cannon was told that MAFF and DH were of one mind that there was no case for extending the action on baby food.552

The Women’s Farming Union and the Conservative Women’s Conference

3.226 On 24 May 1989 the Women’s Farming Union (WFU) issued a press release urging the Government to take steps to ensure that BSE could not be spread through the food chain:

Whilst the WFU recognises that the chance of contamination spreading to the human population is remote it feels that it is the Government’s responsibility to ensure that all aspects of risk are controlled.

The WFU suggests that all brain and spinal cord material from bovines and sheep be banned forthwith from inclusion in any products for human consumption. It further suggests that care is taken to ensure that scrapie infected sheep carcasses are not used in the making of animal and bonemeal fertilisers.

549 YB89/5.22/9.1–9.2
550 The meeting was also attended by Dr Pickles, Dr Rubery and Mr Otley
551 YB89/5.23/3.1–3.2
552 YB89/5.23/3.1
Final responsibility lies with Government to ensure that all foodstuffs are safe for human consumption.\textsuperscript{553}

\textbf{3.227} On 25 May 1989 an article was published in the \textit{Guardian} citing Government sources as indicating that a general ban on the use of beef brains in food would be introduced by MAFF as an extra food safety precaution. The article stated that:

Announcement of the ban is likely to be hastened by the rebuke the Conservative Women’s Conference gave Mr MacGregor yesterday when he attempted to defend the Government’s record on food safety. Tory ladies refused to accept blame for poisoning their families when they spoke against a motion which implied that poor domestic hygiene is the primary cause of the problem . . . A succession of speakers demanded new measures to control BSE . . . \textsuperscript{554}

\textbf{3.228} Sir Donald Acheson had attended an internal meeting the previous day with MAFF officials, where it was decided there were no grounds to extend the baby food ban. Sir Donald Acheson wrote to Mr Freeman on 25 May 1989, attaching a copy of the article. He said:

I do not know whether there is any substance in this article. If Ministers wish to take any further action in relation to BSE I strongly advise that it should be very carefully considered and agreed by both Departments.\textsuperscript{555}

\textbf{3.229} DH contacted MAFF who assured them that the article was incorrect and that there were no plans to introduce such a ban.\textsuperscript{556}

\textbf{3.230} Mr MacGregor was questioned in oral evidence about the pressure on the Government at this time, and about the Conservative Women’s Conference:

\begin{quote}
MR WALKER: The other matters I was going to mention to you was that there was pressure from the MLC [Meat and Livestock Commission], the Women’s Farmers Union, the National Farmers’ Union. That all accords with your recollection?

MR MACGREGOR: I am not actually sure that this is documented, but around that time, there was a Conservative conference as well, where I hinted very clearly that further steps may well be coming; that was because I had already decided well before then, but we had to draw the threads together.

MR WALKER: Are you thinking of the Conservative Women’s Conference?

MR MACGREGOR: I think it probably was, yes. We had to draw the threads together, and in particular, of course, to have the meeting with Sir Richard Southwood.\textsuperscript{557}
\end{quote}
The Meat and Livestock Commission (MLC)

3.231 Since publication of the Southwood Report, the MLC had had discussions with Dr Kimberlin, who in the words of Mr Maclean ‘brought to our attention the value of a further ban on specified materials, not because at that moment he believed it was absolutely essential but because he believed it was a safety factor, in case any of the assumptions were wrong’.558

3.232 On 25 May 1989 Mr Geoffrey John, Chairman of the MLC, wrote to Mr MacGregor as follows:

At its meeting today, the Commission expressed very considerable and urgent concern about the effect of the current BSE issue on the public perception of the meat industry, and potentially on beef sales. You, of course, will be fully aware of recent media interest in the subject. I was asked to express the Commission’s hope that the Ministry would take the necessary measures as soon as possible to bring about a general ban on the use of beef brains, spinal cord and spleen in meat products for human consumption.559

Further developments leading to the decision to ban SBO in all human food

Mr MacGregor responds to Mr Charles Cockbill

3.233 Mrs Shirley Stagg (Private Secretary to Mr MacGregor) responded to Mr Cockbill’s submission of 23 May on the draft baby food offal ban on 31 May 1989:

The Minister feels that we cannot go ahead on baby food without being clear about where we are going on the wider issue of the prohibition of the use of certain offals in human foodstuff generally.560

3.234 Accordingly, the Minister asked for a detailed background note and a draft consultation paper on a possible offal ban from all human food and said he would then wish to meet both Sir Donald Acheson and Sir Richard Southwood to talk through the issue.561

The response to Mr MacGregor

3.235 On 2 June 1989 Mr Cockbill sent Mr MacGregor the background note he had requested on the merits of a possible ban on certain types of bovine offal and a draft consultation letter.562

3.236 The papers were prepared by the Food Standards Division in consultation with the Animal Health Group. The background note stated that while research into
the infectivity of BSE in different organs of cattle had yet to be carried out, by
drawing an analogy with scrapie in sheep, it was possible to divide bovine tissues
and fluids into four categories. Category (i) was most likely to be infective and
comprised brain and spinal cord; Category (iv) was least likely to be infective and
comprised milk, serum and faeces.\footnote{YB89/6.02/5.5}

3.237 The note stated that:

5. If action is taken to extend the prohibition as a matter of extreme caution
it might include brain and spinal cord (category i) and spleen (category ii),
possibly with other organs which are not used in preparation of cooked meat
products.\footnote{YB89/6.02/5.6}

3.238 The note went on to discuss the impact that a ban would have on the meat
industry, possible enforcement difficulties and implications for exports and the
EU.\footnote{YB89/6.02/5.6} It concluded by stating that there were ‘two options open’. One was to
remain with the conclusions of the \textit{Southwood Report} on baby food alone, possibly
developing labelling and relying ‘on the moratorium in the trade not to use the offals
in meat products’. The second option was to prohibit the sale of SBO and ‘lay
ground in Brussels . . . in order to minimise any adverse reaction from the
Community’.\footnote{YB89/6.02/5.1}

3.239 The draft consultation letter referred to the baby food recommendation in the
\textit{Southwood Report} and commented:

The BSE agent has apparently crossed the species barrier from sheep to
cattle. There is thus a (remote) possibility that it could do it again although
the \textit{Southwood Report} conclusions would suggest that this is very unlikely.
Nevertheless with such a new disease and with such limited knowledge
about it, it is appropriate to extend the caution expressed in the \textit{Southwood
Report} conclusions to the more general use of the offal concerned.\footnote{YB89/6.02/5.3}

3.240 Mr Thompson then sent a note to Mr MacGregor recommending that he
should go beyond the recommendations of the \textit{Southwood Report} and ban the use
of ‘Southwood’ types of offal from human consumption as quickly as possible. By
‘Southwood’ offal he meant brain, spinal cord, spleen and thymus. Mr Thompson
added that the BMMA had given assurances that this offal was not used in processed
food. Intestines, which were used to some extent, were a wider issue and needed
further consideration.\footnote{YB89/6.02/2.1–2.4}

3.241 In evidence to the Inquiry, Mr MacGregor said that he had already made up
his mind to introduce a general SBO ban by this date.\footnote{T104 p. 103}
Dr Jeremy Metters contacts Sir Richard Southwood and Dr Tyrrell

3.242 On 2 June 1989 Sir Donald Acheson asked Dr Metters to contact Sir Richard Southwood and Dr David Tyrrell to ‘ascertain whether any new scientific evidence had emerged which cast doubt on the advice previously given by the Southwood Working Party’. 570

3.243 Dr Metters’s minute to Sir Donald Acheson on 9 June 1989 reported that Sir Richard Southwood ‘considered the scientific position, and with it the case for a total ban on bovine offal, had not changed since his report.’ He noted that Dr Tyrrell took:

... a similar view. There was no new data. However the infective agent was so similar or identical to scrapie that in scientific terms it was difficult to justify a ban on bovine but not sheep offal.571

The meetings to consider the offal ban

3.244 On 6 and 7 June Mr MacGregor held two meetings to discuss the proposed SBO ban. There is a degree of conflict of evidence as to some of the details of these meetings which we consider further in the Discussion at the end of this section (see paragraphs 3.258–3.331).

3.245 The meeting of 6 June was attended by Mr Cruickshank, Mr James Coe (Head of Information, March 1987–October 1989), Mr Meldrum, Mr Lawrence and Mr Gueterbock of MAFF and Dr Metters (Deputy CMO, DH). Its objective was to prepare for a meeting with Sir Richard Southwood on the following day. The minute recording this first meeting, prepared by Mrs Stagg, included the following:

2. The Minister said that he felt wider action was now needed on offals to meet concerns firstly about animals in the latter stages of incubating the disease and secondly, to meet the frequently made point that cattle with BSE were getting through the net to the market. Dr Metters said that Sir Richard had indicated that he would not move from the position as set out in his report: the scientific evidence had not changed to enable him to recommend going any further. There was also the problem about what one did with sheep offal if one acted on bovine material since similar quantities of sheep offal were going through the food chain. It was however thought that Sir Richard would probably accept the argument on the risk of cattle getting through to the food chain. In any case, this issue would have to be thoroughly discussed with him.

3. Dr Metters pointed out that the CMO was concerned that we should not take action on offal now and then be faced with the possibility of taking further action on medicines in, say, September. The Minister pointed out the political realities of the situation meant that it would be impossible to wait until September before taking action here.

570 S251A Acheson para. 72
571 YB89/6.09/5.1
INTRODUCTION OF THE BAN ON SPECIFIED BOVINE OFFAL

4. There was some discussion of the definition of the offals which should be prohibited. It was agreed that categories i and ii were the target materials, although since lymph nodes and nerves were everywhere in the carcass, it was not practicable to take action on these. Thus the prohibited offals would be brains; spinal cords; spleen; tonsils; and thymus. Mr Meldrum thought that action on these items would enable us to give complete reassurance to the general public since the rest of the carcass would not contain the BSE agent in any significant quantities based on our considerable experience with scrapie. Intestines which were used for sausage casings, did not pose a problem since these were thoroughly scraped and cleaned before use. The Minister asked the experts to look carefully at the position on casings.

5. The most practicable solution for preventing offals getting into the food chain appeared to be to act at the slaughterhouse. This would remove any enforcement difficulties. Mr Meldrum was unhappy about destroying the offals: this would be costly and logistically difficult. Instead he recommended that they should be separated into a bin for dyeing and then rendering. There would be no compensation.

6. There was some discussion of what one should do about sheep offal. Dr Metters said that the DoH view was that the agent appeared to be the same for cattle and sheep; however this was not certain. Mr Meldrum pointed out that we had to give considerable weight here to our 200 years of experience with scrapie; there was by no means a strong case for acting on sheep as we were proposing to do for beef.

3.246 On 7 June 1989 Mr MacGregor met Sir Richard Southwood with Mr Meldrum and Mr Coe of MAFF and Dr Metters and Dr Pickles of DH. In her minute Mrs Stagg recorded:

2. The Minister opened the discussion by pointing to the growing concern on certain aspects of BSE. There was growing consumer pressure for the ‘Southwood’ offals to be banned from the food chain whether they came from infected cattle or not. The industry themselves were now saying that they would not use these offals because of the consumer perception. Sir Richard himself had pointed to the fact that a considerable amount of uncertainty still shrouded this whole issue. We could not monitor and control every market and slaughterhouse; and this suggested that certain animals might be getting through the net. We held very firmly to the view that action should be based on the best scientific evidence; but the combination of these other factors suggested that there was a case for going wider than baby food and banning the ‘Southwood’ offals of all bovine animals.

Sir Richard replied that the scientific evidence had not changed on this issue . . . If one took further action without scientific evidence it would be difficult to decide where the line should be drawn. He was not persuaded that many animals showing clinical symptoms were slipping through the net although possibly some sub-clinical animals were getting through . . .

572 YB89/6.07/7.1
573 YB89/6.07/1.1–4.2; YB89/6.08/4.1–4.2
5. Both the Minister and Sir Richard felt that the most difficult problem was in drawing the line at sheep meat. Dr Metters thought there might be some justification in acting on bovine offal given that agents which jumped species could sometimes be more virulent than in the original species. However, it was felt that, given the lack of evidence on this point, this was not a strong argument to use. After some discussion it was agreed that the right way to tackle this problem would be to say that the most effective way of dealing with the baby food point was to prevent all ‘Southwood’ bovine offal getting into the food chain. This was the safest and most readily controllable way of implementing the Southwood recommendation and would have the benefit of preventing any material going to other areas in the foodchain. Sir Richard was wholly content with this approach. 574

3.247 Dr Metters’s minute of 9 June to Sir Donald Acheson, reporting on the outcome of the meetings of 6 and 7 June, drew attention to the ‘possibility that MAFF’s action may refocus attention on bovine constituents of pharmaceuticals’. He commented that, while he had raised this point more than once, it had ‘cut little ice’ with MAFF officials. 575

3.248 Mrs Attridge also informed Mr Cockbill of the outcome of the meeting on 7 June with Sir Richard. She noted:

(i) Professor Southwood maintained his position that there was no scientific evidence to support the belief that offal presented a human health hazard (DOH Dr Metters did not dissent).

(ii) The Minister maintained his view that presentationally something had to be done to allay public concern.

(iii) The CVO pointed out that the easiest way to ensure any ban was operated was to remove offal (brains, spinal cord, spleen, tonsils, thymus) that were to be covered in the baby food regulations at the slaughterhouse.

(iv) I suggested that the way to proceed was to say that the Minister considered the easier and more enforceable way to implement the Southwood recommendation on baby foods was to remove the offal at slaughterhouses and where it would be dyed and used for fertiliser and that the Minister would thereby not be appearing to contradict the scientific evidence in the Southwood Report by taking more comprehensive action than recommended and there would be no need to proceed with consultations under the Food Act. 576

Letter to Mr Clarke

3.249 On 9 June 1989 Mr MacGregor wrote to Mr Clarke setting out the case for a bovine offal ban covering all human food consumption. 577 Mr MacGregor referred to the Southwood Report’s advice that there was no scientific evidence that the human population was at risk from BSE.
Despite all this there is continuing concern (including a body of opinion in some scientific circles), which I share, that these bovine offals should be prohibited from use for human consumption, especially since they may come from cattle incubating the disease but still not showing clinical symptoms. Notwithstanding Southwood’s evaluation of the risk, my conclusion, in the light of the advice I have received, is that we should take further action to reassure the public and safeguard human health. I am proposing therefore to take action to prevent the use of certain bovine offals for human consumption. 578

3.250 Mr MacGregor also referred to the concern that diseased animals might be entering the food chain:

We cannot be sure that all diseased animals are prevented from entering the food chain. There is much talk that some animals are not being offered for slaughter but are being slipped through and I have strong suspicions that this is right. It is also possible that some are simply not being detected. 579

DH’s views on the proposals

3.251 On 12 June 1989 Dr Pickles minuted the Private Secretaries of Sir Donald Acheson and Mr Clarke about MAFF’s proposed ban. 580 She noted that Mr MacGregor’s letter to Mr Clarke had suggested that there should be a joint MAFF/DH announcement. She proposed, however, that DH suggest that MAFF handle it on its own and enclosed a draft reply for the Secretary of State. She said that Sir Richard Southwood agreed that there had been no real change in the scientific position since he had produced his Report. Her draft reply said:

Medical advice within this department supports Sir Richard Southwood that the scientific position has not altered since his report was published, although I see now your department is accepting (but not publicly) that some clinically affected cattle still may be going for slaughter. That infected but clinically normal animals are entering the human food chain was of course known to Sir Richard and his advice that banning all bovine offal was unnecessary was given in the light of that knowledge.

Nevertheless, I appreciate the position in which you have been placed and am happy for you to take the action you feel is now needed to reassure the public. I presume your experts have confirmed that stripped intestines contain so little lymphatic tissue that their exclusion from the ban does not appear anomalous and liable to become the subject for further public criticism. Since this announcement is primarily for public reassurance I would be entirely content for it to be made by your department alone. 581

3.252 This draft did not find favour with Sir Donald. At his request Dr Metters produced a new draft:
I recognise the increasing public anxiety about BSE and the pressure this has created for your Department to prohibit the inclusion of bovine offal in food for human consumption.

The nutritional value of the categories of offal you mentioned in your letter is minimal, and their exclusion will serve to reassure the public. It will also show that the Government is responsive to public perception of the BSE risk.

I agree entirely with the various actions you propose to take. As the implementation of the ban on these selected bovine offals will primarily affect abattoirs and the meat trade, I would be quite content for your Department to make the appropriate announcements.582

3.253 Mr MacGregor outlined the proposed ban in relation to BSE at a meeting with Sir Donald Acheson on 12 June 1989. MAFF’s minute of the meeting noted that the CMO ‘warmly welcomed this’ and thought the measure ‘prudent and appropriate’.583

3.254 Mr Clarke told the Inquiry in written evidence that, as Secretary of State for Health, he agreed that the SBO ban should be made even though the scientific advice of his own Department was that the measure was not necessary to protect public health. Mr Clarke accepted that public reassurance was a legitimate aim and might be achieved by a step that went beyond the weight of scientific evidence that the Government had received.584

The Prime Minister notes the proposal

3.255 On 12 June 1989 Mr Andrew Turnbull, Principal Private Secretary to the Prime Minister, wrote to Mrs Stagg. He informed her that the Prime Minister had seen Mr MacGregor’s letter of 9 June to Mr Clarke, and had noted the proposal to apply the ban on specified offal to all human consumption and not just to baby food. Mr Turnbull’s letter was copied to the Private Secretaries to the members of MISC 138 and to Sir Robin Butler, the Cabinet Secretary.585

Announcement of the decision to ban SBO

3.256 In a joint news release on 13 June 1989, MAFF and DH announced the intention to introduce an SBO ban to cover all human food. This news release quoted Mr MacGregor’s answer to a written Parliamentary Question by Mr Tim Boswell, MP:

The Government has already taken wide ranging action to deal with this new disease problem and has acted on all the recommendations made by the Southwood Working Party which was set up to look at all aspects of the disease, including any human health implications.

Although the Southwood Working Party regarded the risk to humans as remote, the Government acted on their recommendation that, as a
precautionary measure, all cattle suspected as having BSE should be slaughtered and destroyed to take them out of the food chain.

As a matter of extreme prudence, the Southwood Working Party also suggested that certain offals should not be used in the manufacture of baby foods. We established in February that these offals are not in fact currently used by baby food manufacturers. In order to provide even more reassurance to the public, I indicated then that we would bring forward regulations to ensure that there is no possibility of their use in the future.

In working out the details, I have concluded that a better way of dealing with this would be to ensure that the relevant types of bovine offals should be rejected at slaughterhouses for all cattle so that they cannot be used for human consumption in any way. These offals, which include brain, spinal cord, thymus, spleen and tonsils, will have to be stained in the slaughterhouse and disposed of under conditions similar to those applying to unfit meat. This approach also deals with a separate problem, namely ensuring that if there is any risk that there are cattle incubating the disease but not showing clinical symptoms which are not being slaughtered and destroyed, their offals do not enter the food chain either.

Detailed proposals for regulations under the Food Act implementing this change will be issued for consultation, as required by the Act, very shortly. 586

3.257 On 14 June 1989 Dr Pickles circulated a copy of the press release. In her covering minute she said:

I was unaware that it was to be a joint announcement. It is not clear what is to be proposed for intestines.

I do not like the suggestion that there is only a remote risk infected but clinically normal cattle are being slaughtered and eaten – of course we know this is bound to be happening. 587

Discussion of what was said about the reasons for the ban

3.258 The decision to introduce an SBO ban was taken by a process which involved the meetings on 6 and 7 June. We examine below the reasons for this decision and what was said about them. It was undoubtedly the right decision. The introduction of an SBO ban represented a proper application of the common sense underlying the ALARP principle to a potential hazard posed by BSE.

3.259 The potential hazard was that BSE might be transmissible to humans through food. That potential hazard had been addressed in part by the compulsory slaughter and destruction of affected animals. If BSE was transmissible these posed the greatest threat, for research with sheep infected with scrapie had demonstrated that
the highest infectivity was to be found in the brain and central nervous system of clinically affected animals.

3.260 Research had also demonstrated that some tissues of sheep infected with scrapie were infective before the animals developed clinical symptoms. In the absence of research on BSE it was logical to proceed on the basis that the same might be true of cattle infected with BSE. The research on sheep was limited, but had been subjected, together with some similar research in relation to goats, to careful analysis by Dr Kimberlin. He identified four categories of potentially infective tissue, grouped according to their infectivity titre.

3.261 The data were scanty and Dr Kimberlin’s work relied to a degree on what Dr Woolfe described as ‘intelligent guesswork’. Nonetheless, Dr Kimberlin’s work was to form the basis of risk assessment carried out by SEAC, by the Lamming Committee and by the European Community Scientific Veterinary Committee (ScVC). The data, as interpreted by Dr Kimberlin, provided a scientific basis for decisions of risk management under the precautionary principle. Tissues in the higher two categories of infectivity posed a potential hazard that could not be dismissed as negligible. Those tissues could be removed from the human food chain with relatively minor economic consequences. Common sense required their removal.

3.262 Dr Kimberlin has a rare ability for lucid exposition of the results of complex scientific research. As a consultant he provided the benefits of his work widely and thereby assisted on many occasions in the process of decision-making. As we shall see he played a part in the decision to introduce an SBO ban. Not all, however, appreciated the scientific justification for the SBO ban. Mr MacGregor summarised the position to us as follows:

...a lot of us over a period gradually came to a view, sometimes from different points of the argument – some people were concerned about sub-clinical animals, I think Donald Thompson was; others were not, because Sir Richard Southwood had made clear that was not a real problem, and if you read his Joint Working Party statement, that is littered with the arguments for that. So others were more concerned about the thing I was bothered about, public presentation, or the practical implications of implementing a baby food ban which I was bothered about.

The point really I think was that when we came to our conclusions before the 7th June meeting, several people had different perspectives on the issue, but the outcome was that we all came to the same conclusion, to have the SBO ban. So it is not true to say that MAFF’s view was that it was the presence of infectivity in tissues in sub-clinically infected animals.

3.263 Mr Thompson almost immediately formed the view that precautions were desirable to deal with the potential hazard posed by subclinical animals entering the human food chain. The evidence clearly indicates that he was concerned about this soon after publication of the Southwood Report. His inquiry in March about the possibility of excluding cull cows from human consumption received short shrift from MAFF officials and he ‘withdrew at the first hurdle’. With hindsight, his
suggestion does not appear to have been so disproportionate. He then raised the question of removing offal from such animals from the human food chain and continued to advocate an offal ban up to the time that the decision was taken to introduce one. He was responsible for initiating the debate in respect of this measure and is entitled to a substantial share of the credit for the final decision.

3.264 Mr Thompson had been keen to discuss the implications of the Southwood Report with the pet food industry, for which he had ministerial responsibility. MAFF officials steered him away from this, apprehensive that, if it appeared there was concern about pets eating ruminant offal, this might raise questions as to why there was not a similar concern in relation to human diet. Members of the pet food industry had, however, been taking their own measures to address what they saw as a potential hazard to pets (see paragraphs 3.191–3.203).

3.265 Spillers took action in 1988 and we commend them for doing so. Pedigree Pet Foods had commissioned Dr Kimberlin to advise them, leading to the preparation of his papers on risk. Appreciating the wider implications for the safety of human food arising from his work, they drew this to the attention of MAFF and agreed that MAFF could be provided with his papers. We commend Pedigree Pet Foods for their initiative in seeking expert advice in respect of the potential dangers posed by bovine offal to pets and for sharing the fruits of this with MAFF. It seems to us that at this stage private enterprise was setting an example to Government. The assistance that they proffered proved valuable.

The reasons for the introduction of the SBO ban

3.266 Mr Meldrum had, initially, led resistance at MAFF to any suggestion that they should go beyond the Southwood recommendations. In reaction to Mr Thompson’s suggestion about cull cows he had remarked: ‘we can hardly now go farther than the Southwood recommendations. If we were to go further we would have to consult Southwood and this would be presentationally extremely difficult.’ This approach was reflected by the additions that he made to Mr Lawrence’s submission on this topic (see paragraphs 3.154–3.155). Mr Meldrum told us that initially he accepted the Southwood Report, but later on it became clear to him that the baby food recommendation lacked logic. It seems that a critical step in his reappraisal was the meeting that he had with Dr Kimberlin at Pedigree Pet Foods on 16 May (see paragraphs 3.198–3.201).

3.267 Mr Meldrum, accompanied by Mrs Owen, Mr Garnett, and Dr Woolfe first met Dr Kimberlin and representatives of Pedigree Pet Foods. There was a long presentation by Dr Kimberlin of his work on risk assessment which led Mrs Owen to record:
From the information presented there would appear to be more to worry about in the potential risk for the ultimate consumer particularly from MRM and spinal cord used in some meat products. My first thoughts were that it would seem prudent to do a similar risk assessment exercise for human food. This would undoubtedly involve FSc, Meat Group, Standards and Food Safety Divisions.594

3.268 Mr Meldrum told us that after this discussion he had a confidential meeting with Dr Kimberlin at which he was given ‘in total confidence’ the papers on risk that Dr Kimberlin had prepared for Pedigree. He treated these as confidential and did not place them on the file, but retained them with his personal papers. This evidence is somewhat perplexing, for Pedigree made a set of these papers available to MAFF at the time of the meeting with Dr Kimberlin, which were placed on the file of the Food Standards Division.595

3.269 Mr Meldrum told us that he already had some idea about the pathogenesis of scrapie in sheep as a result of discussions with Mr Bradley, but that Dr Kimberlin added a huge amount to his knowledge as a result of his analysis.596 Mr Meldrum told us that his meeting with Dr Kimberlin left him thinking that it would be ‘a good idea’ to take the tissues identified by Dr Kimberlin as infective out of the food chain. It was advisable. He thought that that was the quite clear gist of the minute that he put up for Mr MacGregor.597

3.270 Mr Meldrum’s minute598 does not express clear support for an SBO ban, although it does acknowledge that a case for the ban might be made out. Nor do his colleagues seem to have become aware of a change of heart on his part after his meeting with Dr Kimberlin.

3.271 Mr Bradley informed us that he did not think that Mr Meldrum’s meeting with Dr Kimberlin had any effect on the perception within MAFF of the need for the SBO ban. He thought that it was generally accepted that the SBO ban was not necessary on the basis of the Southwood Working Party’s assessment.599

3.272 Mr Cruickshank was not aware of Mr Meldrum attaching significance to information obtained from Dr Kimberlin.600 Mr Andrews, who discussed the matter with Mr Meldrum before preparing his submission for Mr MacGregor of 26 May 1989, made no reference in it to Mr Meldrum supporting an SBO ban. He told us that he could not remember the details of his conversation with Mr Meldrum, nor when he first learned of the discussions with Dr Kimberlin.601 Mr Lowson’s understanding was that Mr Meldrum did not think that an SBO ban for humans was necessary on scientific or public health grounds.602

3.273 Mr Meldrum told us that he believed that he had an un-minuted meeting with Mr MacGregor at which he passed on the information that he had received from Dr Kimberlin. He asked that it should not be minuted because of the confidential nature of the information.603
3.274 Mr MacGregor told us in a statement that, although he could not be certain because of the absence of documentary evidence, his recollection was that Mr Meldrum made him aware of his discussions with Dr Kimberlin which gave a supporting scientific line of thought to the conclusions that they were beginning to reach. 604

3.275 In a written statement Mr Meldrum sought to explain at length the reasoning that led to the introduction of the SBO ban:

It would be an incorrect reflection of events to say that at that time myself and others within MAFF, including Ministers, believed that there was scientific evidence to lead us to conclude that the Southwood Working Party had been wrong in their assessment of the risk of transmission of BSE to man and that we further believed that BSE actually posed a real risk to human health. Following on from this, it would be similarly incorrect to say that it was considered necessary for MAFF to take further steps beyond advice to baby food manufacturers to protect human health . . .

. . . the Southwood Working Party had considered the then available scientific evidence (from work on scrapie), had conducted a risk assessment and had concluded that any risk of transmission of BSE to humans was remote. I had no reason to question that conclusion and nor did I have responsibility to do so. Similarly, I believe that my colleagues and Ministers did not question the conclusion that the risk was remote . . .

The request by the Parliamentary Secretary (Mr Thompson) on 21st March, 1989 605 for advice on cull cows etc, is an indication of the awareness amongst Ministers and within MAFF generally of the issue of sub-clinically infected cattle. However, such concerns were not a reflection of doubts being expressed about the Southwood Working Party’s conclusions that the risk to human health was remote. Rather in the light of the understandable concerns being expressed by the public about sub-clinically infected cattle entering the food chain, discussions were focusing on what steps, if any, MAFF could, and indeed should, take to further minimise the remote risk to human health and so reassure the public. In addition, the Southwood Working Party had recognised that if their assessment of the likelihood that cattle would prove to be a ‘dead-end host’ and that BSE was unlikely to have any implications for human health was incorrect, then the implications would be extremely serious (see paragraph 9.2 of the Southwood Report). 606 So another factor to be considered was what steps, if any, could be taken to protect humans against the possibility that it was later shown that BSE did pose an actual risk to human health . . .

. . . the information that I had obtained from Dr Kimberlin made it clear to me that if it was decided that MAFF would go further than had been recommended by the Southwood Working Party, there was scientific evidence on scrapie infectivity levels which could be extrapolated and used by analogy to identify tissues in which the BSE agent might be found in infected cattle, and the categorisation of those tissues according to their possible infectivity. This was not scientific evidence that “warranted” the

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604 S302B MacGregor para. 46
605 YB89/3.21/5.1; YB89/4.10/2.1
606 IBD1 tab 2

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making of a ban on specified bovine material. What it did do was provide a scientific underpinning to the selection of tissues that could be excluded from the human food chain if Ministers were to adopt a policy to further reduce the remote risk of transmission of BSE to humans.607

3.276 We have set these passages out in some detail for two reasons. First, they give what we believe was an accurate portrayal of Mr Meldrum’s understanding of the reasoning underlying the SBO ban. Secondly, we believe that this reasoning reflected the application of the common sense which underlay the ALARP principle. Under that principle the test for action is not necessity. The test involves considering what measures it is reasonably practicable to take against a remote contingency. Dr Kimberlin’s work illuminated data that was important in applying that test.

3.277 Mr Meldrum was asked what his understanding was of Mr MacGregor’s reasons for wishing to introduce the ban. He answered:

It is difficult to be certain of the order of priority but there were a number of issues obviously in his mind. One was the concern that was being expressed both by scientists and non-scientists about what happened to brains of healthy cattle, healthy in the context of clinically healthy at slaughter. The illogicality that had emerged from the discussion about 5.3.5 in the Southwood Committee report. Yes he was, I believe, influenced in part by the discussions with Richard Kimberlin and the action that might be taken by the petfood industry on the recommendations of Richard Kimberlin. He was also concerned about public presentation because there is no point in having in place animal health and public health controls if the consumer has lost confidence in that particular product. Equally it is very much a part of the overall consideration. But above all, in all of this he was in fact concerned, as was Dr Helen Grant and others, about the possibility that sub-clinically affected cattle could be entering the human food chain, and in the latter stages of incubation that those animals might have significant levels of infectivity in the brain and spinal cord. All of these things put together. Mr MacGregor was absolutely spot on with all of this. He did understand the background.608

3.278 Mr MacGregor gave detailed evidence to us as to his reasons for introducing the SBO ban. In a statement he summarised them as follows:

The reasons why I decided a ban should be introduced can be summarised as follows:

a. to reassure the public I had, at the time of publication of the final report, decided that the use of ruminant offal and thymus in baby food should be banned despite the fact that it was not a recommendation by the scientists;

b. practically it was easier to legislate for and enforce a general ban rather than a ban which applied to only one area of food manufacturing;
c. it would deal with clinical animals (if any) which might slip through the net;

d. it had the merit of dealing with any risk from tissues from subclinical animals. 609

3.279 In oral evidence Mr MacGregor told us that he had listed his reasons for the ban in their order of priority. He had some concern about subclinical animals:

. . . I had some concern about this. Most of the scientists were telling me that this concern was unjustified, but there was just beginning to emerge some body of scientific opinion that there may be something in it, so it had the merit of dealing with that risk, if there was a risk. 610

3.280 Mr MacGregor was asked about his reference in his letter to Mr Clarke to a ‘continuing concern (including a body of opinion in some scientific circles) which I share’. 611 He said that he was probably referring to Mr Meldrum’s discussions with Dr Kimberlin, but that:

. . . to be frank, it was not the most important point I was making in the letter, but it was just to try and get some further impetus behind the argument and to make him see that it was a desirable thing to do. But I would not have put that into the letter; it could not have got through unless there was some evidence. . . 612

3.281 It does not seem to us that Dr Kimberlin’s work was a major influence on Mr MacGregor’s decision to introduce an SBO ban. Major factors were the weight of public concern about subclinical animals and Mr Thompson’s recommendation that a ban should be introduced. However, Mr MacGregor was aware of Dr Kimberlin’s work which, as Mr Meldrum stated, gave a scientific underpinning for the decision.

The attitude of DH

3.282 Sir Donald Acheson told us that he had no problem at all with the proposed ban. It seemed to him to be highly desirable, although his advisers, Professor Southwood and Dr Tyrrell, did not think that it was necessary. He was concerned, however, that it might cause people to stop using vaccines, so he suggested getting reassurance about the safety of vaccines first. This was still being explored at the time that the ban was proposed. 613

3.283 Dr Pickles told us that as Sir Richard had advised that the scientific evidence had not changed since his report, she did not believe that it was necessary to bring in an offal ban and did not promote one. 614

3.284 Dr Metters told us that his Department’s line was not to go beyond the Southwood recommendations. We believe that Sir Donald Acheson’s instructions

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609 S302B MacGregor para. 44
610 T104 pp. 115–6
611 YB89/6.09/11.1
612 YB89/6.09/11.1
613 T79 p. 107
614 S115E Pickles para. 29
to Dr Metters were to resist the introduction of the ban – at least until the position on vaccines was resolved.

The meeting on 6 June

3.285 Dr Metters told us that he favoured the introduction of an SBO ban under the precautionary principle and supported Mr MacGregor’s proposal. After the meeting, he discovered from Dr Pickles that this was contrary to the Department’s line. Despite this he supported the proposal for the ban at the meeting with Sir Richard Southwood on 7 June. Had Dr Metters definitely acted in a way that was contrary to the Department’s policy without raising the matter with the CMO, this might have been a matter for criticism. We believe, however, that his recollection is at fault. Both Mrs Stagg’s minute and his own record indicate that he followed instructions in attempting to persuade Mr MacGregor to delay any action until advice on vaccines was received from the CSM. Mr MacGregor told us that Dr Metters spoke against the ban because it was going beyond Sir Richard Southwood’s advice and because there was a problem with vaccines. Mrs Attridge told us that her impression was that DH was very reluctant to go along with MAFF on the SBO ban.

3.286 We do not believe that Mr MacGregor explained at either meeting that Dr Kimberlin had provided a scientific underpinning for the action that he wished to take. It appeared to those present, other than Mr Meldrum, that he was taking a political decision in response to the public pressure and in order to provide reassurance. Thus Mr Cruickshank told us that it was not made clear to him at the meeting on 6 June that Mr MacGregor believed that there was any scientific merit in introducing the SBO ban. He believed that his Minister was simply reacting to intense political pressure.

3.287 Mr Lowson told us that he was not sure whether Mr MacGregor was genuinely concerned that there was real need for a further human protection measure or whether he was motivated primarily by a need to respond to pressure.

The meeting on 7 June

3.288 Mr MacGregor’s first task at the meeting on 7 June was to persuade Sir Richard Southwood to agree to his decision to introduce an SBO ban. In this he was successful. Sir Richard made the point that the scientific evidence had not changed since his Report but accepted the ‘political necessity for action’, including the possibility of affected animals slipping through the net.

3.289 There then followed the stage in the discussion recorded by Mrs Stagg (see paragraph 3.245). We believe that it was this record which led Dr Metters to conclude, mistakenly, that he had been supporting the SBO ban at this stage. It seems to us that this part of the discussion was not about the merits of introducing

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615 T114 pp. 43–6
616 YB89/6.07/7.1
617 YB89/6.09/5.2
618 S930 MacGregor para. 104
619 T117 p. 51
620 T105 pp. 80–2
621 T127 p. 24
622 YB89/6.08/7.2; YB89/6.08/4.1; YB89/6.09/5.3; T114 pp. 43–6
a ban but about how it should be presented. The decision was that it should be presented as the most practical way of implementing the baby food recommendation. This had the benefit of not appearing to go beyond the Southwood recommendation. We shall in future refer to this way of presenting the decision as ‘the agreed presentation’.

3.290 The suggestion for this approach to presentation came from Mrs Attridge (see paragraph 3.248). Mrs Attridge was at pains to emphasise in her oral evidence that her suggestion of how the measure should be presented was no ‘window dressing to bamboozle the public’. The SBO ban was a way in which the concerns that had been raised by Southwood could be met efficiently. 623

3.291 We accept that the SBO ban provided the answer to a number of technical problems in relation to giving legislative effect to the baby food recommendation. 624 This was a benefit of the introduction of the ban. Was it more than a fringe benefit? We were concerned that the evidence in Phase 1 suggested that it had not played any significant part in Mr MacGregor’s decision to introduce the ban. If we were right, the outcome of the 7 June 1989 meeting was that an inaccurate picture had been presented when this fringe benefit had been advanced as the principal reason for introducing the ban. We notified witnesses that we considered such an approach to be potentially a matter for criticism. This led some to place an emphasis in their responses on the benefit that the ban had as a means of implementing the baby food recommendation which had been absent from the evidence before. Not a hint of this factor appears in the contemporary accounts of the meeting on 6 June and it only arises in Mrs Stagg’s minute of the 7 June meeting in the context of presentation.

Presentation of the SBO ban internally and externally

3.292 Dr Pickles, who was present at the meeting on 7 June, reported:

Sir Richard Southwood agrees with us that there has been no real change in the scientific position since he produced his report in February. He is content for MAFF to present this move as a convenient way of dealing with his recommendation about exclusion of bovine offal from baby food. 625

3.293 Mr Cruickshank described what transpired at the meeting as follows:

I do not think anybody said there was a practical problem with applying the baby food ban in the context of the general regulations that applied to baby food. That was not quite the way the issue came up. The way the issue came up was that when the various strands of discussion came together, and I would emphasise that there were these quite distinct strands which were all bound up together, but when it emerged that it was felt that there were strong political pressures to deal with the question of offals for adults, and this linked, of course, to the question of clinical cases escaping the slaughter and compensation procedures and sub-clinicals; when these were all linked together, the point emerged that a very effective way of dealing with Southwood’s point was simply to remove all these offals in the...
slaughterhouse; this was indeed much the best way of dealing with
the problem.626

3.294 He accepted that the baby food point was a side benefit of Mr MacGregor’s
proposal, but not the reason for it.627

3.295 Mr Meldrum accepted that the presentation agreed was ‘not a complete
description’ of his Minister’s reasons for introducing the ban. The reason for the
presentation was a desire not to suggest that the Government had lost confidence in
the Southwood Report, when this was not the case.628

3.296 Our conclusion is that the baby food point was no more than a fringe benefit
of Mr MacGregor’s decision to introduce the ban. We turn to consider how the SBO
ban was presented internally and externally, and in that context we examine whether
the conduct of individuals fell outside the range of reasonable responses to what was
known at the time.

3.297 The agreed presentation was adopted in the joint news release made by
MAFF and DH on 13 June (see paragraph 3.256). Dr Pickles, who had been
opposed to a joint announcement, minuted Dr Metters about this on the following
day (see paragraph 3.257).

3.298 Some six years later, in December 1995, when suggestions were being made
in the media that MAFF had concealed the fact that infected animals were entering
the human food chain, Mr Meldrum briefed Mr Douglas Hogg (Minister of
Agriculture):

Subclinical disease MAFF made it clear in a Press Notice in June 1989 that
animals incubating BSE might enter the human food chain and it was for that
reason that the SBO controls were introduced later that year to prevent
human consumption of tissues in which infectivity might be present in
clinically healthy cattle.629

3.299 Mr Thompson, in commenting on the press release, for which he was not
responsible, said that the reasons for the ban were given in the wrong order. We
agree. As most cattle were slaughtered before reaching the age at which clinical
symptoms would develop, it was an undoubted fact that infected but clinically
normal cattle were entering the food chain. The press notice should have made this
plain rather than referring to it as a mere possibility. It should also have made plain
that one of the initiatives for the introduction of the SBO ban was to ensure that the
potentially infective tissues of such animals were removed from the food chain for
all humans, not just babies.

3.300 The press release was originally drafted by Mr Lawrence, but was
substantially amended before its release. It is not clear on the evidence who was
responsible for the final version, or who saw this before it was issued. Thus, while
we criticise its form, we are unable to identify who was responsible for this, save
that it was a natural consequence of Mr MacGregor’s decision on presentation.

626 T105 p. 85
627 T105 p. 88
628 T120 pp. 205, 218
629 YB95/12.05/12.4
3.301 In the event, while some newspapers reproduced the press release verbatim, most of the media correctly suggested that the ban was being introduced in response to the widespread pressure for measures to address the risk from subclinical animals. This is not to say that it had no adverse consequences. The agreed presentation was to be frequently repeated in circumstances where it was desirable that it should have been clearly appreciated that the SBO ban was a precautionary measure, underpinned by science, that had been introduced because of a potential hazard posed not merely to babies, but to all humans.

3.302 The agreed presentation was included in the briefing that Mr Lowson prepared for incoming Ministers on 25 July 1989. 630

3.303 Mr Lowson told us that he understood that the ban was introduced in response to public pressure and not because the science justified introducing this precautionary measure. Accepting this, we remain concerned that he gave Ministers the agreed presentation rather than a more accurate description of his understanding of the circumstances that led Mr MacGregor to decide to introduce the ban.

3.304 Mr Gummer, Mr Maclean and Mr Andrews all told us that background briefs for incoming Ministers were not documents to which great significance or reliance was attached. Ministers would flick through them as a kind of prospectus or sketch map as information on any subject could be quickly augmented by greater and more reliable detail. 631 In these circumstances and given the limited time available for preparation of briefs of this kind, we do not think it would be right to criticise.

3.305 At a meeting with the UK Agricultural Supply Trade Association (UKASTA) on 2 October 1989 it was recorded that:

The Minister emphasised that when the announcement is made about the final shape of the Regulations it will be made clear that it goes well beyond Southwood and rather than “condemning” this material it represents a practical means of dealing with the Working Party’s suggestion in relation to baby food. 632

3.306 The agreed presentation was repeated in the submission prepared by Mr Lawrence for Mr Gummer which sought his agreement to the final terms of the SBO ban. This document was widely circulated within MAFF, the ‘Territorial departments’ (as they were then known) and DH. 633

3.307 When Mr Gummer, Mr Maclean and Mr Curry came to give evidence we explored with them their understanding of the reasons for the introduction of the SBO ban. Mr Maclean summarised his understanding as follows:

I felt when I came to MAFF and read the background briefing and then had other papers it was my job to implement, with Mr Gummer and Mr Curry, the decision that had been taken. That decision as I understood it was largely based on some of the practicalities and the difficulties of trying to carry out the Southwood suggestion, not even a recommendation, the suggestion to

630 YB89/7.25/6.1–5.5
631 T124 pp. 60–4, 70–4; T126 pp. 62–6; see also revisions proposed in S281E Andrews D
632 YB89/10.02/1.1
633 YB89/11.02/2.1
avoid the use of these materials in baby food, and for practical purposes the best way was to have the SBO ban. 634

3.308 The evidence of Mr Gummer and Mr Curry was to the same effect. 635

3.309 When Mr Gummer gave evidence to the Agriculture Committee in May 1990 he advanced the agreed presentation when explaining the reason for introducing the SBO ban in an opening statement. He elaborated:

The Southwood recommendation was that we should not allow into baby food particular offals. We could not find a safe way of ensuring that never happens without removing all the offals. In other words, we could not do what Southwood asked us to do by a partial ban, we could only do it effectively by the full ban. Now I believe that was perfectly proper. We said: ‘We accept your advice. We do not actually go further than your advice because we want to go further’, we merely say that in practical terms in order to do what you want us to do we have to have a full-scale offal ban because we cannot do what you want by anything less. 636

3.310 Mr Lowson told us that he believed that Mr Gummer was aware that there were issues in play which went beyond the question of how to implement the baby food recommendation. On taking office Mr Gummer had asked how far the proposed SBO ban exceeded what Southwood had recommended and Mr Lowson had referred him to Mrs Stagg’s minute recording the meeting at which the decision was taken. 637 It does not seem to us that Mr Gummer can have appreciated the full import of this minute, nor would we necessarily expect him to have done so.

3.311 When Mr Gummer and Mr Maclean returned to give evidence in Phase 2 they emphasised that their understanding of the reason for the introduction of the SBO ban did not affect the importance that they attached to its implementation. They told us that it was a measure that was considered very important by some, and it enabled those people to be reassured. It was considered important as one of the basket of measures to make sure the public were protected. 638

3.312 The evidence does not suggest that the understanding of Mr Gummer and his fellow Ministers did affect their attitude to the implementation and enforcement of the SBO ban. Repetition of the agreed presentation was, however, likely to diminish the importance that others attached to it. The message given by the agreed presentation was that there was no scientific justification for the SBO ban but that it was a convenient way of introducing an extreme precaution to protect babies. Mr Bradley gave the same message to the House of Commons Agriculture Committee:

The recommendation from Professor Southwood in this regard in his report, taking all the evidence – and it has not altered since – is that this was an unnecessary procedure. The only suggestion that he made was that babies should be protected from exposure to these offals via baby foods. Therefore, legislation was initiated to take care of this particular point. However, it

634 T92 p. 16
635 T92 pp. 19–21, 38–41, 45, 48
636 IBD1 tab 7 pp. 8–9
637 T127 p. 37
638 T128 pp. 71–3
transpired that the methodology in the legal system of doing this meant it was not a possibility to do it so specifically for baby foods, and it had to be done in a general way. That is how we have come to have the offals banned at all. It would not have arisen if it had been a simple job of just removing things from baby foods. So from that point of view there was no perceived risk to Man, even from these offals, that required any action.639

3.313 If measures imposed under the precautionary principle are to be properly implemented, it is vital that those responsible for their implementation and enforcement believe that they are important safety measures. The evidence that we received led us to conclude that there were many who did not believe that the SBO ban was an important public health safety measure.

3.314 Mr Graham Jukes, Director of Professional Services of the Chartered Institute of Environmental Health told us, when speaking of enforcement of the SBO ban:

At that time, again what comes over from the files is that we were looking at an animal health issue, not necessarily a public health issue. That, I think, again, indicates the sorts of attitudes that might have been around at that time, that people were not really concerned specifically about the public health concerns of this particular material, they were concerned about whether or not they were complying with regulations, which was in a sense window dressing.640

3.315 Representatives of the Federation of Fresh Meat Wholesalers told us that so far as the human SBO ban was concerned there was a general feeling that it was very unlikely that there was a risk to human health anyway. BSE was an animal disease.641

3.316 Mr Richard Lodge, the Head of Food Health and Safety at Birmingham City Council, said that the SBO ban was felt, by Meat Inspectors on the ground, as something that was not really done to protect public health.642

3.317 We do not suggest that this evidence represented the attitude of all to the SBO ban. We believe, however, that it must represent the attitude of many slaughterhouse operatives, Meat Inspectors, Environmental Health Officers and Veterinary Inspectors.

3.318 There was no scientific basis that demonstrated that, if tissues of clinically affected animals posed a potential hazard to humans, the same was not true of some of the tissues of a subclinical animal. Any conclusion to this effect was a value judgement based on flimsy evidence. There was no way that the Government could reassure the many who were concerned about subclinical animals other than by the SBO ban. It was an appropriate response in these circumstances to go further than Southwood and introduce the SBO ban. It is regrettable that the introduction of the ban was coupled with a presentation that suggested that, so far as children, other than babies, and adults were concerned, it was an unnecessary precaution.
3.319 Sir Donald Thompson accepted that there was a danger in such circumstances that the public presentation might become received wisdom at MAFF and that that seemed to have occurred with his successors. Invariably, those who received the agreed presentation were likely to repeat it. It is not possible to say to what extent the agreed presentation may have fostered a belief on the part of some that the SBO ban was an unnecessary public health precaution. We believe that it must have tended to produce that result.

3.320 Mr MacGregor, together with Mr Thompson, are to be commended for introducing the ban despite the reservations of some of their officials about the dangers of departing from the advice of the Southwood Working Party. Those reservations were legitimate matters to raise and not ground for criticism. It is to the Ministers’ credit that they did not prevail. We consider, however, that Mr MacGregor should not have acceded to Mrs Attridge’s suggestion to adopt a public presentation that did not reveal the fact that Ministers thought it desirable to take precautions that went beyond Southwood. He should have ensured that the public were given a candid account of current Government concerns. It was important that all concerned – both within and outside Government – should know that Ministers wished to ensure that SBOs from subclinical animals were banned from all human food, and that there was a scientific underpinning for this ban.

3.321 We do not consider that Mrs Attridge should be blamed for her suggestion as to how the decision should be presented. She reasonably understood that her Minister was reacting to political pressure by taking a measure that had no intrinsic merit other than the fact that the ban neatly implemented the baby food recommendation. Mr Cruickshank had the same understanding and cannot be criticised for not challenging Mrs Attridge’s suggestion. Mr Meldrum did not. He believed that the SBO ban would cure illogicality in the Southwood recommendations but shared the desire to do nothing that cast doubt on the Southwood Report as a whole. It would, however, have been difficult for him to urge a franker approach to presentation inasmuch as he knew that his Minister’s agenda was to secure Sir Richard Southwood’s agreement to the SBO ban. We think it would be harsh to criticise him for his failure to do so and we do not criticise him in this regard.

3.322 Dr Metters and Dr Pickles were opposed to the ban, Dr Metters in compliance with his brief from the CMO and Dr Pickles for the additional reason that she thought it without merit. Neither of them could have been expected to object to the presentational approach that was agreed upon.

The response of DH to MAFF’s proposal

3.323 The re-draft of the reply to Mr MacGregor’s letter requested by Sir Donald Acheson and his warm reaction to the proposed ban, describing it as ‘prudent and appropriate’ (see paragraph 3.253) is not easy to reconcile with his earlier commendation of the Southwood Report, which recommended no such precautionary measures. It also contrasts with what we have concluded was his original reaction on learning of the proposed ban. He was asked the reason for his change of attitude. He replied that he had just returned from a foreign visit with Mr Clarke and:
Having been away for two or three weeks, your mind clears a bit of the immediate issues and perhaps you see things more freshly.  

3.324 He also told us that once it was clear that MAFF were determined to go ahead without waiting for the position of vaccines to be resolved, he had no other objections to the ban.  

3.325 It may be that Sir Donald had belatedly come to appreciate the merit under the precautionary principle of the proposed measure. His support for it was commendable.  

3.326 When Mr Clarke received Mr MacGregor’s letter proposing the SBO ban he concluded that the measure was motivated by a desire to restore and maintain consumer confidence rather than by any scientific consideration.  

3.327 He assumed that the reference to ‘a body of opinion in some scientific circles’ had been inserted to add weight to the proposal when the reality was that ‘we had no scientific advice which was strong enough to justify doing this’. We consider that this was a not unreasonable assumption to make – indeed so far as Mr MacGregor’s reason for the reference is concerned, it was not far short of the mark. In these circumstances we have no criticism to make of Mr Clarke’s support of MAFF’s proposal without seeking particulars of the scientific opinion to which the letter had referred.  

The reaction of the Prime Minister  

3.328 A copy of Mr MacGregor’s letter was sent to Mrs Thatcher and to members of MISC138. By noting the proposal without dissent Mrs Thatcher gave it her tacit approval. In a statement to the Inquiry she commented that she did not believe that she would have accepted the need for the ban solely for public reassurance and pointed out that the Minister had noted the view of some scientists that further action was now required.  

3.329 The Prime Minister’s approval was the last step in the process of taking a measure which provided an important safeguard of human health and which those responsible can cite in support of the proposition that the crucial measures that the emergence of BSE required were put in place.

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644 T128 p. 69  
645 S251C Acheson para. 4  
646 T87 p. 49  
647 T87 pp. 53–4  
648 S401 Thatcher para. 33
Sheep offal

3.330 The *Southwood Report*’s baby food recommendation applied to offal from sheep and other ruminants as well as cattle. Mr Meldrum’s minute of 26 May 1989 to Mr MacGregor contrasted sheep and cattle. In the case of cattle one was dealing with a new condition and could not be certain that the agent could not jump the species barrier to affect man. To go further and extend a ban to sheep ‘would re-open the whole of the scrapie issue’.

3.331 Mr Meldrum’s concerns were heeded and the SBO ban applied only to cattle. The result was that the *Southwood Report*’s recommendation about baby foods, to the extent that it applied to ruminants other than cattle, was not given legislative effect. If this was a matter of concern to the members of the Southwood Working Party, they did not raise it with Government. There was, we think, a valid distinction between BSE, a disease which had been only recently observed, and scrapie in sheep. In the case of scrapie, long experience had failed to demonstrate any risk to humans. Thus in 1989 it was reasonable to take action only in relation to cattle. It was to become apparent the following year that BSE could be transmitted experimentally to sheep by oral ingestion. We deal with this in Chapter 4.

Preparation of the SBO Regulations

Introduction

3.332 The intention of the SBO ban was to prevent human consumption of those parts of the cow that were likely to pose a significant risk of infectivity if BSE proved to be transmissible to humans. This section traces the processes that led to the determination of those tissues which were to be covered by the ban.

3.333 Experimental research on scrapie carried out by Dr William Hadlow to which we have referred earlier (see table at paragraph 3.200) had indicated that brain, spinal cord, spleen, thymus, tonsils and intestines were high-risk tissues and the intention from the outset was that these should be included in the list of types of SBO.

3.334 More generally, the lympho-reticular system had been demonstrated to be a source of significant infectivity. This raised a problem. There could be no question of including the entire system in the ban. The approach ultimately adopted was to include in the ban those tissues, other than muscle, in which lymph nodes (macroscopically visible as opposed to lymph nodules which are only visible under microscope) were prevalent. It was on this basis that intestine was to be included in the ban.

3.335 In this section we shall be concentrating on a number of issues which fell to be resolved. The first was whether lymphatic tissue was to be found in all or any of the four stomachs of the cow to an extent which rendered it appropriate to include them in the ban. This was of commercial significance, for edible tripe was produced
from these tissues and one of the stomachs, the abomasum, was the source of rennet, which was used for making cheese.

3.336 A second issue was whether an exception could be made from any ban on intestines to exclude casings used for sausages and black and white pudding, on the ground that the processing of the casing would remove the lymphatic tissue.

3.337 A third issue was whether an exception could be made from the ban in respect of calves under 6 months of age. Having been born after the introduction of the ruminant feed ban they should not, in theory, have been at risk of infection – unless BSE was capable of vertical or horizontal transmission, questions which were unresolved.

3.338 A fourth issue was whether it was acceptable that the spinal column of cattle should be used for the extraction of mechanically recovered meat (MRM), having regard to the risk that this might be contaminated with residual nervous tissue.

3.339 These last two issues merit particular attention, for the decision that was reached in the case of each of them was reversed some five years later.

3.340 We shall also be considering steps taken in relation to the enforcement of the SBO ban.

Division of responsibilities for developing the SBO Regulations between MAFF and DH and within MAFF

3.341 MAFF and DH had joint responsibility for working on a range of health and food safety issues. Sir Derek Andrews, the Permanent Secretary of MAFF, and Sir Christopher France (Permanent Secretary: 1987–88, DHSS; 1988–92, DH), along with other senior officials including the CMO, met at least every six months to discuss and review any policy issues which concerned both Departments. Furthermore, the Cabinet Secretary chaired a weekly meeting of all Permanent Secretaries where any particular issues of concern to Departments in general could be raised. Sir Derek described the interface between MAFF and DH as a ‘mixture of formal and informal relationships’.

3.342 Mr Cruickshank stated:

Veterinary staff were responsible for professional advice both on animal health issues and on public health issues relating to farm animals and meat or other animal products. On the latter they maintained close contact with medical colleagues in the Department of Health . . . Similarly, there was frequent contact between administrative staff in Animal Health Group and administrative staff in DHSS, as well as with colleagues in other parts of MAFF.

3.343 So far as the SBO Regulations were concerned, DH let MAFF take the lead in formulating the ambit of the Regulations and in the consultation process. This

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651 S281A Andrews para. 10  
652 S281A Andrews para. 10; S275 France para. 15  
653 S281A Andrews para. 13  
654 S75 Cruickshank para. 1.7
was natural as, although the object of the exercise was the protection of public health, the technical issues were essentially ones that called for veterinary expertise. Furthermore, the understanding of DH was that MAFF’s reason for introducing the Regulations was reassurance rather than protection of the consumer.

3.344 The division of responsibilities for the safety of human food between DH and MAFF was reviewed during the second half of 1989 by a Working Group chaired by Mr Andrew Whetnall. We describe their conclusions in Chapter 4, where we also deal with hygiene standards in slaughterhouses and the responsibilities of different parts of government for meat hygiene enforcement.

3.345 Within the administrative side of MAFF the Animal Health Division (AHD) was concerned with the development and implementation of policy on animal diseases. The Meat Hygiene Division (MHD) was responsible for policy and legislation on hygiene and inspection in meat plants, for import and export requirements relating to meat and for welfare of animals at slaughter. Both these Divisions were involved in the preparation of Regulations to give effect to the proposed SBO ban.

3.346 The AHD and the MHD (along with the Animal Welfare Division and the Animal Medicines Division) were all based at Tolworth. The heads of each Division reported to Mr Cruickshank who was based in Whitehall so that he could be close to Ministers and other senior officials.

3.347 In mid-1989, when it became clear that the Minister wanted to impose a ban on certain offals, Mr Lowson wrote to Mr Cruickshank concerned that the AHD did not have the necessary resources to ‘give this project a priority that is no doubt attached to it.’ In response, Mr M J Griffiths (MHD, MAFF) agreed that his Division would deal with the Legal Department on the preparation of the Regulations. This left the AHD responsible for advising on policy in regard to BSE.

3.348 Sir Derek Andrews saw this division of responsibility as a ‘logical and efficient allocation of the work in the circumstances’ particularly as the AHD already had expertise in making policy in relation to BSE, whilst MHD had experience in handling slaughterhouse legislation.

3.349 The reasons for adopting this approach were set out by Ms Bronwen Jones (MHD) who told us:

This arrangement was adopted because the Regulations were designed primarily as a precautionary measure to protect human health from any risk and not a disease control measure; because the protection of human health was effected in this instance by imposing requirements in abattoirs; and because they were modelled closely on existing regulations governing the treatment and disposal of unfit meat. MHD were responsible for those regulations and for policy generally on abattoir hygiene and practices as far as they relate to the protection of human health from risks through food.
3.350 Sir Derek Andrews stated that ‘The evidence before the Inquiry indicates, therefore, that AHD and MHD worked closely together, pooling their expertise as would be normal in a government department with specialised units’. The contemporary documents suggest that there was, at least initially, a degree of tension between the two Divisions as to the sharing of the burden of introducing the SBO Regulations.

3.351 On 6 July Mr Griffiths minuted Mr John Maslin (Senior Executive Officer, Animal Health Group, 1985–96, MAFF) confirming the division of responsibilities between AHD and MHD. He stated:

The only point I wish to make now is that I must ask that Mr Duncan Fry is not shown in the letter as the contact point for comments.

We did agree, as Mr Fry has considerable experience of the legislation, that he would assist this work, by acting as your Division’s agent in the preparation of the draft SI. Indeed, he then gave the best part of his time, which meant many late nights in the office, to the job in the two weeks before he went on leave. My agreement to these arrangements was on the clear understanding that consultation would be undertaken by AH Division. When comments are in, we will be prepared, as now, to continue to give as much help as possible.

3.352 The reaction of officials in AHD can be confirmed from manuscript endorsements on this minute which were not intended to be preserved for posterity. These indicated that they were less than happy with their allotted roles.

3.353 Both veterinarians and administrators were involved in preparation of the regulations. Mr Cruickshank stated that:

The division of responsibilities between the veterinary and administrative staff was never very precisely defined.

3.354 Mr Lowson stated:

Veterinary and administrative staff worked in separate hierarchies but in very close partnership.

Choice of legislation

3.355 On 7 June 1989, Mr Lawrence minuted Mr Griffiths about the meeting that Mr Cruickshank had had with the Minister the previous evening, discussed in paragraph 3.245. In relation to the legislation to be used under which to bring the ban:
It was agreed, if it is legally possible to do so, that it would be best to condemn offals at source rather than seek to prohibit their use through a further amendment to the Meat Products Regulations.  

3.356 Mr Fry minuted Mr Lawrence on 8 June stating that it would be possible to regulate to prohibit the use of certain types of offal in human food under sections 4 and 13 of the Food Act 1984. He advised that the Regulations would probably have to stand alone, rather than be an amendment to the existing Meat Inspection Regulations as:

we are not able to define the material as unfit for human consumption nor attribute any health hazard to it. The enforcement authority will be local authorities – whose staff enforce the legislation in slaughterhouses.

3.357 Mr Fry noted that lawyers still needed to consider the final details, but he hoped the material to be banned ‘could be brought within the controls of the Meat (Sterilisation and Staining) Regulations for its subsequent treatment’. Using the Food Act as the vehicle for making the Regulations would also require Ministers to ‘consult with such organisations as appear to them to be representative of interests substantially affected by the Regulations or by the Order’.  

3.358 In his letter to Mr Clark on 9 June 1989 about the SBO ban proposal, Mr MacGregor had said that he was ‘anxious to introduce the necessary Regulation, which will be made under the Food Act, with the minimum of delay’. As Mrs Attridge stated in oral evidence:

The Animal Health Act is a very directly applying Act. Its powers can be made that day and come into force that day. Therefore, if one can use the Animal Health Act, one can make immediate regulations, but clearly this could not be under the Animal Health Act because it was not relating to animal diseases. It was a recommendation that related to foodstuffs, so by circular argument, when one looked further into it, one got back to the Food Act 1984.

3.359 On 15 June 1989, Mr Fry sent a draft minute instructing lawyers to prepare the proposed Regulation to Mr Lawrence, Mrs Attridge, Mr Crawford and Mr L Gunatileke (Legal Department, MAFF) and others. He explained in a covering note that ‘I have gone for treatment along the lines of that required in the Meat (Sterilisation and Staining) Regulations for specified offal.’ Mr Fry said in his statement to the Inquiry that he had frequent discussions with Mr Gunatileke to establish the legal details of the Regulations. Mr Fry also sent a minute to Mr Cruickshank (to be sent to Mr Barry Atwood of the MAFF Legal Department if Mr Cruickshank wished) ‘pressing for amendments to existing SIs and outlining how they might work’ rather than having separate Regulations as was being envisaged.
3.360 However, five days later the form of the legislation was still to be clarified. Mr Fry informed his colleagues that:

The lawyers favour a stand alone SI banning sale etc backed up by a requirement to treat this material in the same way as specified offal in the Meat (Sterilisation and Staining) Regulations . . . The alternative approach is to further consider a provision in the Meat Inspection Regulations and the Fresh Meat Export (Hygiene and Inspection) Regulations along the lines of Schedule 2 para 1(2) and Schedule 8, Part VIII para 1(2) respectively which deal with certain meat being regarded as unfit for human consumption.673

3.361 Mr David Taylor (Veterinary Head of Section of the Red Meat Hygiene Section MAFF, May 1987–April 1997) responded to Mr Fry on 22 June 1989. He stated that he preferred amending the Meat (Sterilisation and Staining) Regulations because the relevant schedules in the other Regulations required the inspector to make a judgement as to fitness, when no such judgement would be required for SBO. Further, the Meat (Sterilisation and Staining) Regulations already provided for the treatment and handling of unfit offal.674

3.362 After the Regulations had been drafted and a proposed consultation document was submitted to the Minister on 7 July 1989, Mr Cruickshank said that ‘we have tried wherever possible to stick to the procedures for handling unfit meat in the Meat (Sterilisation and Staining) Regulations, with which the industry is familiar’. He noted that in some cases that had not been possible, but workable arrangements had been devised.675

Contentious offal: introduction

3.363 As indicated in the introduction to this section, the aim of the SBO ban was to prevent high-risk offal entering the human food chain. Although brain, spinal cord, tonsils, spleen, thymus and intestines had been identified as high-risk offal to be included in the ban, there were a number of additional issues to be resolved in relation to the proposed ban. In particular whether:

i. to include tripes and rennet in the ban;

ii. to include mesenteric fat in the ban;

iii. to exclude casings from the ban on intestines;

iv. to exclude calves under 6 months of age from the ban;

v. it was acceptable to use spinal column of cattle for the production of MRM; and

vi. the status of brain as an SBO would compromise the use of bovine heads for meat recovery.

3.364 Research and discussion proceeded on all of these topics simultaneously between early June and mid November 1989, when the Regulations were finalised and came into effect. In this section we trace the development of policy on these
topics, including the additional work by Mr Bradley in this area, the consideration of the responses to the public consultation on the proposed ban and the views of independent experts.

3.365 As a result of our separate coverage of each of these topics, many of the events, including the various meetings held by Ministers and/or officials during this period, appear several times. In order to reduce some of the repetition associated with this detailed coverage of policy development, we first provide a brief outline of the main stages and events in the process. We have already mentioned some of these events, particularly those in June, earlier in this chapter.

6 June: Mr MacGregor meets senior MAFF officials

3.366 The meeting with Mr MacGregor was attended by Mr Andrews, Mr Cockbill, Mr Meldrum, Mr Cruickshank, Mr Lawrence, Mr Gueterbock and Mr Coe from MAFF and by Dr Metters from DH.

3.367 The purpose of this meeting was to discuss the issues raised in Mr Cockbill’s submission of 2 June on various aspects of the proposed offal ban and Mr Thompson’s note of 2 June on various policy options on BSE. Its purpose was also to ‘clear the ground and decide on the main lines of action prior to the meeting with Sir Richard Southwood the following day’. 676

7 June: Mr MacGregor and senior officials meet Sir Richard Southwood

3.368 The meeting between Mr MacGregor and Sir Richard Southwood was also attended by Mr Cruickshank, Mr Meldrum, Mr Coe and Mrs Attridge from MAFF, and by Dr Metters and Dr Pickles from DH.

3.369 The meeting discussed the background to the proposed ban of specified offal, including the possible exemptions of casings and calves. 677

13 June: press announcement of the proposed SBO ban

3.370 DH and MAFF issued a joint press release to announce their intention to impose a ban on the sale of SBO for human consumption. 678

15 June: Mr Fry circulates draft instructions to lawyers on the Regulations

3.371 Mr Fry sought comments from others in MAFF on his draft instructions to lawyers on the preparation of the Regulations to implement the specified offal ban. The draft instructions provided for, among other things, the exemptions on casings and of calves of less than 6 months of age. They also explained how the Regulations should deal with the removal of bovine brains from skulls. 679
19 June–21 July: Mr Bradley’s reports

3.372 Policy decisions on what should be included in the SBO ban were largely based on the work undertaken by Mr Bradley during this period. He carried out a series of studies to determine the extent to which lymphatic tissue was present in the digestive system of cattle.\(^680\) The results of these studies were presented to Mr Meldrum, Dr Watson, Mr Kevin Taylor, Mr Wilesmith, Mr Lawrence and Dr Woolfe in a series of ten reports.\(^681\)

3.373 While Mr Bradley was conducting his studies, MAFF continued the process of formulating policy on the content of the SBO ban.

27 June: first meeting between MAFF officials and representatives of relevant industries

3.374 This meeting was attended by representatives of the tripe manufacturing, and pet food industries, the MLC and the United Kingdom Renderers Association (UKRA). MAFF was represented by Mr Meldrum, Mr Lawrence and Mr Maslin.

3.375 The meeting discussed the background to the SBO ban, and Mr Bradley’s studies. Also covered was the question of communication with the industry and the estimated size and value of the tripe industry.\(^682\)

7 July: submission of draft regulations and consultation letter to Mr MacGregor

3.376 Mr Cruickshank sent a submission incorporating a proposal for regulations and a consultation letter to Mr MacGregor. His covering note commented that MAFF had been in close contact with DH in drawing up the consultation document. At this stage the ban included brain, spinal cord, spleen, thymus, tonsils, intestines and stomachs (rumen, reticulum, omasum and abomasum). Exempt from the ban was the spinal cord of animals of less than 6 months of age where the carcass had not been split after slaughter, the small intestine used in the manufacture of sausage casings, and rennet deriving from calves under 6 months.\(^683\)

19 July: submission of revised consultation letter to Mr Donald Thompson

3.377 Mr Cruickshank submitted a revised consultation letter to Mr Thompson. The covering note updated the Minister about recent advice from CVL which added further weight to the view that bovine stomachs, from which tripe and rennet were prepared, need not be included in the ban, and that the large intestine as well as the small intestine would be similarly exempt.\(^684\)
21 July: DH agreement to the proposals in MAFF’s consultation letter

3.378 Dr Pickles forwarded MAFF’s revised consultation letter to Sir Donald Acheson and Dr Metters, indicating that she was content with the proposals for the ban on specified offal.685

Ministerial changes in late July

3.379 On 24 July 1989 Mr Gummer succeeded Mr MacGregor as Minister of Agriculture, Fisheries and Food. The following day he was joined by Messrs David Maclean and David Curry, who succeeded Messrs Donald Thompson and Richard Ryder as Parliamentary Under Secretaries (Commons).

26 July: MAFF issues the consultation letter on the proposed SBO ban

3.380 On 26 July, following Mr Thompson’s approval, Mr Lawrence sent out the consultation letter to a large number of industry and other groups, including the meat industry, food retailers and manufacturers, farmers, local authorities, scientific institutions and the European Commission. The letter sought their views about the proposal for a ban on the sale of certain types of bovine offal and asked for a response by 13 September. The letter noted that the BSE agent might be present in the brain, spinal cord, spleen, thymus, tonsils and intestines.686 Responses were widely circulated within MAFF by Mr Maslin687 and also sent to Dr Pickles at DH and officials in the Agriculture departments in Scotland, Wales and Northern Ireland.

18 September: the ad hoc meeting of experts

3.381 This meeting was attended by Sir Richard Southwood, Dr Tyrrell, Dr Kimberlin, Mr Meldrum, Mr Bradley, Mr Lowson, Mr Lawrence, Dr Metters and Dr Pickles.

3.382 The meeting had been proposed by Dr Metters on 7 August with the aim of seeking appropriate scientific advice on maternal transmission, particularly in relation to the proposal to exclude calves under 6 months from the ban.

3.383 In addition to the possible exemption for calves, the meeting also discussed the issues of abomasum, rennet and casings.688

27 September: meeting to discuss responses to the consultation letter

3.384 This meeting was chaired by Mr Cruickshank and attended by Mr K Taylor, Mr D Taylor, Mr Lowson, Mr Lawrence, Mr Maslin, Mr Fry and others from MAFF, Dr Wilesmith from CVL, Mr Anderson (Department of Agriculture and Fisheries for Scotland), Mr Graham Podmore (Welsh Office Agricultural Department) and Mr R Martin (Department of Agriculture for Northern Ireland).689
No representative from DH was present at the meeting. Dr Pickles had been invited at short notice but was unable to attend.690

3.385 On 29 September, Mr Maslin circulated a note of the meeting to all the attendees and to Mr Meldrum, Mr Keith Baker (Assistant CVO, Meat Hygiene Division June 1988–March 1996) and Mr Bradley (among others).691 Dr Pickles and Dr Metters were sent copies of the meeting note on 3 October.692

19 October: Mr Meldrum writes to Dr Jeremy Metters

3.386 Mr Meldrum’s letter of 19 October to Dr Metters set out the latest rationale for the proposed policies on rennet, casings, mesenteric fat and calves, and enclosed ‘further detailed advice’ from Dr Kimberlin. He also sought a meeting with Dr Metters to ‘discuss the way forward’.693

3.387 A few days later Mr Meldrum copied this letter to Dr Tyrrell and Sir Richard Southwood, seeking their comments ‘on the approach we are advocating and which we hope to present to Ministers’.694 Both Dr Tyrrell and Sir Richard subsequently endorsed the proposed approach.

20 October: the meeting with the Meat Industry Liaison Group (MILG)

3.388 Mr Lowson, Mr Lawrence, Mr Maslin, Mr Baker and others from MAFF attended this meeting. The purpose of the meeting was to discuss a number of concerns raised by the MILG in their response to MAFF’s consultation on the proposals to ban certain types of SBO.695

30 October: DH recommends MAFF to proceed as it thinks fit with the proposals

3.389 Dr Metters responded to Mr Meldrum’s letter of 19 October, and advised that he agreed generally with the proposals as they now stood and that he was content for MAFF to proceed.696

2 November: circulation of the final draft regulations to MAFF Ministers

3.390 Mr Lawrence distributed a final draft of the Regulations with a submission to MAFF Ministers. This proposed that the four bovine stomachs, mesenteric fat (used for tallow and edible fats), MRM and offal from calves under 6 months old should be exempt from the ban. However it recommended that casings should not continue to be available, as an ultra-precautionary measure.697

690 S115E Pickles para. 31
691 YB89/9.29/3.1–3.7
692 YB89/10.03/9.1–9.2
693 YB89/10.19.7.1–7.11
694 YB89/10.23/1.1; YB89/10.23/2.1
695 YB89/10.23/6.1–6.3
696 YB89/10.30/7.1–7.2
697 YB89/11.02/4.1–4.23
7 November: Ministers meet to discuss Mr Lawrence’s submission

3.391 The meeting was attended by Mr Gummer, Mr Maclean, Mr Andrews, Mr Packer, Mr Meldrum, Mr Cruickshank, Mr Lawrence, Mr Dugdale and Mr Gueterbock.698

3.392 The Ministers agreed the ban as set out in submission of 2 November. They were told that lawyers envisaged two weeks to make the necessary amendments to the draft orders. Mr Gummer replied that he wished this process to be speeded up and would like the ban to come into force the next day, if at all possible.699 His statement to the Inquiry explained that this was to reassure the public that action was being taken.700

3.393 Industry representatives were telephoned and told about the inclusion of sausage casings.701

3.394 Dr Pickles sent the submission on the proposed regulations to DH Ministers, recommending that they co-sign.

3.395 Mr Cruickshank telephoned Mr Peter Davis, head of MAFF’s legal branch A1 to inform him of the Minister’s request that the Regulations should be ready for signature that day. Mr Davis concluded that a minimum of 48 hours would be needed. When that was initially regarded as too long by the Minister’s office, the head of MAFF’s legal department sought an appointment with the Law Officers. Involvement of the Law Officers became unnecessary when the Minister’s office agreed to accept 48 hours.

8 November: signature of the Regulations

3.396 At around 8.15pm on 8 November 1989 Mr Davis forwarded a keyed copy of the Regulations.702 They were submitted by Miss Jones for signature later that evening. Her covering minute noted that copies of the Regulations would be circulated to Chief Executives of District Councils in England and Wales, who were the enforcement authorities.703 The Regulations were made on 8 November, laid before Parliament on 9 November and came into force on 13 November 1989.704

3.397 We now deal with each of the contentious offal types in turn, explaining how the policy on each was developed.

Tripe and rennet

The CMO raises the issue of whether tripe should be added to the list of types of banned offal

3.398 The day before the announcement and press briefing on the proposed offal ban, Mr MacGregor met the CMO who sought clarification about whether bovine
Introduction of the Ban on Specified Bovine Offal

tripe would be included in the ban. Mrs Stagg’s minute describing the meeting recorded that Mr MacGregor agreed to examine the question of bovine tripe and it requested a note from Mr Cruickshank on this point for the press briefing the next day.\textsuperscript{705}

3.399 On 13 June, Mr Cruickshank reported to Mr MacGregor:

I understand from Mr Crawford that tripes are made from the stomach of the animal. They have not previously been mentioned in this connection, but the veterinary advice is that they will contain significant quantities of lymphatic tissue. Like intestines, they are scraped in the course of preparation, but they are not scraped as thoroughly as intestines. There is therefore likely to be more lymphatic tissue left on the material. Although in the time available it has not been possible to establish to what extent the scrapie agent has been found in sheep stomachs, it would seem likely from first principles that the stomachs of infected animals would be affected.

Unlike the other offals which we are proposing to prohibit, I understand there is some economic interest in tripes. I believe for example, that Northern Ireland exports significant quantities of tripes to the Far East.

As it has not been possible in the time available to give this issue as full consideration as it might warrant, I would suggest that we leave the announcement unchanged, but in the consultation document which is being prepared we might air the possibility of adding stomachs to the list of offals to be rejected.\textsuperscript{706}

3.400 Accordingly, the announcement on 13 June did not mention tripe or whether it would be included in the offal ban.\textsuperscript{707}

Mr Lawrence clarifies MAFF’s ‘line to take’ on tripe

3.401 Following the 13 June announcement, MAFF were inundated with telephone calls seeking clarification on their intentions in relation to the ban.\textsuperscript{708} On 15 June, Mr Lawrence minuted Mr Cruickshank, Mr Meldrum, Mr Bradley and others in MAFF, to pass on some of the points raised. On tripe, he noted:

... the line we are taking is to say that, whilst it is not specifically included in the list of offals which the Ministry wishes to ban, careful consideration is being given to its possible inclusion after taking the best possible scientific advice. I have already had a useful discussion with Mr Bradley on this. He informs me that three of the four stomachs may be used for tripe: these are the rumen, reticulum and the omasum. The abomasum is not used. The oesophagus is apparently part of what is described as tripe and can also be used for human consumption. Urgent consideration, therefore, needs to be given to the amount of lymphatic tissue in the three stomachs, and presumably the oesophagus, to see whether it presents a risk after preparation.\textsuperscript{709}
3.402 The statement that the abomasum was not used proved to be incorrect. It was the source of a variety of tripe known as ‘black tripe’ (see paragraph 3.408). Abomasum had a further significance as a source of rennet, which was extracted from calf abomasums for the production of cheese.

**Mr David Taylor’s advice on tripe**

3.403 On 16 June, Mr Fry of MAFF’s MHD reported to Mr Cruickshank that it was not the practice to scrape the stomach in the manufacture of tripe, and that in any event, scraping would not ensure removal of substantial amounts of lymphoid tissue. This information had come from Mr David Taylor.\(^{710}\)

**Mr Bradley’s investigations into the distribution of lymphoid tissue in the digestive system of cattle**

3.404 The first two of Mr Bradley’s reports (on 19 and 22 June 1989) presented results from examination of bovine tissue samples stored at CVL.\(^{711}\) These initial results showed that there were significantly fewer lymphoid nodules in the oesophagus and tripe organs—rumen, reticulum, omasum—than in the abomasum and the other parts of the digestive tract. Mr Bradley concluded that tripe and oesophagus might therefore present a lower risk of harbouring the BSE agent. However, he cautioned that the tissues he had examined were from diseased cattle and might be unrepresentative of the true picture. He reminded his readers that a more detailed study on the digestive tract of an adult beef animal reared for human consumption was shortly to be under way.

3.405 Mr Bradley’s third report of 2 July, presented the results from his examination of the digestive system of an adult beef animal. This study largely confirmed his previous observations on the distribution of lymphoid tissue. He observed that dressing of the tripe might remove the small traces of lymphoid cells. Further:

> Even if it did not, the risk factor for grey tripe organs (ie, rumen, reticulum and omasum) and oesophagus in regard to BSE infectivity is, assuming a correlation between presence of lymphoid tissue and BSE infectivity, much lower than for unprepared abomasum and particularly small intestine and parts of the large intestine. The true risk factor can only be established by infectivity studies but the present study suggests that grey tripe organs and oesophagus are of acceptably low risk for human consumption provided these results pertain with a large selection of animals.\(^{712}\)

3.406 Mr Bradley’s fourth report of 5 July presented the results from his examination of tripe specimens collected from a visit to the premises of a bovine tripe dresser on 28 June.\(^{713}\) The specimens were collected at the point of receipt from the abattoir, after each of the three main processing procedures and at the final product stage. Mr Bradley reported that the fresh untreated rumen and reticulum had precisely similar structure to that seen in a freshly killed beef animal; further, that although the processing stages removed certain layers of tissue from the rumen and

\(^{710}\) YB89/6.16/2.1

\(^{711}\) YB89/6.19/3.4–3.7

\(^{712}\) YB89/6.19/3.10

\(^{713}\) YB89/6.19/3.15; YB89/6.28/1.2–1.16
reticulum, the lymphatic nodes were not removed but they were nevertheless
minimal. He concluded that the risk factors for BSE infectivity of grey tripe organs
and the oesophagus were much lower than for unprepared abomasum and intestine.

3.407 In his fifth report of 12 July, Mr Bradley presented the results from his further
examination of the tripe specimens collected on 28 June, in particular the
immunological activity of the lymph nodules in the digestive tract.\(^{714}\) The results
further supported the conclusions from his previous reports that the potential for
BSE infectivity would be a lower risk in the grey tripe than in the abomasum or
small and large intestines.

3.408 In his sixth report of 13 July, Mr Bradley presented the results from his
examination of five beef cattle slaughtered for human consumption. The results
were consistent with his previous observations: the abomasum contained many
more lymph nodules than in the oesophagus or in the rumen, reticulum or omasum.
He concluded that:

\[
\ldots \text{abomasum should be regarded as a higher risk tissue in regard to the}
\text{potential for BSE infectivity. Note however that if the mucous membrane}
\text{was entirely removed during the processing to black tripe for human}
\text{consumption this risk would be reduced or eliminated.}^{715}
\]

3.409 Mr Bradley also submitted his seventh report on 13 July, which summarised
the results of his studies on the risks of infectivity of tissues from the bovine
digestive tract. He noted:

The spectrum of perceived risk for BSE infectivity for man from
consumption of infected animals is infinite ie there is none at one end or ‘all
cattle exposed to infection should be killed and incinerated’ – (Dr Grant).
The Government has seen fit to ‘set the standard’ somewhere between the
extremes and closer to the first. At present the ‘needle’ setting the standard
is on the move from the point of no risk to the point of increased risk. It is
therefore important to establish at least one and possibly several ‘stops’. The
present tripe problem provides an opportunity to set such a stop as well as to
protect an important and safe industry. It is therefore paramount that the
detailed scientific study of fresh and cooked tripe morphology is soundly
based, agreed with experts in the field, understood by administrators and
politicians and presented honestly and effectively to the public and media
(if required).\(^{716}\)

3.410 Mr Bradley’s conclusions and recommendations were:

Based on the studies conducted and on the assumptions made which have
been discussed with other experts in the field, it is recommended that as an
interim measure and until the results of infectivity experiments are known
oesophagus (weasand), reticulum, rumen and omasum are continued to be
permitted for sale for human consumption provided the procedural changes
in preparation of tripe mentioned here and in previous reports are adopted.
[These have been omitted from this summary.]

\(^{714}\) YB89/6.19/3.18–3.19
\(^{715}\) YB89/6.19/3.21
\(^{716}\) YB89/7.13/2.1–2.5
Infectivity studies in mice should be initiated and paid for in part at least by the industry.

Untreated abomasum and intestine should not be used for human consumption.

Studies on the preparations of rennet and gut casings from cattle and histological and other studies as required should be initiated to determine their safety in regard BSE infectivity.

Cross-contamination of ‘clean’ by ‘dirty’ tissues should be avoided in all processes.717

3.411 This was followed on 14 July by Mr Bradley’s eighth report, a pictorial account of lymphoid tissue in the bovine digestive system.718 This was complementary to his previous reports and illustrated the various tissue sections he had examined. He concluded:

The abomasum, small and large intestine should not be available for human consumption unless all the parts containing lymphoid tissue are completely removed.719

3.412 His ninth report of 18 July was on the immunological activity of lymph nodules in the digestive tract from mature beef cattle slaughtered for human consumption.720 The results supported the findings from his previous studies that oesophagus and grey tripe presented a lower risk for BSE infectivity than abomasum or intestine.

3.413 Mr Bradley’s tenth report of 21 July focused on the abomasum from adult beef cattle.721 In particular the study investigated whether the lining of the abomasum, and its component lymphoid tissue, was removed or destroyed by tripe dressing and processing. The results showed that there was little change to the thickness of the abomasal wall during dressing and processing, and Mr Bradley concluded that:

Substantial quantities of lymphoid tissue remain in the product at the point of sale.722

3.414 Mr Meldrum wrote to Mr Bradley on 21 July advising that he did not wish to initiate any further investigations into the production of rennet ‘since Ministers are being advised to exempt abomasums from the “offal ban” and I have no wish to stir up any more hornets nests!’.723

717 YB89/6.19/3.27
718 YB89/7.14/2.1–2.17
719 YB89/7.14/2.17
720 YB89/6.19/3.30–3.31
721 YB89/6.19/3.32–3.35
722 YB89/6.19/3.33
723 YB89/7.21/2.1
27 June: first meeting between MAFF officials and representatives of relevant industries

3.415 The note of this meeting records that Mr Meldrum explained the background to the proposed SBO ban, the concern about lymphatic tissue in tripe, and that a decision would be taken after the findings from Mr Bradley’s scientific studies on tripe were known.

3.416 The tripe industry representatives discussed their concerns about the proposed ban. In particular one representative asked what the difference was between residual lymphatic tissue in meat (on which no action was to be taken) and tripe. The note records that Mr Meldrum explained that:

. . . it was all on assessment of risk and a line had to be drawn somewhere. It was impractical to remove lymph nodes in meat from carcasses at the slaughterhouse but that butchers removed these from meat before sale.724

3.417 The possible consequences of banning tripe were discussed in the context of the size and value of the tripe industry. One example given at the meeting showed that at one abattoir sales of tripe and omasum were £300,000 to £350,000 per year from processing 1,400 animals per week.725

Mr Meldrum’s contribution to the development of the ‘line to take’

3.418 Also on 27 June Mr Meldrum minuted Mr Maslin providing a contribution for a submission to Mr MacGregor about the consultation letter on the proposed ban on the use of SBO. The minute was copied to Mr Bradley and others in MAFF. On the issue of tripe, Mr Meldrum wrote:

As the Minister will be aware, banning the use of tripes (stomachs) is not only contentious but technically weak. According to the literature the agent is not present in tripes although it is present in the intestines. However, tripe may contain some lymphoid tissue where the agent may be present. We are carrying out some work, urgently, at the Central Veterinary Laboratory into the structure of tripe and, in particular, to determine whether any lymphoid tissue is present in treated tripe. In the meantime we propose to consult on the basis of a ban on the use of tripe and can take a final view when the consultation process is complete and we have finished our investigations at the CVL. However by so doing we are casting doubt on the safety of tripe but the consultation letter is worded so as to put the issue in perspective without alarming the public unduly.726

3.419 Mr Meldrum’s conclusions on rennet were the following:

This is produced from calf abomasums by a system of separation of mucus, filtration and exposure to a pH between 2 and 3 for about 2.5 hours. This will not destroy the agent but is likely to reduce the level of the agent in the final product. We therefore conclude that the risk from such rennet is very small indeed and may be totally absent since the agent is unlikely to be in the

724 YB89/6.27/1.2
725 YB89/6.27/1.2
726 YB89/6.27/3.1–3.2
abomasum in the first place... The consultation letter, therefore, makes no reference to a ban on rennet for the reasons described above.\(^{727}\)

**3.420** A week later Mr Bradley replied to Mr Meldrum’s minute. On the subject of tripe he reminded Mr Meldrum that:

There have been no studies I know of to determine the infectivity of bovine tripe, therefore, we do not know if it is infected or not. This applies also to sheep.\(^{728}\)

**3.421** With respect to rennet Mr Bradley stated:

Whilst I appreciate that rennet is an important commodity and should be cleared if it is scientifically possible to do so, I urge a degree of caution for the following reasons:

a) If BSE transmits maternally the absence of exposure to scrapie or BSE-contaminated meat and bone meal alone is not an argument to defend the use of rennet since all material swallowed (including amniotic fluid *in utero*) passes into the abomasum. Maternal transmission might therefore expose the calf and abomasum to infection.

b) The abomasum of calves contains lymphoid nodules in the thickness of the wall. The full extent of this has not yet been examined in the calf but in a 2 year old ox killed for human consumption lymphoid nodules are extensive.

Despite these findings and even assuming oral (and thus abomasal) exposure to the unconventional agent it may be possible to “clear” rennet scientifically if all the cellular and membranous material is removed in processing. Even this may need some further informed opinion from NPU or Dr Kimberlin.\(^{729}\)

**7 July: submission of draft regulations and consultation letter to Mr MacGregor**

**3.422** Mr Cruickshank’s submission of 7 July to Mr MacGregor commented that work on the submission had proved more difficult and time-consuming than expected for two reasons:

First, there is the Chief Medical Officer’s last-minute suggestion that tripes should be included in the ban. Tripes, unlike the other material which we proposed banning are of economic significance to the industry. It is unclear to what extent prepared tripes contain lymphatic tissue which could harbour the BSE agent. Work is being done urgently at the CVL to establish the position, but the results will not be available for another week or two. Rather than hold up the consultation further, it seems best to issue the document with a clear indication that we shall only ban tripes if the investigations reveal there could be a risk.

\(^{727}\) YB89/6.27/3.1  
\(^{728}\) YB89/6.30/4.1  
\(^{729}\) YB89/6.30/4.1
Secondly, our legal advice is that the consultation document must specify very precisely what we intend to put in the regulations. This has meant that we have had to consider in great detail the procedures to be applied in slaughterhouses in handling the various types of material involved, and the procedures for movement of this material on leaving the abattoir. We have tried wherever possible to stick to the procedures for handling unfit meat in the Meat (Sterilisation and Staining) Regulations, with which the industry is familiar. In some cases this has not been possible, but we have been able to devise arrangements which will I believe be workable. 730

3.423 The draft consultation letter attached to Mr Cruickshank’s note explained that the abomasum of animals not more than 6 months old and used in the manufacture of rennet, would be exempted from the scope of the Regulations. 731

3.424 On 14 July, Miss Bowles (Private Secretary to Mr Thompson) minuted Mr Cruickshank in response to his submission of 7 July, advising him that Mr Thompson would be handling the policy on SBO. The minute noted Mr Thompson’s request for the consultation document to be amended to say that scientific evidence had not established any need for tripe to be included in the ban. It also noted that Mr Thompson was content for tripe to be made the subject of separate regulations and consultation, if it proved necessary to ban it at a later date. 732

Mr Meldrum reviews the ‘line to take’ on tripe in the consultation document

3.425 Mr Meldrum minuted Mr Crawford on 17 July commenting on Mr Bradley’s work and recommendations up to 14 July. In relation to tripe and rennet his minute stated:

It is clear from Mr Bradley’s reports that oesophagus, rumen, reticulum and omasum can be used for human consumption without restriction. The small and large intestines should only be used as casings.

Mr Bradley has demonstrated that the abomasum contains a similar amount of lymphoid tissue to the intestines. However, in the preparation of black tripe the mucosa is likely to be removed and for that reason abomasum should not present a human health hazard when used either as black tripe or casings.

I have already covered the production of rennet in an earlier minute and I have no wish to change the view expressed at that time and reflected in the submission to the Minister. Mr Bradley has commented that calves derived from BSE affected dams are higher risk from the rennet production viewpoint. However, bearing in mind that by the time the calf is killed any material derived from its dam at birth will have been passed and that the agent will be at a very low level indeed if at all in its carcass, such an animal would be a very low risk indeed. This taken with the effect of the pH in rennet production (to which I have suitable references from Mr D M Taylor

730 YB89/7.07/1.1
731 YB89/7.07/1.7
732 YB89/7.14/6.1
at NPU, Edinburgh) should ensure that the rennet produced does not present a human health hazard . . .

The consultation letter can therefore be recast along the lines I have indicated above. It therefore follows that both small and large intestines with the exception of casings would not be permitted for human consumption but that no action would need to be taken with any of the four stomachs on the basis that we are totally content with rumen, reticulum and omasum and that the products of the abomasum are prepared in such as way as to be a negligible human health hazard. 733

3.426 Mr Meldrum asked Mr Crawford to consult with Mr Cruickshank on amending the consultation proposals, as described, and to clear the ‘line to take’ with Dr Metters, Deputy CMO. 734

Involvement of DH in preparation of the consultation document

3.427 MAFF had consulted DH on the draft consultation document early in July. Dr Pickles had written to Mr Maslin on 7 July setting out her reservations about the draft, without commenting on the proposed policy on tripe or rennet. 735

3.428 On 17 July 1989, Dr Pickles minuted the CMO about MAFF’s plans not to ban tripe, as proposed by Mr Meldrum. She advised that she had agreed to a change in the draft consultation letter that may appear to ‘contradict what CMO had agreed earlier’. She noted that originally DH, at the suggestion of the CMO, had asked for tripe to be banned, believing it to be small intestine which possibly contained lymphoid tissue (see paragraph 3.399). She said that she had now been informed that tripe was from the higher parts of the bovine digestive tract and did not contain lymphoid tissue. She commented that Dr Kimberlin was content that it presented no risk. 736

3.429 Dr Metters was contacted on 18 July by MAFF about Mr Bradley’s results and the revised ‘line to take’ on tripe. The next day he minuted Dr Pickles 737 noting that, in addition to their work on sausage casings:

The CVL had also investigated the lymphoid content of bovine stomachs, particularly the abomasum. This was in relation to the sale of bovine stomachs as tripe, which apparently is sold in ‘white’ or more rarely ‘black’ varieties. Here again the laboratory had found that the lymphoid content of tripe as presented for human consumption was minimal. Their conclusion is that tripe should not be included as one of the banned bovine offals.

MAFF wished to inform us of their histological findings and conclusions. As a result of these they intend to state in the forthcoming consultation letter that bovine stomach, in the form of tripe and stripped intestine, used for sausage skins, will both be exempted from the ban of other ‘Southwood’ offals. 738
Dr Metters recorded that ‘If MAFF were satisfied with the findings from CVL, DH would certainly not wish to second-guess their findings.’ However, Dr Metters noted that those who disagreed would have an opportunity to state their case to MAFF during the consultation period.

19 July: submission of revised consultation letter to Mr Donald Thompson

On the subject of tripe, the revised covering letter enclosing the consultation letter sent by Mr Cruickshank to Mr Thompson noted that Ministers had not wished to include tripe in the offal ban, and:

In fact we have now received advice from CVL that bovine stomachs, from which tripes are prepared, need not be included in the prohibition. Similarly, the procedures used in the production of rennet from the fourth stomach (the abomasum) are such that rennet production need not be restricted.739

26 July: MAFF issues consultation document on the proposed specified offal ban

The consultation document did not contain any references to, or explanations of proposed exemptions of tripe, abomasum and rennet from the ban.

Correspondence between Mr Meldrum and Dr Jeremy Metters on the reasoning behind the exemptions for tripe and rennet

On 24 July, two days before the consultation document was issued, Mr Meldrum had written to Dr Metters confirming the reasoning behind the exemption from the SBO ban of stomachs and of intestines for casings.740 Mr Meldrum was writing at the request of Dr Pickles who had advised the CMO on 21 July that she was content with the consultation proposals.741 Mr Meldrum reported on the conclusions from the CVL work to establish the possible presence of lymphoid tissue, possibly harbouring the BSE agent, in the proposed types of offal. On tripe and rennet, Mr Meldrum explained:

The results show that, with the exception of the abomasum, the amount of lymphatic tissue present in the stomachs is significantly lower than is found in lung and is virtually constantly absent in the oesophagus . . . Consequently such tissue in stomachs should present a minimal risk. We are also satisfied from our investigations into the processing of tripe that the associated lymph nodes are removed by dressing.

The abomasum has similar levels of lymphatic tissue to the intestines. However, in the preparation of tripe from this stomach the associated lymph nodes are removed and the mechanical preparation will remove some of the mucosa. However, although the majority of the lymphatic tissue in the mucosa is retained after preparation any infectivity would be significantly reduced by the heat treatment to which the material is subjected. For these
reasons the abomasum should not present a significant human health hazard when used as tripe.

Rennet is produced from bovine abomasums by a system of separation of mucus, filtration and exposure to a pH between 2 and 3 for about 2.5 hours. Though this will not destroy all the agent present the pH treatment will significantly reduce the level in the final product should it be there in the raw material. I believe that any risk from rennet is therefore negligible.

3.434 On 3 August, Dr Metters responded to Mr Meldrum’s letter. He was satisfied with Mr Meldrum’s conclusion that tripe made from the three bovine stomachs (rumen, reticulum and omasum) should present only a minimal risk. He considered, however, that abomasum presented:

a more difficult decision as the lymphatic and lymph node distribution is more similar to the rest of the intestine than the other three stomachs. Furthermore unlike the intestines, after processing and preparation the majority of the lymphatic tissue in the mucosa remains. Thus any infectivity that there may be present in the lymphatic tissue will only be reduced by the heat treatment. The next question then posed is the extent to which heat treatment to which the abomasum tripe is subjected, is likely to reduce any infectivity that may possibly be present and hence any risk to human health. As I am not familiar with the temperature levels used to treat abomasum tripe I am in no position to comment. However, I would make the point that the transmissible agent in Creutzfeldt-Jakob Disease is renowned for its resistance to heat.

3.435 Dr Metters noted that further studies, as recommended in the Tyrrell Report just published in June 1989, would be needed and would take time. He concluded that ‘in the interim we are not aware of any data that would conflict with the conclusions you have reached regarding the possible risk to human health.’

3.436 On the issue of rennet, Dr Metters referred to a telephone call with Mr Meldrum where the latter had advised that further data had been received on rennet from the NPU. He said that DH did not have access to these data, but had no reason to disagree with the advice MAFF had received.

3.437 On 7 August, Dr Metters wrote to Mr Meldrum in response to MAFF’s proposals to exclude calves under 6 months of age from the ban (see paragraph 3.535 in the section discussing the exemption of calves). He proposed that MAFF and DH should hold an ad hoc meeting of experts to consider the proposed calf exemption, to include Sir Richard Southwood and Dr Tyrrell. He suggested that the same meeting of experts should consider the question of abomasum tripe.

3.438 Mr Meldrum responded to Dr Metters on 14 August agreeing to arrange a meeting. He suggested Mr Bradley and Dr Kimberlin also attend.
18 September: the *ad-hoc* meeting of experts

3.439 On abomasum and rennet the meeting notes record:

> The consensus was that the abomasum, containing, as it did, a certain amount of lymphoid tissue, represented a higher risk than the other stomachs. There was also doubt about the pH effect on rennet. Dr Kimberlin agreed to look at these issues and advise. Mr Bradley would also – within the next two weeks – look at the rennet production process at a plant.\(^{748}\)

3.440 On 21 September, Mr Bradley minuted Mr Lawrence to advise that he would be unable to deliver further information on or about the rennet production process within the two-week timescale envisaged at the meeting of experts.\(^{749}\) He commented that in his report of 13 July he had recommended that these studies were done, but had been restrained from conducting them at that time. He asked Mr Lawrence to:

> Ensure administratively that no further actions are taken until (my) studies are complete.\(^{750}\)

27 September: meeting to discuss the responses to the consultation letter

3.441 Only a few of the responses to the consultation – from the Petfood Manufacturers Association\(^{751}\), the MLC\(^{752}\) and the MILG\(^{753}\) – had raised tripe as an issue. Each of these bodies sought clarification on whether tripe was to be included in the ban. None of the responses provided any comments on rennet.

3.442 The main outcome of the meeting was that MAFF would continue with the drafting of regulations to implement the ban. Mr Maslin’s note of the meeting recorded that in relation to tripe:

> A definition of intestines should be included, making it clear that it did not cover stomachs or mesenteric fat.

3.443 With respect to abomasum and rennet, the note recorded that further scientific studies were under way and the results would be available shortly, when a decision would be taken.

3.444 A few days later Mr Lawrence minuted Mr Gummer to update him on the proposed ban, including MAFF’s conclusions in the light of the consultation. On the subject of tripe and rennet he concluded that when further studies were completed further discussions would be held with DH and a submission prepared for the Minister.\(^{754}\)

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\(^{748}\) YB89/9.20/1.2  
\(^{749}\) YB89/9.21/3.1  
\(^{750}\) YB89/9.21/3.1  
\(^{751}\) YB89/9.13/4.1–4.5  
\(^{752}\) YB89/9.25/1.29–1.31  
\(^{753}\) YB89/9.25/1.31–1.33  
\(^{754}\) YB89/10.03/3.1–3.2
3.445 Mr Lawrence also wrote to Dr Pickles, enclosing the note of the meeting of 27 September.\(^{755}\) He copied the letter and note to Dr Metters and advised that MAFF would like to discuss the findings of Dr Kimberlin and Mr Bradley on casings, rennet and abomasum with DH.

Mr Bradley’s risk assessment on rennet

3.446 Meanwhile, on 28 September, Mr Bradley had submitted his risk assessment report on rennet to Mr Meldrum and to Dr Watson.\(^{756}\) The report examined the factors in rennet production influencing the risk of the BSE agent being present in the final product. He had examined abomasums from calves and older cattle collected from a rennet factory, the processes used to produce rennet at the factory and the subsequent use of rennet in other industrial processes.

3.447 On risk of infectivity of abomasum, Mr Bradley commented that it was not possible to guarantee absence of BSE infectivity. He noted that lymphoid nodules were absent in the abomasum of very young calves and increased in quantity with age. He continued:

On this basis even calves exposed to infection may not harbour infectivity in the abomasum and even if they did it would be at a very low level, and judging by natural ovine scrapie studies, would be undetectable.

With regard to adult ox reed, whilst there are variable lymphoid nodules present and in similar quantity to that in small intestine, in no instance was it formed into macroscopically visible nodes or patches . . .

This suggests a dividing line can be introduced to separate, for practical purposes and in regard to offals, tissues with a higher risk which will be excluded from the ban. The criterion would be that offals with macroscopically visible lymphoid tissue would be banned (with exceptions, if appropriate, where such tissue was removed, eg casings) others being excluded.

In this way oesophagus and tripe already cleared histologically continue to present acceptable risk as also now does abomasum.

Strictly speaking therefore only parts of the intestine containing macroscopically visible Peyer’s patches would be banned, but since these cannot readily be identified in abattoir conditions it is necessary to ban (other than casings) the complete alimentary tract from duodenum to rectum. Overall then abomasum would be cleared for human consumption as black tripe despite its lymphoid content and also for rennet production.\(^{757}\)

3.448 Mr Bradley considered that, although pH would only have a limited effect, other chemical treatments and/or filtration might reduce any infectivity in the liquid rennet. He pointed out that if infectivity was present in source material, filtration would lead to the infectivity ending up in the waste rather than the rennet. In relation

\(^{755}\) YB89/10.03/9.1–9.2

\(^{756}\) YB89/9.28/2.1–2.5

\(^{757}\) YB89/9.28/2.5–2.6
to subsequent processing (e.g., in cheese-making) the dilution of the rennet at 1:4,000 would also reduce any infectivity.\(^\text{758}\)

3.449 He concluded that:

Reappraisal of previous studies and introducing a definite and less severe criterion for risk factor in offals (macroscopically visible lymphoid tissue) enables abomasum and thus rennet to be excluded from the offal ban. This is recommended as an interim measure pending result of infectivity studies.\(^\text{759}\)

Dr Kimberlin’s paper on the scientific arguments for the proposed offal ban

3.450 On 4 October, Dr Kimberlin wrote to Mr Meldrum enclosing his paper on abomasum, casings and rennet. In relation to tripe his covering letter commented:

After much thought I have assembled the arguments that avoid banning any of the tripe organs. This not only seems reasonable, but it circumvents the problems of presentation if you were to ban intestines and abomasum (but not the other parts of the stomach) which would also make it awkward to deal with rennet.\(^\text{760}\)

3.451 Dr Kimberlin’s paper commented that the proposed ban on brain, spinal cord, thymus, spleen and tonsils was well-founded. The paper considered that the tripe organs should be excluded from the proposed ban and presented several arguments to support this proposition. His arguments were broadly consistent with those presented by Mr Bradley in his report of 28 September (see paragraphs 3.446–3.449). In particular:

Most of the infectivity in the intestines seems to be associated with the large masses of fixed lymphoreticular tissue: Peyer’s patches…

Peyer’s patches are rarely if ever found in the tripe organs. Certainly the amounts would be very much smaller than in either the small or large intestines and it is important to recognise the quantitative differences…

Unless future studies show convincingly that the amounts of LRS (lymphoreticular system) tissue in the tripe organs approach the total relative mass of Peyer’s patches in the intestines, there is no basis for banning the use of any of the tripes, including abomasum. However, it is important to measure the infectivity in these tissues as soon as possible.\(^\text{761}\)

3.452 On rennet Dr Kimberlin considered that there was little scope for chemical inactivation of any infectivity during the manufacture of rennet. Nevertheless physical processing during manufacture, particularly the repeated filtration steps, would ensure that the rennet was free from significant levels of infectivity, even if there were appreciable levels of infectivity in the abomasum.\(^\text{762}\)
Dr Pickles briefs the CMO for a meeting with Mr Gummer

3.453 On 5 October, Dr Pickles prepared a briefing note for a meeting planned between the CMO, Sir Donald Acheson, and Mr Gummer on 16 October. In the note, Dr Pickles mentioned that since Mr Gummer had taken office, he had already had several briefing sessions on BSE, ‘but may want to hear CMO confirm that the risk to humans is considered remote’. In relation to the proposed SBO ban she commented:

This is a very important issue for Mr Gummer and he may want to discuss the rationale with CMO. Although the ban goes beyond what Southwood recommended, and has led to unforeseen practical, economic and international difficulties, there can be no turning back. The theoretical risk of contamination with agent, by analogy with scrapie, lies with lymphoid and nervous tissue. Measures currently proposed in ban would eliminate large concentrations of such tissue (spleen, thymus, tonsils, unstripped intestines, brain, mature spinal cord), but it has to be recognised that it is impossible to eliminate all lymphoid and nervous tissue, which includes peripheral nodes and nerves intimately associated with the main edible parts.

But even if BSE agent is present in small amounts in uncooked beef and beef products – and accepting that cooking reduces levels but may not eliminate agent – the chance of BSE being transmissible by the oral route is remote. Scientific evidence is that BSE is identical to/close to scrapie, and scrapie-infected mutton has presented no risk over the centuries.763

19 October: Mr Meldrum writes to Dr Jeremy Metters on rennet, abomasum and casings

3.454 Mr Meldrum’s letter of 19 October advised Dr Metters of the results of the further investigations by Mr Bradley and Dr Kimberlin into the production of rennet and casings.764 He enclosed Dr Kimberlin’s paper of 4 October (see paragraphs 3.450–3.452).

3.455 On tripe and rennet Mr Meldrum proposed:

We suggest that we can separate offals for practical purposes on the basis that those with macroscopically visible lymphoid tissues would be banned whilst others would be excluded. In this way oesophagus and tripe would continue to present a low and acceptable risk as would the abomasum.

On this basis and with further knowledge of the rennet production process we suggest that both abomasums and rennet should be excluded from the ban. The latter in any event goes through a number of processes which will reduce the possibility of presence of the agent and, finally, the dilution factor in cheese making would obviate any residual risk.765
Mr Meldrum seeks comments from Sir Richard Southwood and Dr Tyrrell on how to proceed with rennet, abomasum and casings

3.456 Mr Meldrum wrote to Sir Richard Southwood and Dr Tyrrell on 23 October enclosing a copy of the letter and attachments which he had sent to Dr Metters on 19 October. He advised that Dr Metters was broadly content with the proposed approach but would be giving his final view shortly.

3.457 Sir Richard responded on 26 October, stating he was happy with Mr Meldrum’s recommendations. He did not offer any specific comments on tripe or rennet. Dr Tyrrell responded on 6 November and agreed with Mr Meldrum’s conclusions on exempting rennet. He did not offer any specific comments on tripe.

30 October: DH recommends MAFF to proceed as they think fit with the proposals

3.458 Dr Metters replied to Mr Meldrum’s letter on 30 October. He noted that consideration of which tissues to ban needed to be seen in the context of the Southwood Report:

... it is appropriate to refer back to the Southwood Report and remind ourselves that all the current discussions go over and above those recommendations. Our purpose is to reduce the risk of exposure to bovine tissues that might contain the BSE agent through all reasonably practical ways. We accept that it would not be possible to remove all minor tissues that might contain the agent in sub-clinical cases, since we expect these to include peripheral lymph nodes and nerves intimately associated with the main edible parts. But we are not looking to exclude all such tissues since we firmly believe such exclusion could not increase any further the ‘safety’ of human food with respect to BSE. We must not forget the oral route is highly inefficient even in those species known to be susceptible to BSE/scrapie.

On that basis your current proposals are satisfactory from the public health point of view. There is logic in having as the dividing line between acceptable and unacceptable the presence of macroscopically visible nodes of lymphoid tissue, but as Dr Kimberlin points out this leaves open the question of peripheral nodes. This may be unavoidable. But what is avoidable is gut-associated lymphoid tissue. So whilst we are entirely content that you do not include in your ban abomasum and rennet, oesophagus and tripe, we are less convinced about the logic for exclusion of sausage casings.

In summary, we are content with the logic of your arguments on all tissues except sausage casings. For these we still wonder about the possibility of using synthetic alternatives, particularly as so little bovine offal is used for...
this purpose. However, we are content for MAFF to proceed as they think fit in the light of the above comments.

2 November: circulation of the final draft regulations to MAFF Ministers

3.459 On the question of tripes and rennet, the covering submission to the draft regulations stated:

However none of the four stomachs (producing tripes, nor rennet produced from abomasum (the fourth stomach) would be included; neither would mesenteric fat (attached to the intestines and which is used to produce tallow and edible fats). These recommended exemptions follow further scientific studies plus independent advice from Dr Kimberlin and are supported by Sir Richard Southwood and Dr David Tyrrell, who chairs the research Committee on BSE. A note summarising the reasons for drawing these conclusions is contained in the Annex.770

3.460 The technical Annex drew attention to the practical approach of banning material with macroscopically visible lymphoid tissues:

For practical purposes a dividing line can be drawn between those offals with macroscopically visible lymphoid tissues (Peyer’s patches), which should be banned, and others, which should be excluded. On this basis, and with further knowledge of the rennet production process, it is considered that both rennet and abomasums should be excluded from the ban. The former in any event goes through a number of processes which will reduce the possibility of presence of the agent and, finally, the dilution factor in cheese making would obviate any residual risk.771

3.461 At the 7 November meeting with officials, MAFF Ministers agreed that the ban should be implemented as set out in the submission of 2 November.772

Mesenteric fat

Mesenteric fat issue raised during consultation

3.462 The question of mesenteric fat was first raised on 25 September in the MILG response to MAFF’s consultation document. They noted:

The Ministry’s consultation paper does not make clear whether the mesenteric fat, which is attached to the intestines, is affected by your proposals or not. We need to know whether this fat can still be used for human consumption. A ban would mean a significant loss of revenue to the abattoirs.773

770 YB89/11.02/4.4
771 YB89/11.02/4.12
772 YB89/11.07/2.1–2.2
773 YB89/9.25/1.32
MAFF’s response

3.463 Mr Maslin’s note of the meeting on 27 September – to discuss the responses to the consultation – recorded the following:

Mesenteric fat was a valuable by-product used in making tallow and edible fats. It did however contain lymphatic tissue. If the ban was extended to cover it there would be a serious effect on the industry through loss of income. There would also be additional disposal problems. It was agreed that the production process made fat and tallow a low risk product and that the ban should exclude mesenteric fat. 774

3.464 Consequently, it was noted that the definition of intestines should make it clear that it did not cover mesenteric fat.

DH’s response

3.465 On 3 October, when Mr Lawrence sent Dr Pickles the note of the 27 September meeting, he drew her attention to mesenteric fat:

The material is currently rendered to produce tallow and edible fats. The view taken at the meeting was that even though mesenteric fat contains lymphatic tissue, the fact that the majority of it is removed during preparation for processing, plus the rendering process itself, ensures that it is a low risk and should not therefore be proscribed. However I shall be grateful for confirmation that your Department takes the same view on this. 775

3.466 Dr Metters had been sent a copy of the letter and suggested to Dr Pickles that ‘it is surely the lymphatic vessels that present a problem’. However, he was not familiar with the number and distribution of lymph nodes in bovine mesentery, and asked whether they needed more detail from MAFF. Dr Pickles responded that she had already requested more information. 776

Rationale for excluding mesenteric fat from the SBO ban

3.467 Mr Lawrence also updated Mr Gummer on 3 October about MAFF’s conclusions following the consultation process. He noted that mesenteric fat should not be covered by the ban, since the way it was prepared and processed minimised the risk of transmission. 777

3.468 Mr Meldrum’s letter of 19 October also provided Dr Metters with further explanation as to why MAFF had decided to exclude mesenteric fat from the SBO ban. Mr Meldrum explained that 60–70 per cent of the fat was obtained from the gut room after the intestine had been flushed and washed with water. It would be included with material to be rendered for human consumption. The majority of the fat would be held at high temperature for 15 to 20 minutes, so that the material would separate. The fat would be held in vats for preparation of dripping, while

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774 YB89/9.29/1.4
775 YB89/10.03/9.1–9.2
776 YB89/10.03/8.1–9.2
777 YB89/10.03/3.2
greaves containing the solid fraction would not be used for human consumption.

Mr Meldrum continued:

Quite clearly the agent of BSE might be present in the mesenteric lymph nodes although in the first place one would have to assess whether or not this risk is greater than the risk from the lymph glands present in the carcass which are not to be subjected to the offal ban. In addition, the weight of lymph nodes in the uncooked material would be very low compared with the overall weight of the mix. In addition, and most importantly, we know that the agent of BSE is associated with lipo protein and these proteins would fractionate with the greaves.

As you may be aware, this is an identical process to that used in the animal protein processing industry for the preparation of meat and bone meal and tallow for industrial purposes. We have taken the view supported by the Southwood Committee that such fat is not a risk to animal health and should not therefore be part of the ruminant protein ban.

On the basis that any lymphoid tissue is only a small fraction of the material harvested, is heated to 115 to 120°C, that the agent of BSE would fractionate with the lipo protein into the greaves and that therefore there will be a very low level of the agent in the dripping, I recommend that bovine fat should be excluded from our proposed offal ban. 778

3.469 Dr Metters replied to Mr Meldrum: ‘we agree that it would be illogical to ban mesenteric fat for human consumption. The amount of BSE agent in contaminated lymph nodes is likely to be small and unlikely to survive processing.’ 779

Ministers decide to exclude mesenteric fat

3.470 In his covering submission to the final draft regulations on 2 November, Mr Lawrence proposed that mesenteric fat, used to produce tallow and edible fats, would not be included in the ban. 780

3.471 At the subsequent meeting of MAFF Ministers and officials on 7 November, concern was expressed about the proposed exclusion of mesenteric fat from the ban. 781 According to the note of the meeting, it was agreed to exclude mesenteric fat after:

Mr Meldrum explained that the risk associated with mesenteric fat, while not zero, was extremely minimal. In response to questions from the Parliamentary Secretary, he confirmed that non-mesenteric fat that might be used for human consumption did not contain lymph nodes and did not pose a problem, and that mesenteric fat, which did contain them, would not be found in association with other organs, such as liver and kidneys, used for human consumption. 782
3.472 In a statement to the Inquiry, Mr Maclean explained that his query about mesenteric fat ‘was typical of the sort of question put to officials by Ministers; it was essential, I felt, that if there were to be any exclusions of this type Ministers understood the reasons for such exclusions’. During oral evidence, Mr Maclean told us that he had flagged his concerns prior to the meeting, and:

... to be absolutely honest I flagged up mesenteric fat and wanted further questions on it because I had never heard of the term before. I wanted to be sure, if I was being asked to exclude mesenteric fat, I had a clue what it was.  

Casings

MAFF’s formulation of the casing exception

3.473 In his advice to Mr Thompson on 22 May 1989 about the Minister’s cull cow proposal (see paragraph 3.204), Mr Lawrence noted that the BMMA had informed MAFF that some intestines were used for sausage casings. However, ‘the mucosal surface, including lymphatic tissue (which might harbour the agent) is removed before use and they are salted as well’. Mr Lawrence concluded that such materials ‘must be considered as a very low risk indeed’.

3.474 In his 2 June note (see paragraphs 3.235–3.239) Mr Cockbill told Mr MacGregor that while most potentially infective offal was not used in meat products, the major exception was intestines, which were used as sausage skins. Though alternative casings were available, ‘a ban on this use of offal would have a significant effect on the meat products trade and could lead to pressure for scientific justification for such action’.

3.475 The note therefore recommended that if a ban was to be implemented, the use of SBO in sausage casings should be an exception to the general ban on the use of SBO in meat products intended for human consumption.

3.476 When Mr MacGregor and senior MAFF officials met on 6 June to discuss the note it was agreed that intestines used for sausage casings did not pose a problem since they were thoroughly scraped and cleaned before use. However, Mr MacGregor asked that the experts look carefully at the position on casings.

3.477 The minute of the meeting on 7 June between Mr MacGregor, MAFF officials and Sir Richard Southwood, records that:

Mr Meldrum pointed out that intestines were used as sausage casings after being thoroughly cleaned, but it was inevitable that there would be some lymphatic tissue in the wall of the intestines. He thought this could be regarded as de minimus. Kimberlin had done some work on intestines although it was not clear that this covered stripped casings. It was agreed that Mr Meldrum should take further advice on the casings point. It was
however thought that the advice would be that there was a minimal risk only with these.\textsuperscript{789}

\textbf{3.478} Thus, when Mr MacGregor wrote to Mr Kenneth Clarke on 9 June proposing an SBO ban, he said:

\ldots because nearly all of the lymphatic tissue (which may harbour the agent) is removed from intestines before use as sausage casings I believe that they can be exempted from this prohibition, when used for this purpose.\textsuperscript{790}

\textbf{DH’s response}

\textbf{3.479} Dr Pickles drafted a reply to Mr MacGregor for Mr Clarke on 12 June.

Among other things, it stated:

I presume your experts have confirmed that stripped intestines contain so little lymphatic tissue that their exclusion from the ban does not appear anomalous and liable to become the subject for further public criticism.\textsuperscript{791}

\textbf{3.480} However, Dr Metters’\textsuperscript{’}s version, drafted at the request of Sir Donald Acheson and subsequently sent to Mr MacGregor, did not mention intestines.\textsuperscript{792}

\textbf{3.481} On 14 June 1989, the day after the public announcement of the SBO ban, Dr Pickles commented to Dr Metters and other DH officials that ‘it is not clear what is to be proposed for intestines’.\textsuperscript{793}

\textbf{15 June: Mr Fry circulates draft instructions to lawyers for the preparation of Regulations to implement the SBO ban}

\textbf{3.482} In his draft instructions to lawyers, Mr Fry explained which types of offal the ban should cover. However, he noted that ‘exceptions would have to be made for intestines which are cleaned to remove the lymphatic tissue for use as sausage casings’\textsuperscript{,}.\textsuperscript{794}

\textbf{DH’s reaction to the draft consultation letter}

\textbf{3.483} Dr Pickles minuted Mr Maslin on 7 July to express her reservations about the draft consultation document. She stated:

\ldots as it is currently worded it looks as if sausage casings are a risk but you are excluding them from the ban because it would otherwise be inconvenient/expensive. I presume MAFF is content that whatever treatment is given to small intestines to prepare casings means that there is no remaining contamination with lymphoid tissue. Unless you can give me that reassurance, a ‘risk’ must remain.
Whilst you know that I am not myself persuaded this risk is one we need take action about, the inconsistency with the other steps you are taking cannot be disguised.\textsuperscript{795}

3.484 The same day Mr Maslin forwarded a copy of the revised draft consultation letter and submission to Mr Cruickshank, and commented in his accompanying minute that:

I understand from Meat Hygiene Division that the removal of lymphatic tissue for small intestines intended for sausages takes place either at the slaughterhouse or the sausage factory. I have amended the draft to reflect this but it does leave the question of enforcement. I assume however that the movement licence could cover this by making it clear that, if not already processed, the sausage manufacturer would have to do so before they are used . . .

Dr Pickles, DH, has commented that she does not believe casings should be exempted. I am not sure however whether this is the official Department of Health view or her own. We are trying to contact our opposite numbers to find out.\textsuperscript{796}

3.485 The reworked consultation document stated that there would be an exemption for:

. . . that part of the the small intestines of bovine animals used for casings for sausages if it is cleaned immediately after slaughter, so as to remove lymphatic tissue.\textsuperscript{797}

3.486 Dr Pickles minuted Sir Donald Acheson on 17 July, saying she was still concerned about sausage casings made from bovine small intestine. Though MAFF claimed that all the lymphoid tissue was stripped in its preparation, ‘I have been asking to see that in writing for some time, to no avail.’\textsuperscript{798}

3.487 The next day Dr Metters was informed of the results of histopathological examinations of bovine gastrointestinal tissues carried out by the CVL. Dr Metters conveyed the information to Dr Pickles on 19 July. The CVL had been asked to investigate the lymphoid constituents of bovine intestines that had been stripped of endothelium prior to their use as sausage casings. They had done so, and found that the stripped casings contained minimal lymphoid tissue. Since the casings were also processed before use, the CVL had concluded that the BSE risk to humans from intestines used as sausage casings was minimal. Dr Metters also told Dr Pickles that:

I reminded him that Mr MacGregor had asked MAFF officials (not DH) to investigate the lymphoid content of bovine intestine, as used for human consumption. If MAFF were satisfied with the findings from CVL, DH would certainly not wish to second-guess their findings.\textsuperscript{799}
The revised consultation document submitted to Mr Thompson on 19 July said, regarding intestines:

There would also be an exemption for the large and small intestines of bovine animals used for casings for sausages, provided they are processed (either in the slaughterhouse or in casing manufacturers’ premises) to remove lymphatic tissues.\(^{800}\)

On 21 July Dr Pickles forwarded a copy of the consultation letter to Sir Donald Acheson and Dr Metters and noted she was now ‘content’ with MAFF’s proposals.\(^{801}\) In particular, she noted intestines were only to be allowed as sausage casings if the lymphatic tissue was removed.\(^{802}\)

Three days later Mr Meldrum wrote to Dr Metters, providing the written confirmation that Dr Pickles had been seeking for some time:

The intestines contain significant amounts of lymphoid tissue and are thus a ‘risk’ organ. However in the processing of casings for sausage manufacture the lymphoid tissue in the mucosa is removed when the intestines are scraped, cleaned and washed. On this basis we have concluded that we could not justify a ban on intestines so processed for use as casings; particularly as the ban itself is purely a precautionary measure going beyond the measures recommended by Southwood.\(^{803}\)

Dr Metters replied on 3 August, noting the points Mr Meldrum had made on intestines used for sausage manufacture.\(^{804}\)

On 7 September, Dr Pickles minuted Mr Maslin regarding a statement by a medicinal company which used bovine intestines from the UK, which said that there was no way of physically separating the serosal layer from the lymphatic tissue in intestines. She noted:

These statements seem inconsistent with what has been said in justification for the exclusion of sausage casings from the proposed offal ban. The statements made by the licence holder are of course confidential under the Medicines Act, but inevitably there is a risk that the advice they have received might become public.

As you know, my personal view is to be relaxed about this since my own inclination would be to back the Southwood view and regard the risk from oral ingestion from asymptomatic animals to be so remote it can be disregarded, even for those who do inadvertently eat lymphoid tissue. But you may wish to take this up in considering the responses to your consultation letter and in defensive briefing of your Ministers for the future. For my own part, my scientific curiosity would like to be satisfied as to whether or not lymphoid can be separated out.\(^{805}\)
18 September: the *ad hoc* meeting of experts

3.493 At the meeting it was noted that intestines had been sectioned and lymphoid tissue was found to be virtually absent. Processing, including scraping and turning the tissue inside out helped ensure this. Thus, it was agreed that casings could be excluded from the ban if histological examination confirmed the absence of lymphoid tissue. Mr Bradley would carry out the examination in the next two weeks. 806

3.494 Dr Kimberlin, who was also preparing a report on abomasum and rennet (see paragraphs 3.450–3.452) would also consider the issue of casings in his report, although this was not recorded in the note of the meeting. 807

Consultation responses on the casings exemption

3.495 Issues relevant to the casings exemption, raised in response to the consultation document included:

i. The British Medical Association questioned whether sufficient research had been carried out into the effectiveness of stripping lymphatic tissue from large and small intestines, prior to their use for sausage casings. There was concern that if this was a simple mechanical process, a danger might exist that viral tissue might still be present adhering to the intestinal walls; 808

ii. The Institution of Environmental Health Officers (IEHO) suggested that an overall ban on intestines would be more appropriate. This would also remove problems associated with the processing to remove lymphatic tissue, which was the real problem; 809

iii. UKASTA noted that there seemed to be a lack of control over disposal of lymphatic material; 810

iv. The Sterilised Suture Manufacturers Association queried how the removal of lymphatic material was to be carried out; 811 and

v. The Royal Environmental Health Institute of Scotland raised enforcement problems, and suggested it should be mandatory to process the intestine in the slaughterhouse of origin. 812

3.496 At the 27 September meeting to discuss the responses it was noted, in relation to casings, that further scientific studies were being conducted and a decision would be made once the results were available. 813

3.497 Also on 27 September, Mr Bradley minuted Mr Wilesmith and Mr Maslin with his views on the consultation responses. He noted that sausage casings had been a ‘bone of contention’, but he thought the issues would ‘all be resolved scientifically by next week when my study is complete’. 814
3.498 On 3 October, Mr Lawrence updated Mr Gummer on the proposed ban noting that there would be additional responsibilities for local authorities in overseeing controls at sausage casing manufacturers, although these were ‘unlikely to be of great significance’. Mr Lawrence concluded that when the further studies on casings were completed, further discussions would be held with DH and possibly outside experts, and a submission would be prepared for the Minister.

3.499 Mr Lawrence’s letter of the same day to Dr Pickles, in which he forwarded a note summarising conclusions of the meeting of 27 September, advised that MAFF would wish to discuss Mr Bradley’s and Dr Kimberlin’s reports on casings when they became available.

Mr Bradley’s report on bovine casings

3.500 Mr Bradley reported to Mr Meldrum and Dr Watson on 6 October. He explained that intestine divided into approximately equal halves had been collected from ten adult cattle slaughtered and passed for human consumption. Each half had been processed to the casing stage within about four hours of death. Samples were then collected for histological examination from different intervals along the halves.

3.501 Mr Bradley gave technical details of the results obtained, and concluded as follows:

This study reveals that prepared bovine casings consist consistently of serosa, muscularis, sub-mucosa and muscularis mucosae and rarely mucosa. As a result some Peyer’s patches, lymphoid nodules and infiltrating lymphocytes remain.

There is thus a probable increased risk of BSE infectivity in prepared casings which is probably not further reduced by either physical (heat) or chemical (salt) processes used in manufacture.

Consumers may be protected to some degree due to cooking processes and by not eating the casing.

The precise risk factors in regard to BSE infectivity can be estimated by assay in mice and it is recommended this is done. Further expert opinion should be sought on the interim decision needed now on the basis of the scientific evidence and in the light of Professor Southwood’s report stating the risk for humans was remote.

19 October: Mr Meldrum writes to Dr Jeremy Metters

3.502 Mr Meldrum’s letter of 19 October to Dr Metters noted that ‘there is no dispute that both small intestines and large intestines should be covered by the ban’ and that Dr Kimberlin’s report had reached the same conclusion. On casings, he quoted Mr Bradley’s report at some length, and then said:

815 YB89/10.03/3.2–3.3
816 YB89/10.03/3.3–3.4
817 YB89/10.03/9.1
818 YB89/10.06/1.2
819 YB89/10.06/1.4
I might add that I am somewhat surprised that so much tissue remained in the casings but this may be a feature of casings obtained from cattle as against pigs. 820

3.503 Mr Meldrum noted that Mr Bradley’s findings indicated that a risk of BSE infectivity must exist if it is present in the first place in gut-associated lymphoid tissue. However, he concluded:

Nevertheless such casings are only used in black and white puddings, are cooked and are normally discarded at the time of eating. In addition, the vast majority of bovine intestines are discarded in toto and there is only limited utilisation of bovine casings for human consumption and this constitutes a further dilution factor.

We conclude that the human health risk from casings is extremely low particularly in view of the fact that so little intestinal tissue is used for casings, that the product is fully cooked and we believe that it is common practice for the casings to be discarded on the table. 821

3.504 Mr Meldrum forwarded a copy of his letter to Sir Richard Southwood and Dr Tyrrell four days later, and asked for their views. He commented that Dr Metters was ‘broadly content but will be giving me his final view later this week’. 822

3.505 Sir Richard responded that he was ‘perfectly content’ with Mr Meldrum’s recommendations. 823 Dr Tyrrell responded that ‘on balance it is reasonable to exempt casings provided that it is on the basis that the policy is to reduce the risk of oral ingestion of BSE-contaminated material, which is probably very small to one which is very small indeed’. 824

30 October: DH recommends MAFF to proceed as it thinks fit with the proposals

3.506 In his reply of 30 October to Mr Meldrum’s letter, Dr Metters said that DH was

. . . content with the logic of your arguments on all tissues except sausage casings. For these we still wonder about the possibility of using synthetic alternatives, particularly as so little bovine offal is used for this purpose. However, we are content for MAFF to proceed as they think fit in the light of the above comments. 825

3.507 Dr Pickles had drafted the letter for Dr Metters. In a note attached to her draft reply she commented that:

I am persuaded by their arguments on 3 of the 4 points. The remaining one on casings, whilst as you know my own belief is that this whole exercise is hard to justify, suffers from inconsistency. I provide a draft reply on this
basis but would not object if you acquiesced with the MAFF line on this one too.\textsuperscript{826}

**MAFF changes its view on the exemption of casings**

\textbf{3.508} In the light of this response from DH, MAFF changed its view on the proposed exemption of casings. On 30 October, before receipt of the DH’s views, Mr Lawrence circulated a draft submission to Mr Meldrum, Mr Cruickshank and other MAFF colleagues. The covering note indicated that the recommendations given in the draft submission had been included on the assumption that DH had endorsed them. The reasons given in the draft submission for the exemption of casings were as follows:

Both small and large intestine contain lymphoid tissue. Even after processing there is a definite but variable retention of lymphoid tissue in the form of Peyer’s patches, nodules and infiltrations, though all are, in some cases, almost totally reduced by the processing procedure. Nonetheless, such casings are only used in black and white puddings and once cooked are normally discarded before consumption. It is therefore concluded that the human health risk from casings is very low indeed, in view of the processing method and the fact that the product is fully cooked and the skin not eaten.\textsuperscript{827}

\textbf{3.509} However, the final submission sent to Mr Gummer on 2 November, recommended:

Although such casings are only used in black and white puddings and once cooked are normally discarded before consumption, it is considered that, as an ultra-precautionary measure, such material should \textit{not} continue to be available for use as casings. The Department of Health endorse this view.\textsuperscript{828}

**Mr Meldrum explains the change in position**

\textbf{3.510} Mr Meldrum wrote to Dr Metters on 7 November to explain the situation regarding casings. He said:

I have reconsidered our position on the use of bovine casings and in view of your reservations we are now recommending to Ministers that bovine casings should also be banned for human consumption. I believe it is most important that we have a fully agreed position on this most important area. In addition, it will make it easier presentationally to ban all small and large intestines derived from cattle. However, I trust that this will not cause you any problems with the use of sutures. No doubt we shall have some complaints from the producers of haggis and black and white sausages but we can live with that since there are alternative materials that can be used.\textsuperscript{829}

\textsuperscript{826} YB89/10.30/8.1  
\textsuperscript{827} YB89/10.30/3.14  
\textsuperscript{828} YB89/11.02/4.14  
\textsuperscript{829} YB89/11.07/3.1
7 November: Ministers agree to include casings in the ban

3.511 At the meeting of MAFF Ministers and officials on 7 November it was agreed that intestinal material used for casings should be included in the ban.830

Reaction to the inclusion of casings in the ban

3.512 Following the decision that casings would now be included, Mr Maslin made urgent contact with the main trade organisations to inform them of the change and to seek their immediate reactions. Mr Maslin recorded the responses in a minute, which included the following:

i. The BMMA reported that little usage was made of bovine casings from the UK, and they were not overly concerned about the ban;

ii. The National Federation of Meat Traders said the ban would have an affect on their trade, but alternatives were available. They could not understand why processed casings were to be banned yet lymph nodes in meat were not; and

iii. Various manufacturers and retailers were concerned about the financial implications. While alternatives were available, the quality was not as good.831

3.513 In his statement to the Inquiry Mr Maslin commented that subsequent calls from companies affected by the ban on casings revealed that some firms would be seriously affected, and job losses were expected. Companies were also unhappy about the lack of proper consultation on the change.832

3.514 When Ms Bronwen Jones submitted the Regulations to the Minister for his signature on 8 November 1989, she attached a note stating the following about casings:

There is however one particular issue of which the Minister should be aware. As the Minister knows the Regulations would prohibit the use of bovine intestines as casings. This prohibition was included after the formal consultation process had been completed, and officials therefore telephoned bodies representing those likely to be affected to seek their views. The industry (both suppliers and users of casings) were not happy with this change and said that it would pose difficulties for the manufacturers of saveloys, black and white puddings and haggis, and impose additional costs on slaughterhouses, who will be unable to sell this material for casings. They also questioned the scientific basis for this decision. Users are concerned about casings which they have in stock at the time the Regulations come into force. Against this, it must be said that consumer interests, if similarly consulted, would no doubt have been as strongly in favour of the ban on casings.

Although none have expressly said that they regarded consultation at such short notice, by telephone, as unacceptable, it is clear that this could be
a point of criticism, and expose us to legal challenge on the validity of the Regulations.833

The exemption for calves under 6 months

Introduction

3.515 This section traces the evolution of MAFF’s decision to exclude calves aged under 6 months from the SBO ban. Initially, MAFF consulted on a proposal to exclude calves’ spinal cords from the ban. This was primarily motivated by practical considerations. The Fresh Meat Export (Hygiene and Inspection) Regulations required bovine carcasses of animals over 6 months to be split lengthways and it was not the practice to split carcasses of calves under 6 months. This meant that the spinal cord was not accessible. The section also describes other factors that contributed to MAFF’s proposal to exclude calves’ spinal cord from the ban.

3.516 While consultation on the proposed exception for calves’ spinal cord was in progress, the possibility of excluding calves under 6 months generally from the ban was discussed within MAFF. The section explains the motivation and factors underlying the final decision to exclude calves from the ban. It also addresses issues associated with allowing SBO of calves to enter the human food chain, in particular the use of thymus as a delicacy.

Formulation of exemption for calves’ spines

3.517 At the 6 June meeting with Mr MacGregor, Mr Meldrum pointed out that calves required a very different risk assessment when deciding whether they should be included in the ban. He noted there would be problems with taking the spinal cord from calves since it was not normal practice to split them.834 In a statement to the Inquiry, Mr Meldrum said it should also be noted that:

i. Calves should not have been fed MBM since the introduction of the ruminant feed ban 11 months earlier, and even then, veal calves would rarely have been fed MBM prior to the ban; and

ii. He knew from a meeting with Dr Kimberlin on 16 May 1989, and from Dr Kimberlin’s papers, that infectivity in young animals would be much lower and limited in distribution compared to older animals, even if calves had been exposed to the BSE agent in their first few weeks of life.835

3.518 At the meeting Dr Metters pointed out that the possibility of vertical transmission of BSE was a relevant consideration.836

3.519 In a note of the meeting sent to Mr Griffiths on 7 June, Mr Lawrence observed that calves caused a practical problem, because ‘apparently in animals less than 12 months of age, it is not possible to split the spinal cord’. This required an
exemption for calves’ spinal cord, which would not be a presentational problem since ruminant-based protein material had been banned for almost a year, and animals of that age were unlikely to be harbouring the agent.837

3.520 When Mr MacGregor met Sir Richard Southwood on 7 June, it was agreed that the spinal cord of calves should be excluded from the proposed ban. This was felt to be a minimal risk given the lengthy lead-time for the development of the disease.838 Mr Metters’s note on the meeting, drafted for Sir Donald Acheson, records that the meeting agreed excluding calves ‘could be justified as animals under 10 months of age have not been fed ruminant-based animal food stuffs. It was recognised this disregards the possibility of vertical transmission’.839

3.521 In a statement to the Inquiry, Mr Meldrum noted that ‘if there had been a need to remove the spinal cord of calves in order to add a further layer of protection for the consumer then it would have been done’. However, ‘it was not done since there was no good reason to do it, then or now’.840

3.522 Mr Fry’s draft instructions of 15 June to MAFF lawyers said that ‘we are not now seeking to limit the action to animals over a certain age’. However, the instructions required an exemption to be drafted ‘in the case of spinal cord from bovine animals of less than 6 months of age when the carcasses of those animals are not split’.841 In his note to MAFF officials attached to the draft instructions, Mr Fry explained: ‘I have assumed a six month exemption for splitting bovine carcasses as this fits in with the Fresh Meat Export (Hygiene and Inspection) Regulations’.842

Mr Fry questions whether calves should be excluded from ban

3.523 Mr Fry wrote to Mr Lawrence on 20 June raising further issues that needed to be clarified. On calves he stated:

Further consideration needs to be given to applying the ban to offals from calves (under 6 months of age). We have to exclude calves spinal cord from the ban as it is not possible to remove it without requiring calves to be split lengthwise which is not current practice. We have therefore to argue that there is no risk because they will not have been fed contaminated feed and we could therefore apply the argument to all calves offal. This solution would help in dealing with rennet . . . It does not of course cover any suspicions of the disease passing vertically.843

3.524 Mr David Taylor, of the Meat Hygiene Section, responded to Mr Fry’s minute on 22 June, and agreed that calves should be exempted from the ban:

To argue that there is no risk to consumption of spinal cord from calves under six months old because they will not have been fed contaminated meal but to require a ban on other offals from the same calf is inconsistent and would inevitably lead to criticism from industry and public alike.844
Mr Meldrum’s contribution to the development of the line to take

3.525 On 27 June, Mr Meldrum made what he termed a ‘rough contribution’ on the spinal cord of calves for the submission to Mr MacGregor on the consultation letter for the proposed ban:

We have agreed that the ban would not apply to the spinal cord of young cattle where the spine had not been split. At the present time there is a requirement to split bovine carcasses of animals over 6 months of age in export slaughterhouses. This requirement must be extended to domestic premises by 1 January 1991. In the meantime we suggest that there should be no requirement to seize or stain spinal cords from carcasses that are not split. This however does present the possibility that such spinal cords could enter the human food chain although this is highly unlikely. The risk to man is extremely remote since the calves will not have been fed meat and bone meal.845

3.526 Mr Bradley commented on Mr Meldrum’s suggestions a few days later. Regarding Mr Meldrum’s sentence that the risk to humans was remote because calves would not have been fed MBM, he said:

The risk to man is remote but not due to the absence of feeding meat and bone meal but rather due to the scientific evidence. Since these calves could conceivably be infected from their dams, (something we are seeking to determine) a better argument to use for the remoteness of human infection would be that the CNS [central nervous system] in natural scrapie appears not to be detectably infected (by mouse inoculation) until half way through the incubation period. If translated to calves up to 6 months old this would give a great margin of safety where carcasses were not split. Richard Kimberlin told me once he considered that brain and spinal cord of the young animal would be the safest part to eat. Perhaps we should not go that far until we have completed pathogenesis studies of infectivity in cattle but it is useful to bear in mind.846

3.527 Mr Meldrum has told the Inquiry that Mr Bradley’s minute ‘recognises that even if maternal transmission did occur, it would remain the case that infectivity would be highly unlikely to be detectable in spinal cord in calves up to 6 months old, indicating that it did not matter whether the exposure to calves occurred through feed or the maternal route, the hazard to man through CNS tissues of calves was the same, ie it was remote’.847

845 YB89/6.27/3.1. The standardisation of practices for domestic and export slaughterhouses occurred on 1 January 1993 – see chapter 4
846 YB89/6.30/4.1
847 S184E Meldrum para. 84
7 July: submission of draft regulations and consultation letter to Mr MacGregor

3.528 The submission of 7 July from Mr Cruickshank to Mr MacGregor, incorporating Mr Meldrum’s ‘rough contribution’, proposed excluding the spinal cord of calves under 6 months from the ban, and noted the risk to man was low given that calves would not have been fed MBM. The risk from maternal transmission (although subject to research) was said to be ‘remote’.848

3.529 Mr Meldrum told us that he believes the submission was not saying that the risk of maternal transmission was remote, but was saying that the risk to humans was remote if maternal transmission did occur.849

3.530 Mr Cruickshank told us that this submission reflected the veterinary advice he had received, and would have been explicitly cleared with Mr Meldrum. Mr Cruickshank believed Mr Meldrum would not have agreed to the submission going forward in that form if he had believed maternal transmission was more than likely.850 However, in oral evidence Mr Cruickshank agreed maternal transmission was ‘something which could not be ignored’.851

EU live cattle export ban

3.531 On 21 July, a European Commission Decision prohibited the export of all live cattle born before the ruminant feed ban came into effect on 18 July 1988 or born to dams in which BSE was suspected or officially confirmed.852 Germany, The Netherlands, Ireland and Denmark had already banned the import of all British cattle from BSE-affected herds.853

3.532 Mr Lowson recorded in a minute to Mr MacGregor on 21 July:

One possibility which needs to be considered in the light of the situation in both the Community and domestically is to look again at the possibility of amending the ban on specified bovine offals to cover only those of older cattle, thereby making it clearer that we do not regard those of young animals as constituting a risk . . . a distinction could be drawn between calves of up to 6 months (or thereabouts) and older animals, which would be defensible on health grounds.854

3.533 However, as this would be a ‘major departure’ from the earlier announcement, Mr Lowson recommended (and Mr Meldrum agreed) they should proceed with the proposals for consultation already agreed. Any change in approach should be contemplated only if it became clear that it was ‘necessary in order to head off real problems’.855

848 YB89/7.07/1.2–1.3
849 S184E Meldrum para. 87
850 S75B Cruickshank para. 85
851 T105 p. 109
852 L18 tab 14 (89/469/EEC)
853 YB89/7.20/7.1
854 YB89/7.21/4.2–4.3. This minute was also sent to Mr Thompson, Mr Meldrum, Mr Cruickshank, Mr Crawford and Mrs Attridge (among others)
855 YB89/7.21/4.3
MAFF considers exempting calves from the SBO ban and DH’s concern about maternal transmission

3.534 On 4 August, further to a telephone conversation between Mr Meldrum and Dr Metters, Mr Lawrence wrote to Dr Metters and confirmed that MAFF were considering recommending to Ministers that the offal ban should not include offal from calves under 6 months. He stated that this was because ‘the Community, having restricted our exports of cattle, could conceivably close the door completely unless we take certain action’, and also because ‘we could face significant problems in disposing of the specified offals’. Mr Lawrence hoped that, in view of the fact they believed cattle born after the introduction of the ruminant feed ban were free from the disease, Dr Metters could agree to the proposal. He noted that they needed to go to Ministers quickly, ‘but it is clearly essential that we have your agreement before we do so’.  

3.535 Dr Metters wrote to Mr Meldrum on 7 August. He indicated that the CMO was not prepared to support the exclusion of calves of under 6 months of age from the ban before receiving appropriate scientific advice, particularly on the issue of maternal transmission. He noted:

Furthermore, we understand a cohort of calves born to cows that had BSE is being followed up. In the absence of a proper scientific assessment it would be very difficult in retrospect to defend a decision to exclude calves from the offal ban, if in six months or a year’s time some of the calves in this cohort develop BSE.

3.536 However, Dr Metters said that they recognised that both the trade and offal disposal issues posed major problems for MAFF, and he thus suggested an ad hoc expert meeting involving Sir Richard Southwood and Dr Tyrrell. This was ‘so that the best possible scientific evaluation can be made of the likelihood of vertical transmission of BSE’.

3.537 Also on 7 August, Mr Lowson reported to Mr Cruickshank that Mr Meldrum was becoming increasingly convinced that excluding young cows from the ban could help meet threats from feed compounders that they would refuse to use MBM derived from SBO. It would also help to meet EU pressure for further trade measures. Mr Lowson stated that MAFF lawyers advised that they could amend the proposals without extending the consultation period, and then continued:

In the light of this I suggest that we speak to UKASTA, UKRA and the Commission (Mr Meldrum may care to do the latter) to get an indication of whether making such a change really would help mitigate the difficulties that we foresee. It will also be necessary to consult DOH and we are already doing so. I would be reluctant to advise Ministers to change their approach unless it was reasonably clear that to do so would be useful.

3.538 Mr Meldrum responded on 14 August to Dr Metters’s letter of the previous week, and addressed the maternal transmission issue:
I take the view that maternal transmission may be found to occur and for that reason the offspring of both clinically and sub-clinically affected cows could be exposed to the agent of BSE at parturition and subsequently succumb to the disease. I accept that this possibility must exist since we do not yet have any definitive information on whether maternal transmission can occur. It will take us some years to complete our field trial into maternal transmission and in the interim we must for the purposes of our discussion assume the worst possible scenario.\textsuperscript{860}

3.539 Mr Meldrum agreed to arrange an \textit{ad hoc} meeting, and suggested that Mr Bradley and Dr Kimberlin also attend.\textsuperscript{861}

3.540 On 17 August Mr Cruickshank responded to Mr Lowson’s minute of 7 August. He referred to a note from Mr Hilton (Deputy Secretary, MAFF) expressing reservations about the proposed change of approach. He stated:

I share the same view as Mr Hilton and yourself on this question. Notwithstanding the potentially very serious implications indeed for our export trade in cattle, I do not think we can advise Ministers that the ban on the use of specified offals for human consumption should be limited to those from older animals. If we were to say this, we would immediately be asked whether this implies that we are now satisfied there is no possibility of maternal transmission of BSE. We would of course have to say that although we have no evidence of maternal transmission we cannot rule out the possibility. I fear this would put us in an indefensible position.\textsuperscript{862}

3.541 Two weeks later Mr Meldrum sent a minute to Mr Hilton, Mr Cruickshank and Mr Lowson, disagreeing with their views on the calf exemption. He said there was clear evidence that the scrapie agent was undetectable in young animals and the same argument could be applied to cattle. He was however happy to defer taking the matter further until after the meeting of experts.\textsuperscript{863}

\textbf{Further EC pressure}

3.542 Mr Lawrence attended an EC Public Health Standing Veterinary Committee meeting on 13 September. He informed Mr Meldrum and Mr Cruickshank that the meeting confirmed that an SBO ban would cause difficulty for the UK within the EC, as there was no ban on the use of offal from UK exported cattle. Those at the meeting believed this anomaly would generate public pressure to act, a view Mr Lawrence agreed with. In light of these concerns, he recommended considering the exclusion of calves from the SBO ban, to ‘head off any damaging Community measures’.\textsuperscript{864}

18 September: the \textit{ad hoc} meeting of experts

3.543 The minutes of the meeting record that Mr Meldrum ‘floated the possibility that calves under 6 months of age might be excluded from the ban (a) because they
were not fed ruminant material and (b) using the scrapie analogy the agent had not been isolated from young lambs.’

3.544 Dr Kimberlin was recorded as saying it might be reasonable to exclude offals from animals under 6 months of age. However, it was not known whether vertical or horizontal transmission could take place, although in the nearest analogue (transmissible mink encephalopathy) it was a dead-end host. Dr Kimberlin then sought to draw a distinction between CNS (central nervous system) and LRS (lymphoreticular system) material by suggesting the former could be exempt but not the latter. This was because if the agent was present, it was likely to appear in the LRS tissue first.

3.545 The meeting concluded that there would be difficulty in supporting an exemption for material for calves on the current knowledge on BSE.

Consultation responses on the proposed exemption of calves under 6 months

3.546 Comments in the responses to the letter of consultation relevant to the proposed exemption for spinal cord from calves under 6 months included:

i. The Welsh Office of the Association of District Councils could not understand the reason for the proposed exemption. It believed there could be maternal transmission to calves, and noted that the exemption seemed to be primarily included for trade reasons;

ii. The Royal Environmental Health Institute of Scotland suggested that animals younger than one year be exempted as the feed ban had applied since July 1988;

iii. The Royal College of Veterinary Surgeons thought that if spinal cords from calves were exempt, thymus should then be exempt; and

iv. The IEHO commented that the exemption from the Regulations of spinal cords from bovines under 6 months would appear to be a retrograde step, since the condition of BSE was still not fully understood.

3.547 The minutes of the meeting on 27 September to discuss the responses to the consultation do not mention any discussion of the proposed exemption for spinal cord of calves aged under 6 months.

3.548 However, in his minute to Mr Wilesmith and Mr Maslin on the same day, Mr Bradley advised that he did not believe brain of calves below 6 months of age presented a risk.
Further consideration of the issue

3.549 On 4 October, Dr Kimberlin wrote to Mr Meldrum:

I am sorry that you found the meeting on the 18th of September a bit disappointing. The issue of the CNS in young calves was, and still is, quite clear to me but I cannot find a way of exempting the major LRS tissues at any age. Ray Bradley and I have discussed this again recently, at your request and at great length. I appreciate the implications of banning LRS tissues but I see no choice.874

3.550 Also on that day, Dr Metters wrote to Dr Pickles regarding consistency between proposals for use of surgical catgut manufactured from bovine intestines and the exemption of spinal cords from cows under 6 months. He noted:

At the MAFF meeting on 18 September Dr Kimberlin was content for calf spinal cord to remain in the carcass up to the age of 6 months as the evidence suggests that BSE entry to the CNS takes place later. Dr Kimberlin was much more concerned about the evidence that BSE appears much earlier in the reticulo-endothelial elements of bovine intestine.

Is there an inconsistency between the six month limit MAFF have in mind for the inclusion of bovine spinal cord in calf carcasses for human consumption and the 18 months – 2 years limit on bovine raw material from ‘clean beef cattle’ used for the manufacture of surgical catgut?875

19 October: Mr Meldrum writes to Dr Jeremy Metters

3.551 In his letter to Dr Metters of 19 October, Mr Meldrum made the following points on calves:

I have given very careful thought indeed to our discussions about a cut-off point for cattle less than six months of age. At our meeting in Whitehall we concluded that brain and spinal cord of such calves would not present a risk and this is supported in Richard Kimberlin’s paper. Richard Kimberlin was, understandably, concerned at the possibility that the agent could even at this young age be present in the reticulo endothelial system and in particular in the spleen and thymus. This view is supported by some unpublished evidence.

I have now ascertained through consultations with the trade that in the United Kingdom spleen and thymus are not used for human consumption . . .

On the basis that they are not entering the human food chain I believe it is totally reasonable to exempt calves under six months of age from the ban since the only residual risk is the possibility that some calves may be the offspring of BSE affected animals and that maternal transmission might in the course of time be proven to take place.876

874 YB89/10.04/7.1
875 YB89/10.04/2.1
876 YB89/10.19/7.6
Mr Meldrum then identified the following factors to be ‘borne in mind in consideration of any such exemption’, which he believed weighed in favour of calves being exempted:

That such calves would not have been fed meat and bone meal containing any ruminant protein.

That although maternal transmission may occur the possibility will be significantly less than the clinical occurrence rate in adult cattle which is one in one thousand.

That calves under six months of age may contain a low level of the BSE agent in the spleen and thymus.

That such spleen and thymus did not enter the human food chain.

That the number of calves slaughtered each year in the UK is very low indeed.\(^{877}\)

He concluded by stating that Dr Kimberlin had seen a draft of the letter, and had stated that he did not object to the line Mr Meldrum was taking on calves, bearing in mind the importance of the issue and the need to protect the UK’s export markets. Mr Meldrum also offered to meet with Dr Metters to discuss matters further.\(^{878}\)

A few days later Dr Metters wrote the following note to Dr Pickles on Mr Meldrum’s letter:

For advice please. Should we take up the offer of a meeting, or can we agree to what MAFF propose by letter. I am generally content, but would feel happier if Sir Richard Southwood and Dr Tyrrell were ‘signed up’ as well. Dr Kimberlin is already persuaded, or so it appears.\(^{879}\)

Dr Kimberlin’s change of heart on calves

In a statement to the Inquiry, Dr Kimberlin said that the draft letter from Mr Meldrum caused him to consider the issue of excluding calves from the ban further. The first factor he addressed was the prevalence of infection in calves:

In considering the prevalence of infection in calves, it was very important that the ruminant-protein-feed ban had been introduced over a year earlier, in July 1988. Because of the long incubation period of BSE in cattle, the ban would have had no effect on the prevalence of infection in cattle infected before it was introduced but, potentially, it could have already reduced, dramatically, the prevalence of infection in calves of less than 6 months of age.

However, allowance had to be made for the fact that there had been no withdrawal of feeds already in the supply chain, which would have reduced
the immediate effects of the ban. Nevertheless, I concluded that, by the same
time the SBO ban was implemented, the prevalence of feed-borné infection
in calves of less than 6 months would be substantially lower than in adults.
The extent of maternal transmission of BSE remained unknown but it
was reasonable to argue that it was unlikely to be 100 per cent efficient.
Furthermore, my opinion that LRS tissues from young calves would pose
less of a risk than adult LRS tissues would still apply, regardless of how
calves were infected.880

3.556 Dr Kimberlin also considered the amount of LRS tissue entering the human
food chain. Since Mr Meldrum had advised him that spleen and thymus were
not used for human consumption, ‘then these tissues would not pose a risk’.
Dr Kimberlin was aware that little use was made of spleen and was not ‘overly
concerned about thymus because the evidence suggested that thymus was of lower
risk than other LRS tissues in natural, as opposed to experimental, scrapie’.881

3.557 Dr Kimberlin told us that Mr Meldrum was correct to assert to Dr Metters
that he agreed with Mr Meldrum’s ‘line’:

However, the reason was not because I was ‘bearing in mind the
importance of the issue and the need to protect our export market’, but
because Mr. Meldrum’s assessment addressed all the relevant factors
affecting risk in a way that I considered to be reasonable and, most
importantly, that I could defend, scientifically. I was not endorsing his
every word.882

Thymus issues

3.558 The 20 October meeting between MAFF and the MILG, as recorded in an
MILG letter to members dated 23 October, noted in relation to thymus:

In response to the Ministry’s question, MILG said there was a small
specialist trade in thymuses, but they could not say what tonnage was
involved. At the request of MAFF, it was agreed that enquiries should
be made with the catering butchers regarding usage.883

3.559 During oral evidence, Mr Keith Baker was asked whether he thought he
should have ensured that the fact that thymus was used for human consumption was
brought to the attention of Sir Richard Southwood, Dr Tyrrell and Dr Kimberlin,
who were considering the exemption for calves, and had not attended the meeting.
He replied ‘No, I do not think so at all.’ This was because he was not involved in
the correspondence between Mr Meldrum and Dr Metters, and therefore when
thymus was discussed at the meeting he would not have been aware of the context
in which it was raised unless it had been explained. Mr Baker could not recall that
the context of the thymus issue had been explained at the meeting.884

3.560 Mr Cruickshank has stated to the Inquiry that it was clear that only a very
small number of people in the meat trade were in fact aware there was a small
specialist trade in thymus. Further, he believed it was unreasonable to expect MAFF to have an intimate knowledge of ‘all the most abstruse aspects of the meat trade’. Instead, MAFF relied on advice from industry organisations and respected individuals in the industry. Mr Cruickshank also stated that:

As I recall, the thinking on thymus was that the level of consumption was so very small, and the risk from eating any offals was so extremely remote, it would be disproportionate to include thymus in the ban.885

3.561 However, in oral evidence Mr Cruickshank added he knew ‘practically nothing’ about thymus at the time, and could not associate this line of thinking with any individual person.886

3.562 Mr Meldrum also pointed out that in May the BMMA, whose members produced about 80 per cent of the meat products sold in the UK, had advised MAFF informally that thymus was not actually used in meat products.887

Sir Richard Southwood and Dr Tyrrell agree with Mr Meldrum

3.563 In response to Mr Meldrum’s request of 23 October for comments on the proposed exemption of calves from the specified offal ban, Sir Richard Southwood informed Mr Meldrum on 26 October that he was ‘perfectly content with the decision about calves’.888 Dr Tyrrell also accepted Mr Meldrum’s conclusions about calves.889

30 October: DH recommends MAFF to proceed as they think fit with the proposals

3.564 Dr Metters’s reply to Mr Meldrum’s letter of 19 October said the following on the issue of calves:

You put forward strong arguments for total exemption of young cattle and tell me Dr Kimberlin is content. You mention the importance of this issue for exports and yet do not comment on human consumption of thymus outside the UK. Nevertheless, we are content for all organs of young calves to be exempt. After all, the Southwood report concludes vertical transmission is unlikely. However, were such transmission to be demonstrated, this exclusion must then be reconsidered.890

3.565 In a statement to the Inquiry, Dr Metters said that prior to Sir Richard Southwood, Dr Tyrrell and Dr Kimberlin stating that they agreed to the exemption, the DH ‘was not prepared to agree to the proposed exemption at that time’. However, DH accepted the advice of the experts, since ‘it is difficult to envisage three experts better qualified to advise on this issue at that time’.891
3.566 During oral evidence, Dr Metters commented that on the evidence they had at the time, ‘that was a proportionate and reasonable thing to have assented to, given the range of issues that were in Mr Meldrum’s original letter to me’. Further, at the end of his letter he had commented that he would like to see further copies of relevant correspondence with experts, and that if any of them had reservations, they might need to meet. According to Dr Metters, this illustrated that they were willing to revisit the point if need be.892

3.567 In another statement, Dr Metters commented that, although he had no record of discussing this letter with Sir Donald Acheson, ‘it is inconceivable that I would have written this letter without discussing the substance of it with him’.893

2 November: circulation of the final draft regulations to MAFF Ministers

3.568 Mr Lawrence’s submission of 2 November to Mr Gummer mentioned that Sir Richard Southwood and Dr Tyrrell had agreed that brain and spinal cord from calves posed no risk. Dr Kimberlin’s concerns were noted. The submission continued:

There is no knowledge amongst the trade organisations, nor abattoir owners, of any use made of the specified offals from calves in the UK for human food, except in the case of thymus, where it is used, exceptionally, as a delicacy.

Calves under six months will not have been fed on meat and bone meal containing ruminant protein. Therefore the only residual risk is the possibility that some calves may be the offspring of BSE affected animals and that maternal transmission might, in the course of time, be proven to take place. Furthermore, of the total kill of cattle this year, which is likely to be some 3.3M, only about 25,000 will be calves under six months. In all the circumstances, and having regard to the scientific evidence, it is considered that an exemption would not represent a measurable increase in any possible risk compared with a complete ban and that such calves should be totally exempt from the prohibition.894

3.569 The submission had been cleared with Mr Cruickshank. When questioned during oral evidence as to why he approved the exclusion of calves when on 17 August he had expressed reservations (see paragraph 3.540), Mr Cruickshank said:

I think it was really because the veterinary opinion had come round firmly to say that really there was no conceivable risk for animals under six months. This was not because of the point about maternal transmission, that point remained; it was the point about the infective organism not being there in animals of less than six months.895
7 November: MAFF Ministers meet to consider Mr Lawrence’s submission action

3.570 The minutes of the 7 November meeting do not record any discussion on the exemption of calves.\(^{896}\)

Dr Pickles’s submission to Health Ministers

3.571 Dr Pickles sent a submission on the proposed Regulations to DH Ministers on 7 November. She informed them that an exemption was to be made for calves under 6 months, as none ‘could have been fed contaminated feed and on the assumption vertical transmission from cow to calf is unlikely’. Dr Pickles said she was content with the proposed Regulations, as were outside experts such as Sir Richard Southwood. Dr Pickles therefore recommended that Mr Clarke co-sign the regulations.\(^{897}\)

The CMO does not agree on the exemption for calves

3.572 The next day Dr Pickles was informed that in response to her submission Sir Donald had questioned the desirability or worth of making an exemption for calves, and had commented that ‘surely there is vertical transmission in scrapie’.\(^{898}\)

Dr Pickles reassures the CMO

3.573 On 14 November, Dr Pickles provided Sir Donald with further justification for the exclusion of calf offal. She said that:

there are reasons for believing that vertical transmission is less likely to occur than in scrapie [see Southwood para 6.2] and even were this to occur the prevalence of infection is likely to be much lower in calves than in older animals directly fed meat and bone meal.

there are great practical difficulties in extracting spinal cord from the carcass in these young animals in which the spine is not split.

very few calves are slaughtered in this age group, and in none are the specified offal chosen for consumption in the UK.

commercially very important export of calves would be affected without the exemption, and so there had to be strong justification were calves not to be exempted.\(^{899}\)

3.574 In oral evidence Sir Donald said that the final factor was of no importance to him, since the first three factors already made the case.\(^{900}\) In any event, Sir Donald did not consider the matter further after receiving Dr Pickles’ minute.\(^{901}\)

\(^{896}\) YB89/11.07/2.1–2.2
\(^{897}\) YB89/11.07/8.1
\(^{898}\) YB89/11.08/9.1
\(^{899}\) YB89/11.14/4.1
\(^{900}\) T128 p. 74
\(^{901}\) S251A Acheson para. 81
Mechanically recovered meat (MRM)

What is MRM?

3.575 MRM is derived from the flesh-bearing bones and carcass remnants of cattle, sheep, pigs and poultry by the application of high pressure to the bones to separate any adhering meat. It is used in Europe as well as the UK in the manufacture of a range of processed meat products for human consumption, including frozen sausages, burgers and pies. It is often described as a slurry or a paste, but it can be similar to mince in appearance. For a further discussion of the MRM industry see vol. 13: *Industry Processes and Controls*.

3.576 It has been estimated that the total UK production of beef MRM in the late 1980s was about 4,000–5,000 tonnes per year. The 1997 audit of the bovine and ovine slaughter and by-products sector by the Leatherhead Food Research Association and the MLC estimated the potential for contamination from cattle with spinal cord:

Average contamination of beef MRM, between 1980–89, is estimated at ca 0.04%, falling to ca 0.005% between 1990–95, as the ban on the use of Specified Bovine Offals took effect. Typical usage rates of MRM in meat products would be ca 10%, implying considerable dilution of any spinal cord present.

3.577 Following the emergence of BSE, concern was raised that potentially infective tissues were getting into the human food chain via the MRM process. For a further discussion of infective tissues and their level of infectivity see vol. 2: *Science*.

MRM is first considered

3.578 Mr Bradley first raised the issue of MRM in his report on Mr Thompson’s previous proposal on cull cattle (see paragraphs 3.162–3.166). Mr Bradley was concerned about disposal of brains and spinal cord. He wrote to Dr Watson and stated:

> It would seem sensible that the vertebral column . . . is not permitted to be used for human food (eg, bone broth/gelatin) since it is highly likely to be seriously contaminated in an infected animal exposed in calfhood. You might consider not permitting recovery of meat scraps from vertebral column.

3.579 Dr Watson has no direct recollection of this note. He told us that he understood that, as requested by the CVO, Mr Lawrence was discussing these points with Mr Bradley and that he [Dr Watson] did not therefore become directly involved. However, Dr Watson considered that Mr Bradley would have kept him informed.

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902 YB95/11.16/8.1
903 IBD5 tab 70 p. 4
904 IBD5 tab 70 pp. 5–6
905 IBD5 tab 70 Executive Summary
906 YB89/4.12/1.5
907 YB89/5.05/2.1–2.2
3.580 Mr Lawrence has no recollection of seeing Mr Bradley’s note.

3.581 On 30 June 1989, Mr F A Eames, a Veterinary Officer (VO), sent a memorandum to Mr J Cartwright (Regional Meat Adviser for Wolverhampton) reporting that an abattoir had given up the production of MRM from cattle bones as the abattoir could not guarantee that all central nervous system tissue would be removed from the backbone. Furthermore, he stated:

I fully agree with this ruling and would suggest that similar procedures must be adopted in all abattoirs.908

3.582 The manuscript notes on this minute indicate that Mr Fry, Mr David Taylor and Mr Maslin all saw this ‘isolated minute’.909 Mr T Boulding (Senior Executive Officer, Meat Hygiene Division, MAFF) wrote in the margin of the minute that:

... most slaughterhouses have an MRM plant, and there is a risk of potentially infected material entering the food chain.

3.583 Underneath, Mr Fry wrote:

Clearly the use of backbone for MRM production is more widespread than we had been led to believe. I shall be interested to know what AHD [Animal Health Division] consider we should do.910

MRM in nervous tissue

3.584 On 11 July, Mr David Taylor minuted Mr Kevin Taylor about Mr Eames’s memorandum, seeking Mr Kevin Taylor’s advice on the potential risk involved in the production of MRM. He said:

Personally I would have thought the small amount of residual CNS material left together with the overall dilution factor in the finished product would reduce the ‘risk’ considerably.911

3.585 Mr K Taylor responded on the minute that ‘I suspect that you are right and that any risk – if indeed a risk exists – is further reduced by dilution’. A further handwritten note by Mr D Taylor appeared on this minute, and stated ‘I suggest that no action is required on our part to stop MRM production.’ In oral evidence Mr K Taylor stated:

If I had been asked the same question six months later, I would have given a different answer, but by then I would have been basing it on the assumption that all of the spinal cord had been removed from the vertebral column because that was a legal requirement by the end of 1989, and on that basis I was still perfectly happy about mechanically recovered meat.912

3.586 On 27 July 1989, Mr Maslin circulated a minute considering such issues as the use of bovine eyeballs for teaching purposes, surgical sutures produced from

908 YB89/6.30/2.1
909 YB89/6.30/2.1
910 YB89/6.30/2.1
911 YB89/7.11/3.1
912 T122 pp. 90–91
bovine intestines and the use of spinal cord, thymus and spleen for pharmaceutical products. Chapter 9 of this volume deals with bovine eyeballs, while medical and surgical products are dealt with in vol. 7: *Medicines and Cosmetics*.

3.587 With regard to MRM, Mr Maslin noted:

I am informed that one abattoir at least has stopped using cattle bones for mechanically recovered meat because of the residual presence of nervous tissue. As our action on offals is already a measure of “extreme prudence” going beyond scientific advice in the *Southwood Report* I assume that we do not wish to get embroiled in further measures on MRM.

3.588 Mr Meldrum responded by sending a minute to Mr Lowson the next day in which he said:

I trust that we will not become involved in mechanically recovered meat.

3.589 Mr Bradley responded to Mr Maslin’s minute on 1 August, saying in relation to MRM:

We do not have knowledge of the infectivity of bone in BSE but in natural scrapie of sheep bone marrow is only exceptionally infected and in goats not at all. It may therefore be presumed also to be a low risk tissue in BSE but remains to be proven.

Vertebral column contains the spinal cord and segmental nerves. In bovine adults the vertebral column is split and there is the opportunity for the spinal cord to be mutilated in this process and to contaminate bone edges. Thus there is an increased risk of MRM recovered from the vertebral column bone over that derived from limb bones. This risk may be age dependent, small in calves, possibly increased in infected sub-clinical animals killed at around 2 years of age and high in affected adults or in infected animals in the late pre-clinical phase at three years and over. Clearly spinal cord must be removed before processing to produce MRM should this be allowed to continue.

3.590 Mr Hutchins, a Senior Veterinary Officer (SVO) from the Meat Hygiene Veterinary Section of MAFF, also responded to Mr Maslin and stated:

There would seem no justification for a ban on the use of certain bones in MRM production because of fears about the amount of nervous tissue involved.

Consultation responses in relation to MRM

3.591 Mr D G Higginson (Managing Director, Ulster Farm By-Products Ltd) wrote to MAFF about MRM on 22 September:
It is totally impractical to remove in total on a commercial basis the brain and the spinal cord. The carcass is normally split using a circular saw and this shatters the spinal cord and the sides of beef, after being boned out, have the residual bone treated hydraulically to produce re-claimed meat that will include spinal cord pieces, etc. This meat is used in all types of convenience foods. It is even more surprising that the sheep carcasses are not being dealt with in a similar manner to bovines as the possible spread from sheep to cattle was one of the original causes of concern.\textsuperscript{918}

27 September: meeting to discuss the responses to the consultation document

3.592 The minutes of the meeting on 27 September recorded in relation to MRM:

The proposed ban on specified offals was in itself a measure of extreme prudence, going beyond what Southwood recommended. Though some nervous tissue would be contained in MRM it would be minimal and not present a significant risk. No action should be taken on MRM.\textsuperscript{919}

3.593 Mr Ron Martin, Deputy CVO of the Department of Agriculture for Northern Ireland (DANI), made a note of the meeting which recorded the discussion of MRM as follows:

Mechanically recovered meat (MRM) – the possible danger raised by several of those consulted was recognised and during the discussion there was an expression of the illogicality of what was being done and in particular how easy it would be to have to concede the possible dangers of material other than those listed in the proposed ban. It was agreed not to raise it.\textsuperscript{920}

Mr Bradley’s minute of 27 September

3.594 On 27 September, Mr Bradley sent a minute to Mr Wilesmith and Mr Maslin commenting on the response from industry about the proposed offal ban.\textsuperscript{921} He advised that he did not believe brains of calves below 6 months of age presented a risk. He noted that cross-contamination of low-risk tissue by higher-risk tissue could occur as a result of circular saw cutting and the resultant spray, and the captive bolt and pithing methods.\textsuperscript{922}

Mr Lawrence updates Mr Gummer and DH

3.595 In his update to Mr Gummer on 3 October, Mr Lawrence noted with respect to MRM that:

\ldots although some nervous tissue would probably be contained in mechanically recovered meat (MRM), it would be minimal. The ban should not therefore be extended to MRM.\textsuperscript{923}
3.596 However, on 24 October, Mr A J Lebrecht, Principal Private Secretary to Mr Gummer, minuted Mr Lawrence to advise that the Minister was concerned about the proposal to exclude MRM from the offal ban. Nevertheless, the submission sent to Mr Gummer with the final draft regulations on 2 November recommended:

If any cattle which are in their pre-clinical stage are being slaughtered at abattoirs it is more likely that the agent will be in the lymphatic tissue rather than the central nervous system. If spinal cord is banned it will have to be stripped out of the vertebrae prior to mechanical recovery. It is therefore most unlikely that any agent would be present in MRM. In these circumstances it is considered that MRM should be excluded from the ban.

3.597 Mr Maclean wrote some comments on the submission. On the issue of MRM he stated:

I am not satisfied that parts of the lymphatic system or its contents cannot get into MRM.

Can you give me a guarantee that when the bones are put into the MRM machines, no part of the lymphatic tissue, system or contents would be present in the resulting puree?

How can we be sure that all abattoirs remove the spinal cord and spine cleanly – or at all – before MRM takes place?

What are the risks and possibilities of Cerebro Spinal Fluid getting onto the other meat, or the chances of lymph leaking out from damaged lymphatic vessels or nodes during slaughter, and contaminating other material during MRM, thereby ultimately reaching the human food chain?

7 November: Ministers meet to consider Mr Lawrence’s submission

3.598 The note of the meeting on 7 November recorded with respect to MRM that:

The Minister thought the exclusion of this from the ban was presentationally more difficult. Mr Meldrum explained that the risk associated with mechanically recovered meat was not greater than in the other cases where an exclusion from the ban had been agreed. Mr Lawrence confirmed that our independent advisor, Dr Kimberlin, was satisfied on this point. Mr Maclean asked whether there would be any risk associated with a rupture of the spinal cord when extracted. Mr Meldrum explained that this would not be the case, especially as we were now some time into the ban on feeding ruminant products to ruminants, which reduced any potential risk. It was therefore agreed that MRM should be excluded from the ban.
Heads

MAFF’s proposed treatment of bovine heads

3.599 Bovine heads posed a unique issue in that the brain was to be designated SBO, yet there was still meat on the head that could be recovered for human consumption. Therefore, MAFF needed to consider how the disposal of bovine heads would be managed in practice.

3.600 Mr Fry’s draft instructions to lawyers, circulated on 15 June, indicated: ‘we will need to cover brains in such a way as to permit the skull to be discarded rather than require the brains to be removed from it’. Thus, ‘we need however to provide for heads to be able to be sent from the slaughterhouse to specialist head boning plants for removal of cheek meat etc before being discarded and stained etc’. The instructions also said that MAFF wished for the movement permit system of the Meat (Sterilisation and Staining) Regulations to apply to the offal to be included in the ban.928

3.601 On 20 June, Mr Fry suggested to Mr Lawrence that ‘we are going to have to provide for cattle heads to go to specialist boning plants for the removal of cheek meat’. He recognised that there would be no enforcement staff present, but ‘there is no suggestion that heads should be split to remove the brains for staining’.929 Mr Taylor agreed with this recommendation.930

26 July: MAFF issues consultation document on the proposed specified offal ban

3.602 The consultation document proposed that it would be permissible to remove bovine heads from the slaughterhouse, unstained and unsterilised, in accordance with a movement permit issued under the Regulations, as follows:

Bovine heads could be moved without removing the brains to a specialist boning plant for the recovery of the cheek meat.931

3.603 It was further proposed that ‘the occupier of a specialist boning plant receiving a bovine head from which the brain has not been removed would be required to stain the skull, with the brain still in it, immediately after removal of the cheek meat from the head’.932

Consultation responses on the proposed treatment of bovine heads and head meat

3.604 Responses to the proposal for treatment of bovine heads and head meat included the following:

i. the IEHO raised further concerns over contamination of head meat for human consumption by tonsils. This was because head meat,
particularly cheek meat, was commonly harvested after the tonsils had been split, meaning there could be residual tonsil on the meat;\footnote{YB89/9.25/1.40}

ii. the IEHO also raised the question of where the removal of head meat should take place. The IEHO recommended that if cheek meat was to be removed, it should be done only at the slaughterhouse, ‘where the skull can be properly controlled to be declared unfit’;\footnote{YB89/9.25/1.41}

iii. the MLC questioned the need to stain heads not removed to a specialist boning plant and suggested that measures be improved in the transportation and handling of the heads to prevent contamination; and\footnote{YB89/9.25/1.30}

iv. the Northern Group Public Health Committee suggested that, given the Regulations were to prevent infectious SBO from entering the human food chain, ‘it seems illogical to allow such material, that is, bovine heads, into a specialist boning plant for the recovery of the cheek meat for human consumption’. If such an exception were to be made it would be important to have effective control of the head after the cheek meat had been removed.\footnote{YB89/9.18/3.2. The same point was made by Ards Borough Council in YB89/12.05/6.1}

27 September: meeting to discuss the response to the consultation letter

3.605 The note of the meeting on 27 September does not record any discussion of bovine head issues, though it does state that for specialist boning plants, ‘a definition should be included on the lines of those whose main business was the removal of meat and bones for the wholesale market’.\footnote{YB89/9.27/6.4–6.5}

3.606 Indeed, the evidence available to us suggests bovine heads received little attention during MAFF’s deliberations following the receipt of responses to the consultation document, and the provisions in the Regulations essentially reflect what was proposed in the consultation document.

Consideration of the enforcement of the SBO ban

Introduction

3.607 At the Ministerial meeting to discuss the introduction of the SBO ban on 7 June, it was decided that the ‘most practicable solution for preventing offals getting into the food chain appeared to be to act at the slaughterhouse. This would remove any enforcement difficulties.’\footnote{YB89/6.07/7.1}

3.608 Mr Meldrum recommended that the prohibited types of offal be separated into a bin for staining and rendering.\footnote{YB89/6.07/7.1}
3.609 District Councils, London boroughs and unitary authorities\textsuperscript{940} were responsible at the time for enforcement of meat hygiene legislation within slaughterhouses. Included within their functions was the enforcement and execution of the provisions of the Meat (Sterilisation and Staining) Regulations 1982, which provided for the staining and sterilisation of meat (including offal) unfit for human consumption.\textsuperscript{941} Further details on enforcement of meat hygiene legislation in slaughterhouses are given in chapters 4, 5, and 6 of this volume.

3.610 Mr Duncan Fry (Head of Branch C, of Meat Hygiene Division, MAFF) noted in a minute discussing the regulatory framework for the SBO ban, that: ‘The enforcement authority will be local authorities – whose staff enforce the legislation in slaughterhouses’.\textsuperscript{942}

Response to the letter of consultation from local authorities

3.611 There appears to be little evidence of any discussion on the enforcement of the proposed ban by local authorities, until responses were received to the letter of consultation sent by MAFF to organisations affected by the proposed ban.

3.612 The annex to the consultation letter had detailed the proposals for the Regulations. It provided little detail on the role of local authorities, other than advising that the ‘Regulations would be enforced by the local authorities’ and local authorities would provide for the issue of movement permits to authorise the removal of unsterilised SBO from slaughterhouses.\textsuperscript{943}

3.613 The Chief Environmental Health Officer from the City of Lincoln responded to MAFF that the ‘proposals will create an administrative cost and burden on local authorities’. The extra ‘burdens’ were noted as the need to issue additional movement permits, checking premises where unstained heads are processed, the need to remove tonsils, the cost of removing large volumes of offal, and checks to ensure casing manufacturers removed lymphatic tissue.\textsuperscript{944}

3.614 Mrs K J Swann (Deputy County Analyst, Lancashire County Council) noted:

Overall consideration of the new moves indicates that it will be difficult (if not impossible) for the local authority . . . to prevent the access of prohibited tissues to meat product producers. This then impinges upon the responsibilities of food and drug authorities . . . What they need to do (in concert with local authorities) is to devise a system of monitoring and testing to ensure that prohibited tissues are detected at that stage of the production chain.\textsuperscript{945}

3.615 Mr C Kingman (Local Government Division, Department of Environment) noted that the proposals would result in an ‘extension to local authorities’ existing procedures’ and that ‘we would have preferred to see a piece in the consultation letter dealing with resource implications’. He noted he would like to know the

\textsuperscript{940} In metropolitan districts, unitary authorities combined functions which would otherwise have been split between district and county councils
\textsuperscript{941} L17 tab 15 regulations 6 and 7 provided for the staining and sterilisation of unfit meat, and Regulation 26(2) provided for enforcement by local authorities
\textsuperscript{942} YB89/6.08/2.1
\textsuperscript{943} YB89/7.26/1.10–1.12
\textsuperscript{944} YB89/9.25/1.50–1.51
\textsuperscript{945} YB89/9.25/1.36
reaction from associations involved on costs and manpower; however he concluded:

For now . . . I will record this as a new burden unlikely to result in significant costs for local authorities.\textsuperscript{946}

\textbf{3.616} Mr Nicholas Hibbett, a member of the IEHO and Senior Principal Environment Officer at Carrick Council, was asked in oral evidence whether he agreed that the ban would not result in significant costs to local authorities. He replied:

. . . in local authority we have become a little bit cynical about new regulations that will have no resource implications. They always say that, and they always do. I think in this case it was really an extension to an existing movement permit system that we just had become used to flexing into and dealing with. So I think existing resources were just moved, other priorities were dropped, this priority was taken on board.\textsuperscript{947}

\textbf{3.617} The note of the meeting held on 27 September to discuss the responses to the letter of consultation recorded the following on the effect of the Regulations on local authorities.

LAs already apply the current Staining and Sterilisation Regulations at abattoirs. Their main additional burdens would come from an increase in the number of movement permits they issue and the need to apply controls at head boning plants and sausage manufacturers. It was too late to seek extra financial provision for 1989/90 and 1990/91. The LAs should however be asked to produce a detailed breakdown of the costs involved which could be considered in relation to future years.\textsuperscript{948}

\textbf{3.618} A minute was forwarded to Mr Gummer on 3 October updating him on the progress of the ban. It echoed the minute of 27 September in its consideration of the impact on local authorities of the ban, noting that although some additional responsibilities would fall to the authorities, ‘these are unlikely to be of great significance’.\textsuperscript{949}

\textbf{The meeting of 18 October}

\textbf{3.619} MAFF invited enforcement authority representatives to a meeting on 18 October to discuss the proposed Regulations.\textsuperscript{950} The note of the meeting records that the local authority organisations invited (Association of District Councils, Association of Metropolitan Authorities and Association of London Authorities) were unable to attend despite repeated attempts to convene a meeting. Those present at the meeting were MAFF, the ‘Territorial Departments’ (as they were then known) and the IEHO.

\textbf{3.620} The following points on implications for local authorities from the Regulations were noted in the minutes of the meeting:

\textsuperscript{946} YB89/9.25/1.47
\textsuperscript{947} T56 p. 66
\textsuperscript{948} YB89/9.29/1.4
\textsuperscript{949} YB89/10.03/3.3
\textsuperscript{950} YB89/10.18/2.1
Movement permits

13. MAFF explained that Local Authorities would have to issue more movement permits in respect of specified bovine offal which would have to be treated as unfit meat under the new Regulations. However, the proposed Regulations provided for bulk issue of movement permits in advance where specified material was moved regularly and it was hoped that burdens would largely be able to be absorbed.

Specialist head boning plants

14. It was agreed that these premises . . . would require increased Local Authority input to supervise enforcement of the proposed Regulations. The IEHO confirmed that specific resource implications would vary according to how the existing Regulations were at present enforced in each area.

3.621 It was noted that little comment had been received from local authorities on the draft proposals, and it was ‘hoped therefore that burdens on authorities would not increase too significantly’. Local authorities experiencing resource problems with regard to the proposed Regulations should contact MAFF, and resource implications for local authorities would be mentioned in the submission to the Minister.951 Mr Lawrence discussed this meeting in his oral evidence.

. . . only the IEHO turned up, which I thought was very frustrating and disappointing. I said that in a letter I wrote to the other organisations afterwards, because we were talking about the implications of this new legislation for them in terms of resources and other things. And we wanted to talk it through to make sure that they knew what was going on.952

3.622 Mr Richard Lodge, Head of Food Health and Safety for Birmingham City Council, and Mr Graham Roberts, Senior Environmental Health Officer for Staffordshire Moorlands District Council, advised the Inquiry in oral evidence that they were unaware that their representative organisations had been invited to the meeting although it was a ‘hectic time in terms of local government’s involvement in the legislative process’.953

3.623 Mr Lawrence followed up the meeting by writing to the local authority organisations that did not attend the meeting. He referred to the suggestion that the additional enforcement responsibilities on local authorities would have resource implications.

. . . the proposed regulations would follow those for dealing with unfit meat, which are already applied by enforcement authorities through visits to abattoirs and the issuing of movement licences. As such the role of the enforcement authorities will differ little. If Ministers agree to implement the proposals as envisaged there may be an additional element of enforcement responsibility at boning plants and sausage manufacturers (for casings) but again we understand that these premises are already visited for food hygiene purposes. Additional visits should not therefore be necessary, although this will be entirely at the discretion of the authorities concerned. In the
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circumstances we do not foresee that the proposed regulations will place a significant additional burden on enforcement authorities. 954

The submission to Mr Gummer

3.624 The submission of 2 November 1989 on the Regulations as finally drafted contained no mention of the enforcement of the ban by local authorities, but the attached Q&A brief noted:

How Will The Ban Be Enforced?

By local authority inspectors in the same way as existing controls on meat unfit for human consumption are enforced. 955

Regulations to implement the SBO ban

The SBO ban is announced

3.625 On 8 November 1989, Mr Gummer announced details of the SBO ban in Parliament. In a news release issued that day he was quoted as saying:

All bovine animals which are found to have BSE are slaughtered and destroyed. Meat from these animals does not enter the food chain either for human or animal consumption. Earlier this year my predecessor announced that he would take a further precaution which would be to exclude certain bovine offals derived from healthy animals. Further technical studies have now been carried out and additional independent expert advice has been taken. The offals affected are brain, spinal cord, thymus, spleen, tonsils and intestines . . .

Offals from calves under six months of age will be excluded from these arrangements since any of these offals which may be used for human food will not present a human health hazard . . . This is a further addition to the very tough measures which Sir Richard Southwood’s expert committee recommended earlier this year. 956

Local authorities are contacted

3.626 On 9 November 1989, MAFF wrote to every district council in England and Wales and the local authority associations enclosing a copy of the new Regulations and informing them they would be coming into effect on 13 November. 957 The letter said: ‘If you require any further information or technical advice concerning these Regulations, please contact the Veterinary Service at your local MAFF Divisional Office.’ On the same date a circular letter was issued to all DVOs alerting them to the fact that District Councils had been advised to contact the veterinary service at their local Ministry office if they have any queries about the operation of the Regulations. 958

954 YB89/10.27/1.1–1.7
955 YB89/11.02/4.22
956 YB89/11.08/1.1
957 YB89/11.09/1.1
958 MA42 tab 2 p. 1
The SBO ban comes into effect

3.627 On 13 November 1989, the Bovine Offal (Prohibition) Regulations 1989 came into effect in England and Wales. However, in late November 1989 minor amendments to the Regulations were proposed.\(^{959}\)

3.628 Concerns in November and December 1989 on the part of Environmental Officers as to practical aspects of the SBO Regulations are discussed in Chapter 4.

3.629 The amendments were postponed until the Regulations were prayed against in Parliament, requiring a Parliamentary debate.\(^{960}\) In these circumstances, it was decided that the Northern Ireland and Scottish regulations should be held back until these matters had been resolved; this is discussed further in vol. 9: Wales, Scotland and Northern Ireland.\(^{961}\) We deal with amendments to the Regulations in subsequent chapters of this volume.

Debate in the Standing Committee on Statutory Instruments

3.630 The Parliamentary debate did not take place until 14 December 1989.\(^{962}\) Mr Ron Davies, MP, Opposition Agricultural Spokesman, stated that the Opposition supported the SBO ban but had sought a debate to test whether the Regulations met the Government’s objectives. He asked Ministers to explain why the sale of offal from cattle under 6 months of age at the time of slaughter was not prohibited. He argued that if there was the slightest doubt that vertical transmission of BSE could take place then the Ministry had a responsibility to safeguard public health. He also argued that there was evidence that animals infected with BSE were being identified at markets and slaughterhouses, and that while the Regulations excluded offal from such animals, they would not exclude the rest of the animal which, in some cases, showed clinical symptoms of BSE.

3.631 Mr Davies also urged the Minister to announce 100 per cent compensation for all identified cases of BSE in order to encourage farmers to send the animal to slaughter as opposed to market.\(^{963}\) In reply, Mr David Maclean (Parliamentary Secretary, MAFF) stated that, firstly, the source of infection had been cut off for well over a year, so that calves under 6 months had not been exposed to the agent in feedstuffs and, secondly, that there was still no evidence whatsoever that BSE could be transmitted to offspring. On the effectiveness of the Regulations he stated that it was known, from an analogy with scrapie, that the agent was concentrated in the lymphoreticular and central nervous systems of infected animals.\(^{964}\) Mr Maclean added:

> The dairyman will suspect that the animal has BSE only if he sees clinical signs. In that instance the incentive will be to have that animal destroyed on the farm rather than to risk trying to put it on the market, where our detection systems can pick up the small number of cases of animals with BSE that have moved from farm to market. The assessment of animals at the slaughterhouse ends up lower – on the estimated market value – than the

\(^{959}\) YB89/11.24/10.1

\(^{960}\) M7 tab 7A; YB89/12.11/3.1

\(^{961}\) S253A Hamill para. 5; YB89/12.13/5.1–5.2

\(^{962}\) M7 tab 7A

\(^{963}\) M7 tab 7A pp. 4–5

\(^{964}\) M7 tab 7A pp. 9–11
estimate made on the farm. There is an incentive to the farmer not to send
the animal to market but to have it assessed and to get his 50 per cent of the
on-farm value, which is greater.

... There are then checks and inspections at markets and slaughterhouses. There
is a control mechanism there to provide the second stage. Then, of course we
have these regulations. They are the final belt and braces. 965

Discussion on the preparation of the Regulations

The nature of the exercise

3.632 The decision to introduce an SBO ban and the determination of the tissues
that should be covered by the ban called for the application of principles of risk
evaluation and management that are described in vol. 15: Government and Public
Administration, ch. 5. As explained in that chapter, these principles were not at that
time generally recognised in Government as tools to be consciously applied to
policy-making. Certainly they were not in MAFF. The principles represent,
however, the formulation of a logical approach to the handling of risk and we would
expect the decisions made to reflect such an approach, whether or not the principles
were expressly recognised and applied.

3.633 We have considered in the previous sections of this chapter the events
leading up to the decision to introduce an SBO ban. That decision was not the
product of a formal, or even informal, process of risk evaluation. It was largely a
reaction to public pressure in circumstances where such scientific knowledge as
existed gave no reassurance that the pressure was groundless but provided an
underpinning for measures that would reduce the perceived hazard that was causing
public concern.

3.634 The decision to introduce an SBO ban, nonetheless, was consistent with the
ALARP principle. The ban was introduced as a precaution against what was
considered to be a remote possibility that a risk existed. The removal from the food
chain of the tissues which were deemed likely to carry high-infectivity titres was a
measure which would reduce the potential risk. The Government sought to put this
measure in place so far as reasonably practical.

Identification of the high-risk tissues

3.635 The tissues that initially gave cause for concern as high risk were those
identified by the Southwood Working Party when making the baby food
recommendation. These were identified as high risk by analogy with scrapie on the
basis of research work that had been done by Hadlow and others in relation to the
pathogenesis of scrapie in sheep. Details of the limited scientific knowledge that
existed at the time appear in vol. 2: Science. The research had identified the
lymphoreticular system as the main area of pre-clinical infection; hence the fact that the spleen and tonsils were considered to be high-risk tissues.

3.636 The question then arose whether the prevalence of lymphatic tissue required the inclusion in the ban of the intestine and the four stomachs of the cow. This was of some significance, for the intestine was used to make casings for sausages and delicacies such as black pudding and haggis, and the stomachs were the source of edible tripe and rennet, which was used in the manufacture of some cheese.

3.637 In respect of these products, a subsidiary question arose as to whether the manufacturing processes would satisfactorily remove or inactivate lymphatic tissue which might otherwise pose a risk.

3.638 MAFF took the lead in exploring which tissues should be included in the ban. Mr Bradley carried out histological and immunocytochemical studies of the alimentary tract of the cow to determine to what extent lymphatic tissue was present. He also surveyed the processes involved in the production of tripe, rennet and casings. Policy decisions on what should be included in the ban were largely based on his work.

3.639 DH, in the persons of Dr Metters and Dr Pickles, took part in these decisions, however, and independent advice was sought from Dr Kimberlin, Sir Richard Southwood and Dr Tyrrell.

The approach of those involved

3.640 The SBO Regulations were designed to reduce a risk that many who were involved in their preparation believed to be so negligible that no precautionary measures were necessary. This was true of those who believed that in the absence of fresh data, the Southwood risk evaluation and risk management were not open to question, and that the object of the exercise was to reassure the public. We believe that these included Mr Cruickshank, Mr Lowson, Dr Pickles, and Dr Metters. No doubt there were others. As we have recorded, the agreed public presentation of the SBO ban was designed to play down the significance of the ban. We should record that scepticism as to the need for the exercise did not result in any general failure to give careful consideration to how best it should be carried out.

3.641 Thus Dr Pickles told us that if Ministers, for all sorts of good reasons, wished to do something that was not strictly necessary, she would support them. Her attitude was to try very hard to be logical and consistent. Her aim was to ensure that all the bits of offal that might be of concern were removed from the food chain.

3.642 Mr Cruickshank told us that the question was where to draw the line. As to this, he relied on the advice he received from the Veterinary Officers and Mr Meldrum:

> The starting-off point was that it was a politically motivated ban, yes, but having got past that point, we looked at it very much in technical terms. We looked at how much infectivity there would be in particular tissues. That was the basis on which we took decisions.966
3.643 We shall comment in a little more detail on the process by which decisions were reached on some of the issues involved. In general we wish to commend the diligence with which decisions were reached on the details of the SBO ban. At the same time we would observe that the belief that the SBO Regulations were being imposed as a measure of extreme prudence which went beyond the recommendations of the expert scientists inevitably had an influence when borderline decisions fell to be made. This influence was particularly significant in relation to the consideration to MRM.

The choice of legislation

3.644 The choice of the Food Act 1984 as the legislative vehicle for introducing the SBO ban brought with it a statutory obligation to consult those affected. This was bound to result in significant delay in introducing the measure. By this stage BSE had been designated a zoonosis. We raised the question of whether the SBO ban could not, in those circumstances, have been introduced under the Animal Health Act 1981, which would not have imposed a consultation obligation.

3.645 Mrs Attridge informed us that legal advice which MAFF had received at the very highest level ruled out such a course in the absence of stronger evidence of human risk. We were not able to follow the logic of this, but did not feel the need to explore the matter further. Regulations requiring the removal of tissues from apparently healthy animals on the ground that a small minority might be incubating a disease that carried a remote possibility of transmission to humans were novel. They were quite complex. They carried serious economic consequences for some. It seems to us that consultation was desirable. The use of the established procedures and mechanisms for dealing with unfit meat under the Meat (Sterilisation and Staining) Regulations 1982 was sensible and could conveniently be achieved by subordinate legislation under the Food Act. For these reasons, we have concluded that the decision to proceed under this statute was not merely reasonable, but the appropriate course.

Delay

3.646 Approximately five months elapsed between the decision to introduce the SBO ban and the implementation of that decision. On the face of it, such a delay does not seem acceptable in relation to an important public health measure, albeit one introduced under the precautionary principle in respect of a risk which was considered remote. Mr James Coe, MAFF’s Head of Information in 1989, was certainly aware of this. When Mr Cruickshank proposed that the issue of the consultation letter should be accompanied by a press release, Mr Coe advised:

I don’t think we should issue a press notice. The media – and public – think we have carried out the ban. If we now announce that we are still talking about it we could get a caning. The press does not understand the niceties of consultation.

967 L2 tab 2B
968 L2 tab 1
969 T117 p. 122
970 L1 tab 5
971 YB89/7.19/1.1
His advice was endorsed by Mr Thompson.

The consequence was that in September the Observer published an article which criticised MAFF not only for the delay but for concealing the delay from the public, so that: ‘Beef brains and offal, which could contain the agent for BSE (bovine spongiform encephalopathy) are widely used in pies and pâtés, although the public is largely unaware of it.’

There is a lesson to be learned here about public relations, but we have concluded that neither MAFF nor DH is to be criticised for the time taken to introduce the SBO ban. The consultation process had to focus on the offal to be banned. It was reasonable, in the first instance, to seek to identify all of these before the consultation letter was sent out, rather than to envisage a two-stage consultation process. When the task of resolving issues about tripe and casings proved more difficult than anticipated, the consultation letter was sent out without further delay. The period allowed for consultation was no more than reasonable, having been extended from 30 August to 13 September at the request of Mr MacGregor. The entire period between June and November was one of continuous and diligent activity on the part of those involved in the introduction of the ban, not least Mr Bradley and those responsible for drafting the Regulations.

Had the technical problems in preparing the Regulations been foreseen, an alternative course might have been adopted which would have resulted in swifter introduction of the ban. This is to use hindsight. Having regard to the situation as it appeared at the time, the response of those involved was adequate – at least in so far as speed of action is concerned. We turn now to consider the individual decisions that were taken.

Tripe and rennet

It is convenient to consider these together, for a critical issue in the case of each was the status of the abomasum, the fourth stomach of the cow. The abomasum is the source of rennet. It is also the source of a category of tripe: black tripe. It was the only stomach that gave rise to cause for concern in relation to the presence of lymphatic tissue.

The question whether the four stomachs of the cow, from which tripe was derived, should be banned was first raised by Sir Donald Acheson. Initial enquiries indicated that the stomachs were likely to contain lymphoid tissue that would not necessarily be removed in the processing of tripe so that the matter called for detailed consideration. In the meantime it was decided to consult on the basis that the banned offal would include tripe.

In his report of 13 July, Mr Bradley drew a distinction between the abomasum and the other three stomachs. As to the latter, he was satisfied that procedural changes in the preparation of tripe would enable tripe from these sources to continue to be consumed without risk. He thought, however, that abomasum
INTRODUCTION OF THE BAN ON SPECIFIED BOVINE OFFAL

should not be used for human consumption until it was proven that the dressing procedure removed the mucous membrane lining.977

3.654 After discussion with Mr Bradley about this, Mr Meldrum felt able to advise that in the preparation of black tripe the mucosa was likely to be removed and for that reason abomasum should not represent a human health risk when used for tripe or casings.978

3.655 So far as rennet was concerned, Mr Bradley had suggested that the processing procedures should be studied.979 Mr Meldrum was, however, satisfied that for a number of reasons, including the production process, rennet did not present a human health risk.980

3.656 Internal minutes show that Dr Pickles and Dr Metters were prepared to accept that tripe posed no risk if the CVL so advised.981 However, when they received from Mr Meldrum a detailed account of the position in relation to the abomasum, including the fact that, contrary to his previous understanding, processing did not remove the majority of the lymphatic tissue in the mucosa,982 they commented that further studies would be needed. So far as rennet was concerned they were prepared to accept Mr Meldrum’s statement, on the basis of information provided to him by the NPU, that pH treatment in the course of processing would significantly reduce any residual infectivity.983

3.657 At a meeting with Sir Richard Southwood, Dr Kimberlin and Dr Tyrrell on 18 September it was agreed that both the abomasum and rennet needed further investigation.984 New research by Mr Bradley indicated that, although pH would have only a small effect on infectivity, the process of making rennet was likely to result in infectious particles being filtered out as waste. Mr Bradley also suggested the introduction of a less severe criterion for a risk factor test for offal which would draw the line between macroscopically visible lymphoid nodes (within the ban) and lymph tissue only visible microscopically (outside the ban). Under this criterion, abomasum and rennet would not fall within the ban.985

3.658 When Dr Kimberlin came to advise further on these matters in October his advice followed very similar lines and reached the same conclusions.986

3.659 When the new test, and its consequences, were proposed to Dr Pickles and Dr Metters, they accepted that there was logic in it and that MAFF’s recommendations were acceptable from the public health point of view. The object was not to eliminate risk, but to reduce it through all reasonably practical ways.987

977 YB89/7.13/2.2
978 YB89/7.17/3.1
979 YB89/7.13/2.1
980 YB89/7.17/3.1
981 YB89/7.17/7.1; YB89/7.19/7.1
982 YB89/7.24/2.1
983 YB89/8.03/3.1
984 YB89/9.20/2.2
985 YB89/9.28/2.5–2.6
986 YB89/10.19/7.8–7.12
987 YB89/10.30/2.1
3.660 The submission to Ministers of 2 November 1989 regarding the proposed Regulations made clear the reasoning behind the recommendation not to ban tripe or rennet and confirmed that this had the approval of the experts. The Ministers accepted the recommendation.988

3.661 Had the abomasum been an item of little practical significance, such as the spleen, we think it likely that it would have been included in the ban. Its importance, however, as the source of both tripe and rennet led to a closer scrutiny of the degree of potential risk that it posed. It was concluded that this was not sufficiently significant to justify including it in the ban, and the test of where to draw the line was adjusted accordingly.

3.662 At first blush this story might give the impression that Mr Meldrum and Mr Bradley were primarily motivated by a desire to protect the tripe and rennet industries, and ‘moved the goalposts’ in order to accommodate the production of these commodities from the abomasum. We have concluded that this is not a fair interpretation of the facts. The process that took place was a bona fide exercise, diligently carried out, to achieve the appropriate balance between reduction of risk and the adverse consequences of the measures to do so. It involved not merely MAFF but also DH and independent experts.

3.663 What the story does illustrate is the difficulty of the task of striking the right balance in the absence of primary data on the infectivity, or lack of it, of the tissues involved. Mr Bradley repeatedly drew attention to the desirability of transmissibility studies and to the restrictions on these posed by shortage of funding and facilities. In the absence of such data, where to ‘draw the line’ was very much a matter of individual judgement.

3.664 The exercise of that judgement was rendered particularly difficult for those who believed that, because the SBO ban went ‘beyond Southwood’, the precautionary measures were exceptional steps that went further than science required. This fact was emphasised by Dr Metters in his letter, drafted by Dr Pickles, accepting the revised test. We are inclined to wonder whether Dr Pickles would have been content to accept the revised test had she believed that oral transmissibility was a real risk.

Mesenteric fat

3.665 Careful consideration was given to mesenteric fat. The reasons for excluding it from the ban were spelt out in detail by Mr Meldrum for consideration by Dr Metters and Dr Pickles.

3.666 The comparison with the consideration given to tallow was appropriate. A considered decision had been made that there was no need to include tallow in the ruminant feed ban. That ban was to address a risk of infection that did not involve crossing a species barrier. In these circumstances, it would have been illogical to include mesenteric fat in the SBO ban, which was addressing the remote risk of transmission of infection across a species barrier.
3.667 Mr Maclean acted appropriately both in his initial challenge and his subsequent approval of the recommendation in respect of mesenteric fat.

Casings

3.668 At the meeting with Sir Richard Southwood on 7 June, Mr Meldrum had stated that intestines were used as sausage casings after being thoroughly cleaned. It was inevitable that there would be some lymphatic tissue in the wall of the intestines, but this could be treated as *de minimis*. However, it was agreed that he would take further advice on the point. 989

3.669 In his letter of 9 June to Mr Clarke, Mr MacGregor stated that because nearly all the lymphatic tissue was removed from intestines before use as sausage casings, he believed that they could be exempted from the ban when used for this purpose. 990

3.670 Dr Pickles viewed this claim with scepticism, as was apparent from her draft reply to Mr MacGregor’s letter. 991 Subsequently, in the course of the consideration of the terms of the ban, Dr Pickles reverted to this matter, seeking reassurance that the treatment of casings would preclude contamination with lymphoid tissue. 992 Mr Meldrum responded by saying that as the lymphoid tissue in the mucosa was removed in the course of manufacture, a ban on casings could not be justified ‘particularly as the ban itself is purely a precautionary measure going beyond the measures recommended by Southwood’. 993 Subsequently he corrected the statement, after research by Mr Bradley had shown that the processing of casing left a variable retention of lymphoid tissue, a fact that had surprised him. He expressed the conclusion, however, that the risk from casings was extremely small because so little intestinal tissue was used for them, the product was fully cooked and they were usually discarded at the time of eating. 994

3.671 Dr Metters’s and Dr Pickles’s ultimate agreement to an exemption of casings despite their reservations was, we feel, almost certainly influenced by Dr Pickles’s personal view, based on Southwood, that the risk from oral ingestion from asymptomatic animals was so remote that it could be disregarded, even by those who inadvertently ate lymphoid tissues. 995 There are close parallels between this and the tripe and rennet story.

3.672 On this occasion, however, MAFF decided that exclusion of casings could not be justified, which seems to be a clear indication that those involved were seeking to apply objectivity and consistency to the exercise.

The exception for calves under 6 months

3.673 From the outset it had been intended that the ban on spinal cord would not apply to calves slaughtered below the age of 6 months. There was a pragmatic reason why this exception was desirable. Under normal slaughterhouse practice, the carcasses of calves aged less than 6 months were not split in two, so it was not

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989 YB89/6.06/4.2
990 YB89/6.09/11.2
991 YB89/6.12/5.2
992 YB89/7.07/4.1
993 YB89/7.24/3.1
994 YB89/10.19/2.5
995 YB89/9.07/2.1
possible to remove the spinal cord unless this practice was changed. However, there were two bases upon which the exception could be justified:

i. Calves under 6 months should not have been exposed to feed containing ruminant protein, since the ruminant feed ban had come into force in July of the previous year.

ii. Research in relation to scrapie had indicated that the spread of infectivity would not reach the spinal cord at such an early stage of incubation.

3.674 Mr Meldrum initially advanced the first reason as justification for the proposed exception.996 Mr Bradley pointed out to him that, because of the possibility of maternal transmission, the second reason provided the more cogent justification.997

3.675 At the beginning of August, Mr Lowson minuted Mr Cruickshank about a proposal from the CVO to limit the ban on offal from older animals. Initially, this would be from those calves older than 6 months, but could be extended as those born after the ruminant feed ban got older. He suggested two reasons why this was desirable. First, it would ease the problem of disposing of SBO, which renderers were indicating that they would be reluctant to handle. Second, it might serve to avoid pressure in Europe for a total ban on all UK exports of cattle. Countries had a natural reluctance to import animals if some of their tissues were considered to be unsafe for human consumption.998

3.676 Mr Lowson’s suggestion was met with reservations, both within MAFF and DH. He himself had reservations about recommending it to Ministers unless it was clear that the change of approach would be useful. Mr Hilton and Mr Cruickshank shared these reservations, the latter considering that the risk of maternal transmission would put MAFF in an indefensible position if this course were adopted. The CMO was also concerned about the implications of the possibility of maternal transmission. However, Mr Meldrum disagreed, considering that the evidence that the agent of scrapie was undetectable in young animals could be applied to cattle.999

3.677 At the meeting with the experts on 18 September, Dr Kimberlin expressed reservations about exempting the lymphoreticular system of young calves.1000 Subsequently, after lengthy discussion with Mr Bradley, he advised Mr Meldrum that he could not find a way of exempting the major LRS tissues at any age, although he appreciated the implications of banning them.1001

3.678 Dr Kimberlin received a copy of Mr Meldrum’s letter of 19 October in which he set out in detail the arguments in favour of exempting calves of under 6 months of age from the ban. These led Dr Kimberlin to reconsider his opposition to such a course and to conclude that the potential risk posed by these calves was sufficiently low to permit the exclusion of their tissues from the ban. The factors which influenced him were that it was unlikely that calves would be infected from feed and

996 YB89/6.27/3.1
997 YB89/8.30/4.1
998 YB89/8.07/2.1
999 S184A Meldrum para. F33
1000 YB89/9.20/2.1
1001 YB89/10.04/7.1
that it was uncertain to what extent they might acquire BSE by maternal transmission. Furthermore, the infectivity titre of LRS tissues in any young calves that were infected would be low. Dr Kimberlin was not overly concerned about the thymus, because evidence suggested that thymus presented a lower risk than other LRS tissue in natural cases of scrapie. Finally, Mr Meldrum had informed him that the spleen and thymus were not used for human consumption.

3.679 Mr Meldrum’s arguments in respect of young calves were also accepted by Sir Richard Southwood and Dr Tyrrell. The exemption was approved by Dr Metters and Dr Pickles.

3.680 The submission to Ministers of 2 November 1989 included the information provided by MILG that there was no knowledge among the trade organisations nor abattoir owners, of use made of any specified offal from calves in the UK, with the exception of thymus used exceptionally as a delicacy. Calves under 6 months would also not have been fed ruminant feed. The Ministers approved the exemption for calves under 6 months.

3.681 Features of this story caused us concern. The approval of independent advisers and of Dr Metters and Dr Pickles appears to have been obtained on the basis that the calf offal types that were exempted were not eaten in the UK. However, although only 25,000 calves were slaughtered in the UK, this figure contrasts with 250,000 which were exported and then slaughtered at about 6 months of age for veal production. In his letter to Mr Meldrum of 30 October, Dr Metters included the comment, drafted by Dr Pickles, ‘[y]ou . . . do not comment on human consumption of thymus outside the UK’. If calves’ thymus glands fell within the category of high-risk tissues it would have been quite wrong to exclude them from the ban on the basis that the risk was one that did not threaten the British consumer but was exported to those who enjoyed ris de veau on the Continent. In such circumstances, to have sought to disguise the risk by exempting calves from the ban in order to preserve our export market would have been scandalous. We raised our concern with those who were involved in the decision to exempt young calves.

3.682 Dr Kimberlin has made it plain that his ultimate approval of the exemption for young calves was not influenced by considerations of the effect that a ban would have on exports. Nor does the evidence suggest that the inaccurate information that thymus was not eaten in the UK was critical to his change of heart in relation to thymus. He told us that he was not overly concerned about thymus, because it was a lower-risk tissue. Indeed, when the CMO recommended that the ban should be extended to include calves’ thymus glands in June 1994, by which time SEAC had been informed that it was eaten in this country, Dr Kimberlin felt unable, on scientific grounds, to defend that decision.

3.683 We do not believe that export considerations can have influenced either Sir Richard Southwood or Dr Tyrrell in approving of the exemption for young calves.

3.684 Sir Donald Acheson was initially opposed to the exemption for young calves because of concern about the possibility of maternal transmission. Dr Pickles explained that there were reasons for believing that vertical transmission was less...
likely to occur in cases of BSE than in scrapie. She went on to mention the importance of exports and commented that there had to be strong justification if calves were not to be exempted.\textsuperscript{1005}

3.685 When we discussed this matter with her, she observed:

Can I just . . . remind you about how borderline this subject was? If the feed ban had been effective and there was no vertical transmission, there would be no risk whatsoever from thymus. There was a possibility of vertical transmission. We did not know about it . . . Then the published evidence suggested on the scrapie model you would not get detectable infectivity in thymus at six months in any case, even if there were vertical transmission.

So actually any concern at six months was because of a margin of safety on what the presence of infectivity might be in an animal that was incubating the disease. I think I also reminded you when I spoke earlier about Hadlow’s work that out of the nine sheep and the three goats there had only been two positives of low titre in thymus. So thymus was always a very borderline tissue to be included in any case.

. . . I think we were on very shaky grounds to make a major objection at the Department of Health on this particular issue. We did ask for it to be reconsidered if vertical transmission was demonstrated. I think we were aware there were some important commercial reasons why MAFF did not want to include this.\textsuperscript{1006}

3.686 This evidence indicates that export considerations led Dr Pickles and Dr Metters to conclude that they needed to be on firm ground if they were to persist in objecting to the exemption for young calves. Having regard to the considerations mentioned by Dr Pickles and to the views of the experts, we consider that they acted reasonably in concluding that they should agree to the exemption.

3.687 Mr Meldrum told us that he considered both the protection of exports and the threat that UKRA might decline to handle SBO as factors of importance to be borne in mind when considering the exemption for young calves. These considerations clearly led Mr Meldrum to give particular attention to the possibility of the exemption. Had they led him to seek to downgrade the degree of risk posed by the tissues of young calves without scientific justification, this would have been cause for criticism. In the event the factors identified by Mr Meldrum were endorsed by the independent advisers as justifying the exemption. We do not consider that his enthusiasm for the exemption caused him to overstep the mark.

3.688 Mr Cruickshank drew our attention to the fact that his initial response to the very serious implications of the ban for the export trade was that this could not justify an exemption for young calves.\textsuperscript{1007} The desire to promote exports was not a major factor in his thinking. He subsequently came to support the exemption because ‘the veterinary opinion had come round firmly to say that really there was no conceivable risk for animals under six months’.\textsuperscript{1008}
3.689 Sir Derek Andrews summarised the position as follows:

The fact that thymus was used as a delicacy in human consumption in the UK was a point which was considered and is specifically referred to in the submission to the Minister of 2nd November 1989. The context in which the discussion of this submission took place at the Minister’s meeting of 7th November 1989 was that the SBO ban was a measure of extreme prudence; that the risk of transmission to humans was considered remote; that calves of less than six months had not been fed MBM; and that the scientific evidence indicated (from the research in sheep) that calves under the age of six months would not contain the agent. I believe that proper consideration was given to this issue at the time.

3.690 Mr Maclean submitted a statement which dealt in detail with his reasons for accepting the recommendation of an exemption in respect of the offal of young calves. This opened with the statement:

In agreeing to exempt tissues from calves of less than 6 months from the SBO ban I placed commercial considerations, including exports and the practical difficulties of disposal, secondary to the question of human health, both of consumers in the UK and abroad. The decision was taken following full consideration of the advice received from officials and scientific advisors.

3.691 We are satisfied, on the basis of the facts set out in his statement, that this was indeed the case. Ministers received advice which justified their approval of this exemption.

3.692 In summary, a detailed exploration of our concerns satisfied us that the exemption in respect of the offal of young calves was dealt with reasonably.

Mechanically recovered meat (MRM)

3.693 The introduction of the SBO ban was the first of a number of occasions on which consideration was given to the potential risk posed by MRM. We propose to examine the MRM story in detail, for it proved to be a significant weakness in the precautions to prevent SBO from entering the human food chain.

3.694 Chapter 4 of vol. 13: *Industry Processes and Controls* describes MRM and the process by which it was produced. The process was applied to bones from which the cuts of meat had already been removed. The process mechanically stripped from those bones the residual scraps of meat and other tissues attaching to them. The resultant slurry was used as an ingredient of low-grade meat products. In 1986 approximately 5 per cent of MRM was derived from cattle bones. By far the most significant source of bovine MRM was the spinal column.

3.695 The audit carried out in May 1997 by the Leatherhead Food Research Association in conjunction with the MLC (see paragraph 3.576) included an
investigation into the circumstances in which spinal cord would have reached the consumer before the SBO ban.\textsuperscript{1014} Information was obtained from two major companies. Each had removed spinal cord before the MRM process, but one estimated that prior to 1989 perhaps 25 per cent of spinal columns would have had part of the spinal cord attached at the time of the MRM process. A small proportion of bone-in fore ribs and T-bone steaks reached the consumer – only 15 per cent of these joints were sold bone-in. These might have contained small residual amounts of spinal cord. This evidence indicated that MRM was the route by which most spinal cord was reaching the consumer prior to the SBO ban. Mr Keith Baker, Assistant Chief Veterinary Officer (ACVO) in charge of Meat Hygiene, confirmed that this was the case.\textsuperscript{1015}

3.696 On 15 December 1995, the Specified Bovine Offal (Amendment) Order 1995 came into force. This banned the use of the vertebral column of a bovine animal in the recovery of MRM and also banned the use of meat derived in this way for human food. As we explain in Chapter 6, this measure was introduced on the advice of SEAC. The reason for its introduction was the discovery by the State Veterinary Service of a number of instances where slaughterhouses had left small pieces of spinal cord attached to carcasses after dressing. SEAC decided that, until there was full compliance with the requirement to remove the spinal cord, it would be prudent as a precaution to suspend the use of bovine vertebral column in the manufacture of MRM, and its recommendation to this effect was adopted.\textsuperscript{1016}

3.697 More recently an additional reason has been identified for concern about the practice of extracting MRM from the bovine vertebral column. The autonomic nervous system is linked to the central nervous system at ‘junction boxes’, consisting of clusters of nerve cells, alongside each vertebral body. These are known as dorsal root ganglia.\textsuperscript{1017} In 1998 the result of pathogenesis experiments showed infectivity in the dorsal root ganglia 32 to 40 months after inoculation.\textsuperscript{1018} The process of recovering MRM would have stripped out, for use as human food, not merely any residual spinal cord but also the dorsal root ganglia.

3.698 These facts raise the following questions in relation to the introduction of the SBO ban in 1989:

i. Should contamination of MRM with spinal cord have been anticipated when the SBO Regulations were being prepared?

ii. Should the possibility that dorsal root ganglia might be high-risk tissue have been appreciated at the time of the preparation of the SBO Regulations?

iii. What conclusions should have been reached as to the risk posed by MRM?

iv. Was adequate consideration given to MRM when preparing the SBO Regulations?
Should contamination of MRM have been anticipated?

3.699 On 12 April 1989 Mr Bradley included in a manuscript note to Dr Watson the following advice:

> It would seem sensible that the vertebral column (including perhaps because of its proximity to the pelvis) is not permitted to be used for human food (e.g. bone broth/gelatin) since it is highly likely to be seriously contaminated in an infected animal exposed in calfhood. You might consider not permitting recovery of meat scraps from vertebral column.¹⁰¹⁹

3.700 The evidence is unclear as to who else received notice of Mr Bradley’s views at this stage.

3.701 The memo from Mr Eames, which was sent to Mr Fry, Mr David Taylor and Mr Maslin, drew attention to the danger that Mr Bradley had already identified.¹⁰²⁰ We consider that the fact that an abattoir had, of its own volition, ceased to use cattle bones to make MRM because of concern that central nervous tissue would remain in the spinal column was a powerful warning that this was a matter to be taken seriously.

3.702 Mr Maslin acted properly in seeking advice in relation to this matter. His suggestion was that because the SBO ban was a measure of ‘extreme prudence’ going beyond Southwood, ‘I assume that we do not wish to get embroiled in further measures on MRM’.¹⁰²¹ But the problem raised in relation to MRM needed to be treated on its merits in the context of the approach that had been adopted of removing from the food chain the high-risk tissues.

3.703 Mr Bradley responded appropriately to Mr Maslin’s minute. He warned of the danger that the vertebral column could be contaminated with spinal cord, a risk that he said might be high in infected animals in the late pre-clinical phase. He commented: ‘clearly spinal cord must be removed before processing to produce MRM should this be allowed to continue’ (emphasis ours). Copies were sent to Mr Lawrence and Mr Meldrum.¹⁰²²

3.704 The consultation process in relation to the SBO ban provided further warning of the danger that the spinal column would be contaminated with residues of spinal cord. Both Ulster Farm By-Products Ltd and the City of Lincoln drew attention to this.¹⁰²³

3.705 These events were enough to put those aware of them on notice of the danger that the spinal column might contain remnants of spinal cord, which would contaminate MRM. Those familiar with slaughterhouse operations should already have appreciated this danger.

3.706 The evidence given to the Inquiry suggests that those familiar with slaughterhouse operations did appreciate this danger. Mr Keith Baker was aware of conditions in slaughterhouses and of the processes for recovery of MRM.

¹⁰¹⁹ YB89/4.12/1.5 ¹⁰²⁰ YB89/6.30/2.1 ¹⁰²¹ YB89/7.27/2.2 ¹⁰²² YB89/8.01/6.2 ¹⁰²³ YB89/9.25/1.9
Mr Kevin Taylor had not merely served in the past as a DVO in the Meat Hygiene Section, but had been the DVO with responsibility for ‘keeping an eye’ on MRM. Questions then arose as to how much spinal cord would be included in MRM, and whether this would carry sufficient potential infectivity to be of concern to humans. Before turning to those questions, we discuss the separate issue of dorsal root ganglia.

**Should the infectivity of the dorsal root ganglia have been suspected?**

3.707 At a meeting held by Mr Maclean with representatives of consumer organisations in May 1990, Mr John Godfrey (Member of MAFF’s Consumer Panel) tabled the following question on behalf of the Consumers in Europe Group:

Is the risk of infection from nervous tissue limited to material from the brain and spinal cord?

As far as I know the only information we have is on the sciatic nerve, which has only low, though variable, amounts of causative agent in infected animals. In view of the importance of knowing that peripheral nerve does not pose any hazard, a careful study seems urgent. Can one be confident that the nerve cell bodies associated with the dorsal root ganglia are not as hazardous as the spinal column is taken to be? Meat extracted for food from the vertebral column after the spinal cord has been removed as a precaution might well contain dorsal roots.

3.708 That was, as it transpired, a pertinent question. In 1989, however, the approach to the SBO ban, applying the analogy with scrapie, was to treat as high-risk tissues the spinal cord and brain and the lymphatic system, but not the peripheral nervous system. Mr Bradley told us:

. . . of course there would be nervous tissue in the MRM derived from peripheral nerves which at this time we were not perceiving to be a significant risk factor. Certainly we did not consider dorsal root ganglia at that time which we now know contained detectable infectivity at a late stage of incubation. And we also had no knowledge as to whether these tissues actually got into the MRM.

3.709 Mr Kevin Taylor commented to us:

I suppose that having decided what the specified offal was, the rest was not specified and we regarded it as low enough risk to go into the human food chain.

3.710 Dr Kimberlin told us that he might well have expressed the view in 1989 that dorsal root ganglia posed no greater hazard than the nervous tissue that would be present in muscle. The titre would be much lower than that of the spinal cord and the mass of the peripheral tissue would be much smaller.
Mr Meldrum had a degree of concern about nervous tissue peripheral to the spinal cord, as we shall see at a later stage of the story. Uncertainty about the infectivity of this tissue was an additional reason for concern about MRM, but we do not consider that it should, of itself, have led to an embargo on the practice of recovering MRM from the spinal column.

Was adequate consideration given to MRM when preparing the SBO Regulations?

Spinal cord had been identified as high-risk tissue that should be removed from the human food chain under the SBO Regulations. The likelihood that slaughterhouse practices would result in portions of the spinal cord, or contamination from spinal cord, remaining after attempts to remove it raised the possibility that the SBO ban might not prove fully effective in practice. It posed a risk to human health if BSE were orally transmissible to humans.

This risk was particularly acute in relation to MRM. Spinal cord was encased in the spinal column and the vertebrae were the likely repository of any portions of spinal cord that a slaughterhouse operative failed to remove. The spinal column was also the most likely part of the carcass to be contaminated should a spinal cord be macerated in the course of splitting the carcass. The processes of recovering MRM were designed to ensure that any matter that remained attached or adhering to the bones was recovered in order to be used for food.

The evaluation of the risk posed by remnants of the spinal cord to the safety of MRM required an assessment of two factors:

i. The amount of spinal cord that might be left after attempts to remove it and which might be recovered as MRM.

ii. The minimum quantity of spinal cord that might be capable of carrying an infective dose.

Neither was readily ascertainable.

To establish the amount of spinal cord that might get into MRM, an investigation was needed into the practical aspects of carcass-splitting and removal of the spinal cord. This needed to have regard to the operating standards prevailing in British slaughterhouses. More sophisticated research involving the weighing of spinal tissue, or the analysis of MRM, was a further avenue that might be explored.

The question of the quantity of spinal cord that might suffice to infect was a question on which advice needed to be sought from scientists, such as Dr Kimberlin, with expertise in the field of TSEs.

Neither of the two questions raised above was rigorously addressed in the course of preparing the SBO Regulations.

In relation to the decision on MRM, Mr Meldrum has stated:
As is clear from events leading up to the introduction of the SBO regulations in November 1989, the issue as to whether action on MRM was required in the context of the SBO ban was raised and considered in the same way as many other issues related to the specified offals were raised during preparation of the regulations (for example, tripe, rennet, casings, bovine eyes, sutures and mesenteric fat). It is axiomatic that the assessment of risk from MRM produced from cattle bones was raised and considered in the context of the ban on the use of certain bovine tissues for human consumption and that consideration was given to the risk to humans from consuming MRM.

3.720 Mr Meldrum misstates the position. The attention that was given to MRM was in stark contrast to that devoted to the specific tissues.

3.721 Mr Bradley carried out detailed studies into each of the tissues under consideration. These studies included visits to manufacturers of tripe, rennet, casings and catgut to examine the effect of manufacturing techniques. Papers were prepared which provided a solid basis for risk evaluation. The results of Mr Bradley’s studies were communicated to the DH officials for their consideration.

3.722 So far as MRM is concerned, the picture is very different. Prior to the meeting on 27 September, in an exchange of minutes, Mr Kevin Taylor and Mr David Taylor had agreed that any risk posed by residual spinal cord in MRM would be further reduced by ‘dilution’. Mr Kevin Taylor explained that the dilution that he had in mind was that which would have resulted from the ‘tiny proportion’ of spinal cord that would be left being mixed with all sorts of other perfectly acceptable material to make MRM.

3.723 Mr Maslin had raised the question of the use of cattle bones in the production of MRM by his minute of 27 July. Only Mr Bradley had made a detailed response to this. Mr Meldrum had expressed the hope that ‘we will not become involved’ in MRM and Mr Hutchins expressed the view that there would seem to be no justification for a ban on the use of certain bones in MRM production because of fears about the amount of nervous tissue involved. Mr Hutchins gave no reason for his view and we did not explore this with him. We suspect he was influenced by the terms of Mr Maslin’s minute. In the circumstances we would not think it right to criticise him.

3.724 Implicit in these conclusions are assumptions about the size of the dose that would be necessary to infect, were BSE to be transmissible to humans. As to this, Mr Kevin Taylor said:

...we did not know the infective dose for humans; we do not now know the infective dose for humans. So it was not anything that could have been considered at that particular time.
3.725 It does not seem to us that these expressions of view by Veterinary Officers in the Meat Hygiene Division represented, of themselves, an adequate process of risk evaluation. The SBO ban set out to exclude from the human food chain the brain and spinal cord as tissues in the highest risk category. Once it was concluded that it would not be possible in every case to remove the entirety of the spinal cord from the spinal column, a process which would ensure that any residual spinal cord was harvested from the spinal column and used for human food required the most careful, informed scrutiny by the policy-makers. There was no valid basis upon which it could be assumed that if a portion of spinal cord ended up in MRM it would carry no significant risk of infectivity.

3.726 MRM was discussed at the meeting on 27 September. The issue arose because of the responses to consultation of Ulster Farm By-Products Ltd and the City of Lincoln. Mr Martin told us that he only received copies of these responses when he arrived at the meeting.  

3.727 We have set out the contemporary records of what was said about MRM at the meeting at paragraphs 3.592–3.593. Witnesses were not able to add significantly to these accounts from recollection. Mr Martin, Deputy CVO at DANI, summarised the position as follows:

What we were trying to do here was try to put what we thought at the time was a fairly small risk . . . into context and draw a line somewhere, do a risk analysis on it and draw a line. And I think the conclusion of the meeting as recorded there was that this was such a small risk it was completely negligible . . .

3.728 Mr Cruickshank, who chaired the meeting on 27 September, dealt with the position in a statement:

In relation to action on mechanically recovered meat, it should be remembered that the scientific advice was that the proposed offals ban was not in any case necessary to protect health. In going beyond this advice MAFF exposed itself to the risk of a challenge on grounds of disproportionality. This risk would have been greatly increased if we had banned products where the degree of risk was particularly low. The advice of the MAFF veterinarians, which was accepted by the Department of Health, was that it was most unlikely that any BSE agent would be present in MRM.

Mr Martin’s comments about the illogicality of what was proposed on MRM were made in the context of a discussion where I think all present were conscious of the risk that, given the lack of scientific knowledge of BSE, virtually any part of our proposals taken in isolation could be challenged as illogical. This was not a reason for not proceeding – it simply meant that we had to be very careful to ensure that the package as a whole was so far as possible internally consistent and reasonable. Mr Martin’s oral evidence to the Inquiry indicated he agreed with the conclusion that the risk from MRM was ‘completely negligible’.  

1035  T80 p. 128
1036  T80 p. 131
1037  S75B Cruickshank paras 92–3
3.729 When he returned to give oral evidence in Phase 2 he said that he did not specifically recall anyone saying that there would be bits of SBO going into MRM: 1038

We were in the position, as with so many of these issues, where you could not make calculations and draw lines; you had to rely on people’s judgement. The veterinary judgement was that mechanically recovered meat was acceptable. 1039

3.730 Mr Kevin Taylor emphasised in oral evidence and in written statements that he had no responsibility for either the human SBO ban or the use of MRM as these matters related to human, as opposed to animal, health. He believed that responsibility for advice about the need to protect human health by preventing the consumption of particular animal tissues lay with DH, even if the necessary legislative action was then taken by MAFF. In any event, his responsibility was to advise on the implementation of those recommendations involving live cattle. 1040

3.731 Mr Taylor had no recollection of the meeting on 27 September. He suggested that the concern raised related not to leaving spinal cord behind, because by definition it should have been removed, but to the danger of causing contamination by damaging the spinal cord while splitting the carcass. 1041 He said that he was reasonably content about MRM because when he accompanied foreign veterinary teams to British slaughterhouses, the SBO was being properly removed. 1042

3.732 Like Mr Taylor, Mr Lowson emphasised that his Divisional responsibilities were restricted to animal health.

. . . I had no responsibility for considering the safety and fitness for human consumption of MRM derived from bovine carcasses. 1043

3.733 In relation to the 1989 Regulations he stated that they were made under the Food Act and that the Meat Hygiene Division had taken the lead in preparing them, in accordance with that Division’s normal responsibilities and Mr Cruickshank’s decision about how responsibilities for work following up the ministerial decisions of June 1989 should be divided. 1044

3.734 Mr Lowson pointed out that the meeting on 27 September was attended by Mr David Taylor, who was at that time a senior veterinary surgeon dealing with meat hygiene issues, and Mr Kevin Taylor.

These were the veterinary experts . . . who were familiar with slaughterhouse practices on whose advice it was necessary to rely on issues such as this. 1045

3.735 Mr Lowson could not recall the details of the discussion at the meeting, but said that he believed that he would have been impressed by the fact that there would be:

1038 T105 p. 117
1039 T105 p. 119
1040 S92D Taylor paras 22–5
1041 T122 pp. 92–3
1042 T122 pp. 96–7
1043 S104D Lowson para. 33
1044 YB89/6.12/1.1; S104B Lowson para. 68
1045 T127 p. 53
... a requirement to remove the specified offals themselves, so that for example in the case of greatest relevance to MRM, the spinal cord should be removed before the bones of the spinal column were used to harvest mechanically recovered meat. So, even if that were not done perfectly, a large amount of the potentially infective tissue would be removed from the process.

... the major step in reducing risk was to remove these materials or to require these materials to be removed at the slaughterhouse ... The question is: do you add to any worthwhile extent to the additional safeguard that you have taken beyond what Southwood recommended ... 1046

3.736 Mr David Taylor attended the meeting on 27 September to deputise for Mr Keith Baker, his superior.1047 Mr Baker was referred to the fact that in 1995 it was calculated that on average spinal cord was being left in carcasses in about 4 cases in every 1,000. He said that that was not a statistic which surprised him:

... there would be occasions when you might get a bit of bridging of the spinal canal and you could potentially have a small piece hidden within that bridging of the spinal canal. Not very common but it could happen.1048

3.737 Mr Baker said that in 1989 he would not have thought that this quantity of spinal cord would be critical. His perception changed later when he learned that a small oral dose was sufficient to infect cattle.1049 He made the point, however, that it was not for his section to advise on the implications that this might have for the safety of MRM:

The specific question of MRM and its safety for human consumption was concerned with 'what constitutes an infective dose?' I, and those who reported to me, had no involvement whatsoever in those considerations.1050

3.738 When he saw the minute of the meeting on 27 September he did not consider that it was his role to consider the reasoning that had led to the conclusion that the nervous tissue contained in MRM would be minimal and would not present a significant risk.1051

3.739 Mr Meldrum has emphasised repeatedly to us that as CVO he was not responsible for human health. That was the responsibility of the CMO. More particularly, consideration of what might be the infective dose for man was 'quite properly the responsibility of the Department of Health and not MAFF'.1052 So far as the human SBO ban was concerned, his discussions with DH related to where you drew the line on which tissues should go into the SBO ban 'bearing in mind . . . that the response from the Department of Health initially to this was somewhat lukewarm'.

3.740 We accept that the ultimate responsibility for risks posed by food to human health lay with DH. Dr Pickles also accepted this when it was put to her.1053 But she
made the point that the assessment of risk to human health was a matter for both Departments, working very closely together, and some of the risk management strategies were a matter for MAFF.1054

3.741 So far as the human SBO ban is concerned, MAFF was in the driving seat. The ban was being introduced on the initiative of its Minister. DH was, as Mr Meldrum has pointed out, lukewarm about the ban. MAFF, and the Animal Health Division in particular, was taking the initiative in proposing the policy decisions as to what should be covered by the ban. This was being done in consultation with DH, but Dr Pickles, Dr Metters and Sir Donald Acheson were taking a back seat in the exercise.

3.742 The decision as to what should be included in the ban involved an exercise in risk evaluation and management. The risk in question was risk to human health. MAFF could not perform the exercise in which it was involved without considering risk to human health. Our approach is to consider whether MAFF officials and Ministers gave adequate consideration to the risk to human health when deciding upon the ambit of the SBO ban. The same consideration has to be given to DH, which shared responsibility for the decisions, albeit that it was playing a minor role.

3.743 The respective roles of the two Departments were made quite clear by the terms of the submission to Mr Gummer drafted by Mr Lawrence. The only reference to DH in this was the following:

The Deputy Chief Medical Officer has endorsed the measures proposed in paragraph 5 and could accept an exclusion for calves under six months of age. The same view was taken by Sir Richard Southwood and Dr David Tyrrell, who chairs the Consultative Committee on research.1055

3.744 In a statement to the Inquiry, Mr Meldrum said:

So far as MRM is concerned since knowledge of the production systems lay with MAFF it was not unreasonable for the Department of Health to rely upon MAFF for technical advice, as it did in many other situations, and for MAFF to offer advice to the Department of Health.1056

3.745 We are in no doubt that MAFF’s role in relation to the introduction of the SBO ban involved a responsibility to give consideration to the question of whether MRM should continue to be produced from the spinal column of cattle carcasses and to advise DH accordingly.

3.746 The decision on MRM depended critically on a combination of knowledge of the processes of carcass-splitting and removal of the spinal cord, knowledge of the processes of extracting MRM, knowledge of standards of operation, inspection and monitoring of abattoirs and an understanding of what was known, and what was not known, about infective dose in relation to TSEs.

3.747 No one before the meeting on 27 September set about collecting this information and presenting it in a form that would enable an informed policy decision to be taken. There appears to have been a general assumption that, if any

1054 T116 p. 67
1055 YB89/11.02/4.5
1056 S184E Meldrum para. K2
spinal cord were to get into MRM it would do so in quantities too small to represent a threat. Some failed to appreciate the extent to which spinal cord might get into MRM. Some seem likely to have made unwarranted assumptions about the minimum effective dose.

3.748 The inadequacy of the consideration that was given to MRM in 1989 is demonstrated by the extent of the work that proved necessary in the following year in order to prepare a paper on this topic to put before SEAC.

3.749 What would have happened if MRM had received proper consideration at the time of preparation of the SBO Regulations? There would have had to be the kind of investigation within MAFF that took place in the following year in the course of preparing the paper for SEAC’s consideration (see Chapter 4). This would have been likely to lead to the conclusion that there would on occasion be contamination of the spinal column with spinal cord as a result of carcass-splitting.

3.750 Consideration would have had to be given to the amount of spinal cord that could carry an infective dose, should BSE be orally transmissible to humans. Expert assistance would probably have been sought in relation to this – perhaps from Dr Kimberlin. The exercise would have been speculative and would probably have involved consideration of Hadlow’s work. We believe, however, that the conclusion would have been reached that a small piece of this potentially highly infective tissue might suffice to carry the minimum infective dose. In this context we note the comment of Mr Bradley in relation to the paper prepared for SEAC in the following year:

A gram of infected cord could have a lot of infectivity.1057

3.751 Options would no doubt have been put forward, as they were initially in the paper prepared for SEAC. These options would have received consideration, initially by Mr Meldrum, subsequently, together with Mr Meldrum’s conclusions, by Dr Pickles and Dr Metters and ultimately perhaps, with recommendations, by Mr Gummer and Mr Maclean.

3.752 It is possible that the decision would have been taken to prohibit the use of the spinal column for the extraction of MRM. Such a course would, however, have met strong opposition from the producers of MRM affected by it. Mr Meldrum, to judge from his reaction the following year, would have been likely to consider it disproportionate. In evidence to us, he said:

At the time of discussions in late 1989 I believed MAFF had gone as far as was possible on the evidence available at the time in moving away from the initial advice on baby food that was contained in the Southwood Report to the introduction of the SBO Regulations.1058

3.753 Mr Cruickshank also emphasised to us the concern of MAFF officials at the possibility that the SBO Regulations might be the subject of successful judicial challenge:
In relation to action on mechanically recovered meat, it should be remembered that the scientific advice was that the proposed offals ban was not in any case necessary to protect health. In going beyond this advice MAFF exposed itself to the risk of a challenge on the grounds of disproportionality. This risk would have been greatly increased if we had banned products where the degree of risk was particularly low.\(^{1059}\)

3.754 This concern was realistic. When, in 1995, the use of the spinal column as a source of MRM was finally prohibited, the economic effect on one manufacturing company was sufficiently great for it to seek leave for judicial review.\(^{1060}\)

3.755 In the circumstances, we think that it is unlikely that closer scrutiny of MRM in 1989 would have resulted in a decision at this stage to ban recovery of MRM from the spinal column. The more likely decision would have been that the importance of the total removal of the spinal cord should be emphasised to slaughterhouse operators and to local authorities, and that the degree to which this was achieved once the SBO ban was in force should be carefully monitored.

3.756 Had such a course been adopted, we do not consider that it would have been open to criticism. It would have been likely to have led to a review, such as that which was to take place in the following year, as a result of the reports from local authorities of the difficulty of total removal of the spinal cord and of the disquiet expressed from a number of quarters in respect of the risks posed by MRM. These are considered in the next chapter.

3.757 As MRM was revisited for more thorough consideration in the following year, the question of why it received inadequate consideration in 1989 is of limited significance. We believe that the root of the problem lay in the division of responsibility in relation to the introduction of the SBO Regulations.

3.758 The Meat Hygiene Division considered that its role was simply to be responsible for the drafting of the Regulations. Policy decisions as to what should go into them were for the Animal Health Division. For the most part this worked well. Decisions on which tissues should be included in the ban were appropriate decisions for AHD, with the assistance of the CVL.

3.759 The potential risk posed by MRM called, however, for consideration by those in the Meat Hygiene Division with knowledge of slaughterhouse conditions and practices and of the extent to which the spinal column was likely to contain portions of spinal cord, or to be contaminated with this as a result of the process of carcass-splitting. This does not appear to have received vigorous consideration.

3.760 The question of the risk posed by MRM was raised by Mr Bradley with Dr Watson in April (see paragraph 3.699). It was raised again by Mr Maslin in July (see paragraph 3.702). On neither occasion was detailed consideration of the issue provoked. It was raised again at the meeting on 27 September where the minuted decision was that no action should be taken on MRM because the nervous tissue that it would contain would be minimal and pose no risk. That conclusion was questioned by the Ministers, who received reassurance from Mr Lawrence and Mr Meldrum. So far as peripheral nervous tissue was concerned, this reassurance

\(^{1059}\) S75B Cruickshank para. 92
\(^{1060}\) This is discussed further in Chapter 7; the main point advanced was that the ban was contrary to European Law
appears to have been founded on advice from Dr Kimberlin. So far as contamination from the spinal cord was concerned, Mr Meldrum told us that he relied upon the conclusion reached at the meeting on 27 September. 1061

3.761 Consideration of the proposed SBO Regulations was a team exercise and the failure to give rigorous analysis to MRM was a team failure. We believe that this failure is explained in large part, and mitigated, by the general belief that the SBO ban was a measure of extreme caution that went beyond the recommendations of the scientists. In the circumstances it is easy to understand the reaction that if there was a failure on occasion to remove a little bit of spinal cord, this was unlikely to matter. This does not, however, excuse the failure to carry out the rigorous risk evaluation that was required in order to reach a sound decision on policy.

3.762 We have grave concerns about the outcome of this meeting in relation to MRM. We feel that the problem posed by MRM should not have been dismissed at the meeting of 27 September 1989. It should at least have been identified as calling for further consideration. However, no witness could remember any relevant detail as to the information or views contributed on this subject at that meeting. It would not, in these circumstances be fair to criticise any individual for the conclusion that was reached. Nor would it be fair to criticise those who placed reliance on that conclusion. We simply are not in a position where it would be fair to allocate blame to any individual for the failure to give rigorous analysis to MRM in 1989.

Consideration of MRM by DH

3.763 The meeting of 27 September was called at short notice, and Dr Pickles was unable to be present. She received Mr Maslin’s note of the conclusions of the meeting. 1062 In a statement she said this about MRM:

On this highly technical issue I would have expected one of MAFF’s officials to raise with me any specific concerns which they may have had in relation to MRM, about which, unsurprisingly, I knew very little. I was aware from the Minutes of the meeting held in MAFF on 27.9.89 that MRM had been considered and that the many officials attending the meeting had determined that as only a minimal amount of nervous tissue would be contained in MRM, there was no need to take any action on it. I would have been prepared to accept that the presence of a small amount of tissue was consistent with the ALARP principle of risk assessment and so, having read this, I would not have been prompted to take the matter any further. 1063

1061 T123 pp. 56–8
1062 S115E Pickles paras 31–2
1063 S115E Pickles para. 33
3.764 Dr Pickles told us that she was not familiar with MRM. She said:

I would have thought if there was genuine concern in MAFF about mechanically recovered meat and what was in it, I would have expected a memo to come to me asking me specific questions. I did not see that. I have to say on mechanically recovered meat again I read with some interest some of the papers within MAFF in the following year. I noticed there was a lot of debate about it. I also notice none of those papers were copied to the Department of Health.1064

3.765 Dr Pickles added:

I would have thought if I had known nervous tissue was getting into mechanically recovered meat, that might have actually influenced whether we recommended action should have been taken on that.1065

3.766 Dr Metters’s statement followed similar lines to that of Dr Pickles.1066 In oral evidence he explained that he had understood MAFF’s concern about MRM to relate to peripheral nervous tissue. DH had already made it plain that it did not want any spinal cord going in. He said:

. . . if I knew then what I now know about mechanically recovered meat, I would have taken a different view. At that stage I think there was insufficient clarity in the descriptions of MRM that were given to the Department of Health. Had we known the process of what was going on we might have taken a different view. But looking back at all the contemporaneous documents, we were insufficiently knowledgeable and insufficiently informed.1067

3.767 The comments of Dr Pickles and Dr Metters serve to underline the point that the approach of MAFF officials to MRM differed from their approach to the identification of the tissues which were to be subject to the ban. DH was given no notice of the concerns which had been raised about MRM other than the short reference to this in the note of the meeting of 27 September. We do not consider that Dr Pickles and Dr Metters are open to any criticism for accepting MAFF’s conclusion that the nervous tissue in MRM would be minimal and not present a significant risk.

3.768 At the same time we would observe that, had Dr Pickles or Dr Metters been persuaded at this time of the importance of the SBO ban they might have been more closely involved in the consultative process. This back seat role followed from the failure of DH to carry out a proper review of the Southwood Report.

The Ministers’ decision

3.769 Mr Gummer and Mr Maclean explained to us their reason for expressing concern about MRM and the ban (see paragraphs 3.597–3.598). This was stimulated by consumer concerns about whether this product should properly be described as

1064 T116 p. 74
1065 T116 p. 75; incorporating revisions proposed in S115G Pickles
1066 S116B Metters paras 31–2
1067 T114 p. 97
‘meat’, which had led the Ministers to become familiar with the process and with the fact that the product was somewhat unattractive.\textsuperscript{1068} It was this general consideration which led Mr Gummer to refer to MRM as being ‘presentationally more difficult’.\textsuperscript{1069}

3.770 Mr Maclean, mindful of his new role as Food Safety Minister, raised a number of searching questions in relation to MRM when he received the submission of 4 November.\textsuperscript{1070}

3.771 On 7 November any concerns that the Ministers entertained about MRM were assuaged by Mr Meldrum. Mr Meldrum knew that MRM had been considered at the meeting on 27 September. There were present at that meeting veterinarians with greater knowledge of slaughterhouse practices and MRM than Mr Meldrum. We do not consider that Mr Meldrum can be criticised for accepting the conclusion reached at that meeting and advising Ministers accordingly. He explained to us that he did not believe that the spinal cord ruptured when cut and that he would have explained to Mr Maclean that the problem of cutting through could be addressed by careful removal of any fragments at the dressing stage. Most of the discussion related, however, to the significance of peripheral nerves in the spinal column, which would be liable to be sucked into MRM. Dr Kimberlin confirmed to us that he could well have advised MAFF that the risk from these would be quite small.\textsuperscript{1071} We think it likely that this explains Mr Lawrence’s reference to Dr Kimberlin’s advice.

3.772 We consider that the Ministers are to be commended for questioning the submission that they had received in so far as it related to MRM. Had this matter been fully explored when preparing the Regulations, we do not believe that Mr Meldrum would have been in a position to give quite so reassuring advice about the consequences of cutting through the spinal cord.

Enforcement

3.773 MAFF officials did their best to get representatives of the local authority organisations to attend a meeting to discuss the SBO Regulations. It is perhaps indicative of the significance attached to the Regulations that only the IEHO attended the meeting on 18 October. The understanding of Mr Lawrence and his colleagues was that the new Regulations would impose little additional burden on those who were already responsible for the enforcement of the Meat (Sterilisation and Staining) Regulations, other than some additional paperwork in relation to the issue of movement permits. The local authority organisations may well have taken a similar view.

3.774 There was one vital piece of advice that needed to be given to the local authorities. They should have been told that it was essential that the entirety of the spinal cord was removed from the carcass and that meat should not be stamped as fit unless this had been done.
This advice was never given. No doubt many Meat Inspectors reached this conclusion for themselves, but we do not believe that it would have been obvious to all. Remarkably, as late as 1995, there was debate in the context of the operation of the new Meat Hygiene Service as to whether a Meat Inspector could refuse to stamp a portion of a carcass on the ground that it contained residues of spinal cord. The belief that ‘a little bit cannot matter’ may well have been widely shared.

Mr Lawrence was initially responsible for communication with the local authorities about the implementation of the new Regulations. We do not consider that he should be held at fault for failing to emphasise the importance of total removal of the spinal cord. He was carrying an immense administrative burden at this stage. In the absence of advice on this matter from his veterinary colleagues, we do not think that he could have been expected to focus upon this matter of his own initiative.

The understanding of the administrators of the effect of the Regulations is illustrated by evidence given to us by Mr Duncan Fry, Head of Group C in the Meat Hygiene Division:

There were no or very few additional procedures or activities which had to be undertaken to fulfil this plan, as far as I can recall. The carcasses were already being split so the spinal cord thing was not a problem. They were opened, offal was removed. Intestines were removed. Everything was being done already. The only change in procedure was that some things were being condemned rather than going on through.

By the same token, when the SBO Regulations were introduced, no instructions were given to the veterinarians in the Veterinary Field Service, who made periodic visits to slaughterhouses to monitor compliance with regulations, that it was important to check that all spinal cord was being removed from carcasses.

The failure to take any specific steps to encourage strict compliance with the obligation to remove the spinal cord is not one for which we allocate blame to any individual. It was, it seems to us, closely allied with the failure to appreciate and address the MRM problem. There were at the time some who knew the nature of operating conditions in slaughterhouses and the difficulties that there would be in effecting complete removal of every spinal cord. There were some who would have been able to advise that the potential infectivity of spinal cord was such that a small portion might suffice to infect. The failure to carry out a rigorous analysis when questions were raised about the practicality of the implementation of the ban on spinal cord and the safety of MRM resulted in a communication failure. The two strands of knowledge were not brought together.