10. Chronological account of specific Scottish issues

Emergence of BSE

10.1 Mr Gordon Gerrand, Assistant Chief Veterinary Officer based at DAFS, was the first member of the Scottish Office animal health team to learn about the disease. He received a copy of a minute about BSE dated 4 June 1987 from the Chief Veterinary Officer (CVO), Mr William Rees, to Mr (now Sir) Donald Thompson, the Parliamentary Secretary at MAFF. However, this knowledge appears to have remained strictly within the SVS team in Scotland. It was not, for example, copied to Mr George Thomson (Assistant Secretary, Animal Health, at DAIFS), who said in evidence that he ‘would normally have expected that sort of thing to have been copied to him’. Mr Scudamore, at that time Regional Veterinary Officer for South Scotland, first learned of the disease in September 1987 at an informal meeting of RVOs.

10.2 There is some conflict of evidence about how the implications of BSE were first raised. Dr Gerald Forbes was Senior Medical Officer (SMO) at SHHD from January 1985 to December 1989, with responsibilities for communicable disease and environmental health (he was later to become Director of the Environmental Health (Scotland) Unit). He told the Inquiry that, on the basis of information he picked up informally when visiting MAFF, he wrote a series of memoranda to the CMO for Scotland (at that time Dr Iain Macdonald) during the last quarter of 1986 and the first quarter of 1987 dealing with various aspects of BSE. The memoranda identified a possible link between BSE and human encephalopathies and also suggested a ban on human consumption of cattle brains and spinal columns. These memoranda have not been found but, according to Dr Forbes, are likely to have been destroyed by the Scottish Office as a matter of routine.

10.3 Dr Macdonald, on the other hand, said that he did not become aware of BSE until the last few months of 1987, either after the first case of BSE was confirmed in Scotland or because of something Dr Forbes had said or written to him. He did not accept that Dr Forbes’s memoranda were submitted to him before this period or indeed at any other time. He argued that it was not his normal practice to fail to acknowledge memoranda, and that Dr Forbes could have approached him in person had he done so. He noted that Dr Forbes had contributed nothing on the subject of BSE to the Principal Medical Officer summaries (see paragraph 9.20) for the period October 1986 to September 1987, although he had contributed on a number of other subjects. Finally, Dr Macdonald thought it unlikely that he would have overlooked the implications of the memoranda had he received them.
10.4 In the light of Dr Macdonald’s comments, and since Dr Forbes in his evidence referred to Mr Keith Meldrum as holding the CVO post at the time he learned of BSE (when in fact Mr Meldrum did not take over from Mr Rees until June 1988), we have concluded that Dr Forbes’s memory may have misplaced the precise time at which he became aware of BSE and pressed – as he undoubtedly later did – some serious concerns that he had.

10.5 Other documents seen by the Inquiry indicate that during this period the CVL was keeping tight control over information about BSE cases. The Assistant Secretary at DAFS, Mr George Thomson, told the Inquiry that the Department was made formally aware of BSE on 12 November 1987, when Mr Alistair Cruickshank, the MAFF Under Secretary responsible for Animal Health, sent him a copy of a submission made to the Parliamentary Secretary at MAFF by the Animal Health Division. The submission set out the state of play with respect to the incidence of the disease and action taken, and said that there was no evidence that BSE was transmissible to humans. Prior to this there had already been some press reports about the emergence of the disease, and one object of the submission was to provide ‘strong defensive briefing’ for Ministers.300

10.6 Lord Sanderson, the Scottish Office Minister with responsibility for Agriculture, received his first submission on the disease on 18 February 1988, when Mr Thomson sent him a copy of a MAFF submission on the subject which proposed the introduction of compulsory notification of the disease and a slaughter and compensation policy.301 Mr Thomson pointed out that the proposed action would not deal with subclinical animals and that there might be difficulties with a full compensation scheme. The same day he wrote to Mr Cruickshank at MAFF supporting the proposals but setting out three points the Treasury might raise: he was not sure why BSE should be regarded as harmful to humans when scrapie was not; he thought that the possibility of infected but subclinical animals entering the food chain would occur to people and raise public health fears over meat; and, finally, he was concerned that giving full compensation might be contentious given the lower compensation under other comparable schemes.302 It was decided to await the reaction of MAFF Ministers. The submission was also copied to Mr Michael Forsyth, at that time Parliamentary Under-Secretary responsible for Health at the Scottish Office, who noted it but considered it to be an animal health issue in which the risk to human health was remote.303

10.7 Medical Services of SHHD discussed the potential risk of transmission to humans in late February 1988, since SHHD had received copies of the correspondence between Mr Thomson and the Animal Health Division at MAFF.304 Dr Macdonald recalled BSE being discussed at a meeting of CMOs in the early part of 1988.305 At this stage, the incidence of BSE in Scotland was still at the same level as it had been in December 1987, with only six cases in March compared with an increased total of 490 in Great Britain as a whole.

10.8 Dr Macdonald’s recollection appears to relate to the meeting in March 1988, when Sir Donald Acheson (CMO at the Department of Health in London) informed the CMOs for Wales, Scotland and Northern Ireland of the imminent creation of the
Southwood Working Party on BSE (see vol. 4: *The Southwood Working Party, 1988–89*). Dr Macdonald did not recall being involved in the decision to establish the Working Party, and the Scottish Office was merely informed of the decision once it had been made.

10.9 During April Mr Thomson sent a further submission to Lord Sanderson advising him of the possible implications of BSE for human health, including the prevailing view that there was no evidence to suggest BSE could be transmitted to humans. The submission also informed Lord Sanderson that a decision on the compulsory slaughter scheme had been deferred. Lord Sanderson was also told that a decision on making BSE a notifiable disease or on the slaughter and compensation scheme had been deferred. The following week Mr Thomson told Lord Sanderson of the formal announcement of Sir Richard Southwood as Chair of an expert Working Party and of the fact that no decision had been made about making BSE a notifiable disease or about the slaughter and compensation scheme. He promised to keep the Minister informed of any further developments.

The course of the disease in Scotland

10.10 The first case of BSE in Scotland was recorded in June 1987 and confirmed on 3 December, a year after official recognition of the new disease in England. By the end of December there were six confirmed cases in Scotland out of a total of 132 in Great Britain. The incidence of BSE in Scotland was at its highest during 1993, when there were 2,199 cases. This was a year later than the peak in England. Only 0.38 per cent of a total cattle population of 2.1 million was affected by BSE, compared with 2.24 per cent in England. It is estimated that more than 50 per cent of all cases in Scotland were animals that had been born in England or Wales.

The arrangements for handling Scottish cases

10.11 The arrangements made at the start of the epidemic in Scotland – to examine all Scottish cases at Lasswade Laboratory near Edinburgh – were maintained throughout the whole epidemic. These arrangements included the full neuropathological examination of the brains of affected cattle. In England and Wales the numbers of brains for examination were much greater, and a method of diagnosis from a single slice of one section of the brain had been devised to speed throughput. A useful consequence of the Scottish method was that it enabled researchers to identify a new disorder in the brains of cows submitted as BSE suspects, but lacking the characteristic lesions of BSE. The condition was first identified during 1988 and was initially called ‘idiopathic brainstem neuronal chromatolysis’, later BBD (Bovine Brain Disorder). The cause of BBD remains unknown and preliminary results have so far failed to confirm a link with the transmissible spongiform encephalopathies. However, the incidence of the disease mirrored that of BSE in that, as more suspect cases of BSE were submitted, so more cases of BBD were identified.


Ruminant feed ban

10.12 On 24 May 1988 MAFF informed DAFS of its proposal to hold discussions with the feedstuffs industry about the withdrawal of meat and bone meal (MBM) from ruminant feed, and that MAFF’s Legal Division had been asked to prepare an Order for the introduction of a ruminant feed ban and to make BSE a notifiable disease. Mr Thomson told the Inquiry that DAFS was happy to concur with the MAFF proposals: in Scotland at that time less compound feed was used because of the preponderance of beef herds over dairy herds.

10.13 DAFS representatives attended a meeting with industry representatives on 1 June 1988, which was chaired by MAFF. There were no independent consultations with Scottish industry members.

10.14 The BSE Order to require notification of the disease from 21 June, and to impose a ruminant feed ban from 18 July (see Annex), was submitted on 8 June 1988 to Scottish and Welsh Ministers as well as the MAFF Minister for signature. The Order itself and subsequent amendments were made under the Animal Health Act 1981. Since this applied to Great Britain as a whole, no separate Orders were required for Scotland. In Mr Thomson’s view, there were no significant differences in the way in which the ruminant feed ban was dealt with in Scotland. Mr Scudamore told the Inquiry: ‘I think we dealt with it in the same way as it would have been dealt with in England, that is by publicity, information, informing renderers, farmers and all the feedmill people in between.’

10.15 Mr Thomson said in oral evidence that at the time he felt the period of grace for the introduction of the feed ban was appropriate, since it was necessary to give farmers time to find an alternative source of feed. In addition, he was of the view that ‘if an animal has been fed on this stuff all its life, a matter of a few weeks would hardly tip it over the edge’. He assumed that MAFF had taken veterinary advice in allowing the period of grace. He said he could not recall the issue of enforcement being specifically addressed by his Department. Dr Andrew Matheson, Assistant Secretary at DAFS from 1994, told the Inquiry:

My discussions with SVS colleagues persuaded me that they were fully seized of the importance of enforcing the ban rigorously.

Introduction of the SBO ban

10.16 It was relatively straightforward to coordinate enactment of uniform secondary legislation on animal health matters. However, on human health, food safety matters, Scotland had its own separate primary legislation, namely, the Food and Drugs (Scotland) Act 1956. Although the processes of this Act did not differ markedly from those for England and Wales under the Food Safety Act 1984, a

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314 YB88/5.24/1.1–1.2. For a detailed discussion of the introduction of the ruminant feed ban, see vol. 3: The Early Years, 1986–88 and vol. 5: Animal Health, 1989–96
315 T77 pp. 66–7. Dairy herds tended to be fed greater amounts of compound feed, or protein-rich concentrates, than beef herds, in order to increase milk yields – see vol. 12: Livestock Farming
316 T80 p. 109
317 T77 p. 72
318 S267A Thomson para. 10
319 S264A Matheson para. 1
320 The SBO ban is dealt with in vol. 6: Human Health, 1989–96

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separate Statutory Instrument had to be introduced for human food safety provisions in Scotland. This procedure applied to the Regulations introduced in Scotland to ban Specified Bovine Offal for human consumption – the Bovine Offal (Prohibition) (Scotland) Regulations.

10.17 Subsequent amendments to these Regulations were made under the Food Safety Act 1990, which covered the whole of Great Britain. On 20 July 1995 a consolidated Order, the Specified Bovine Offal Order 1995, was made under the Animal Health Act 1981.321

10.18 On 27 February 1989 the MAFF Minister, Mr John MacGregor, and his DH counterpart published the Report of the Southwood Working Party on BSE. Lord Sanderson was forewarned of this.322 The Secretary of State for Scotland, Mr Malcolm Rifkind, had also attended a Cabinet meeting on 23 February at which the Report was discussed,323 and participated in the Cabinet consideration of its recommendations. The publication of the Report was the subject of a joint news release by MAFF and DH which advised that, among other things, the Southwood Working Party had recommended 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 . . . refers to brain, spinal cord, spleen and intestines (tripe).

10.19 The press release went on to advise that Mr MacGregor would be taking steps as ‘a precautionary measure’:

  to ensure through secondary legislation that it will be illegal for anyone to sell baby food containing such products in future.324

10.20 During March 1989 DAFS officials held a meeting on the proposed baby food offal ban with the Scottish Federation of Meat Traders’ Associations (SFMTA), a body representing independent butchers. The SFMTA was concerned that the way the announcement was reported in the press did not make clear the distinction between what was considered ‘perfectly safe’ – products such as kidney and liver – and other offal.325

10.21 The Food Standards Division of MAFF was responsible for preparing the legislation for the baby food offal ban. Eventually it was decided to widen the ban, and MAFF and DH made a joint announcement on 13 June 1989 that certain cattle offal would be banned for human consumption generally.326

10.22 At this stage, the offal to be covered by the proposed Regulations included brain, spinal cord, spleen, thymus, tonsils and intestines from bovine animals slaughtered in the United Kingdom. However, consideration was still being given to the possibility of excluding from the ban the intestines when used as sausage casings.327

321 See Annex
322 YB89/2.22/15.1
323 YB90/2.22/9.1
324 YB89/2.27/8.2
325 YB89/3.10/4.1
326 YB89/6.13/5.1–5.2. For a detailed discussion of the reasons for this change see vol. 6: Human Health, 1989–96
327 YB89/6.15/2.1–2.6
10.23 Dr Hilary Pickles, a Principal Medical Officer at DH who had acted as joint secretary to the Southwood Working Party, was concerned about the exclusion of sausage casings from the ban, on the basis that a risk remained of contamination with lymphoid tissue.328 However, on 19 July 1989 Dr Jeremy Metters (Deputy CMO at DH) advised Dr Pickles of the CVL’s recent conclusion that the BSE risk to humans from bovine intestines as sausage skins was minimal.329

10.24 On 19 July Mr Cruickshank of MAFF sought ministerial authority to publish a consultation letter and press release on the proposed SBO ban. In doing so, he set out the CVL’s advice that both the small and large intestine (subject to an exception for sausage casing manufacture) should be included in the proposed restriction. Mr Adam Rennie, Assistant Secretary in DAFS’ Meat Hygiene branch, was sent a copy of the draft letter and of Mr Cruickshank’s submission.330 The consultation letter was sent out to interested organisations by MAFF on 26 July and a similar letter (reflecting differences in enabling legislation) was sent out by DAFS the next day to interested organisations in Scotland.331

10.25 Throughout the consultation period, the scope of the ban remained to be finalised. Scientific advice was still being received on the types of offal that should be excluded. Furthermore, the reaction of two major trade bodies to the consultation letter was to delay the process of introducing the SBO ban. The United Kingdom Agricultural Supply Trade Association (UKASTA) was intent upon seeking agreement from its members to a voluntary ban on the use of SBO in animal feed. This had ramifications in that the rendering industry’s trade body, the United Kingdom Renderers’ Association (UKRA), was talking of advising its members to refuse to remove SBO from slaughterhouses. At worst, this could force the closure of the slaughterhouses, which were legally required to remove waste material within 48 hours, and lead to a major waste disposal problem. The Meat Hygiene branch at DAFS had been advised by MAFF of the problems that it had encountered with UKASTA and UKRA.332 The Scottish renderers were all members of UKRA, and it was felt at DAFS that it might be better to see how the matter developed before having consultation meetings with the local industry.333

10.26 Mr Ian Anderson of DAFS attended a meeting chaired by MAFF to discuss the various responses to the consultation on 27 September 1989.334 It was noted that the outcome of further research on the infectivity of intestines was awaited, and a decision on including intestines in the ban would be made then.335 Following the meeting Mr Raymond Bradley of the CVL visited a plant producing sausage casings and investigated the finished product. He concluded that a ‘definite but variable’ amount of lymphoid tissue was left on the casings after cleaning. In addition, any risk from BSE was probably not reduced by heating or salting treatments. Furthermore, even if the casings were not eaten there was a danger of cross-contamination of their contents.336 In a letter to Dr Metters, Deputy CMO at DH, on 19 October, Mr Meldrum (the CVO) noted that he was surprised at the amount of tissue left on the casings. He added:

328 YB89/7.7/4.1
329 YB89/7.19/7.1–7.2
330 YB89/7.19/8.1–8.12; S184A Meldrum para. F24
331 YB89/7.27/5.1–5.6
332 For a full discussion of the voluntary ban on SBO in animal feed, see vol. 5: Animal Health, 1989–96
333 YB89/8.11/5.1
334 YB89/09.29/1.1–1.7
335 YB89/09.29/1.2
336 YB89/10.6/1.3–1.4
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.\textsuperscript{337}

\textbf{10.27} Dr Metters replied on 30 October that DH was not convinced by the arguments for excluding casings. He wondered about the possibility of using synthetic casings, particularly as the amount of bovine intestines used for casings was not great.\textsuperscript{338} In the meantime, work proceeded on drafting Scottish Regulations to parallel those for England and Wales. On 2 November a submission was sent to the MAFF Minister from MAFF’s Animal Health Division seeking agreement to the final terms for the Regulations implementing the proposed SBO ban.\textsuperscript{339} This submission was copied to Mr Thomson at DAFS and reflected a change of heart, as Ministers were now being asked to agree to the inclusion of intestines as an ‘ultra precautionary measure’.\textsuperscript{340}

\textbf{10.28} Meanwhile, following telephone consultations with Scottish retail and wholesale trade associations, Mr Rennie alerted Lord Sanderson to their concern over the ban on bovine intestines because they were used to make black and white puddings and the traditional haggis, Scotland’s national dish. Mr Rennie suggested the Minister should write forthwith to Mr John Gummer, the MAFF Minister.\textsuperscript{341} At this point the Scottish Regulations were at an advanced stage, although they would not be ready for simultaneous introduction with the legislation in England and Wales.

\textbf{10.29} Lord Sanderson wrote to Mr Gummer on 9 November to express his concerns and to reserve his position on the treatment of bovine intestines in the Scottish Regulations until the implications for Scotland could be properly evaluated.\textsuperscript{342} On the same day, Mr Anderson of DAFS wrote to Mr R Green, President of the Scottish Association of Meat Wholesalers, to inform him that it had been suggested that bovine intestines be included in the SBO ban, and to request information on the implications this would have for the Scottish industry.\textsuperscript{343}

\textbf{10.30} The problem for the Scottish Office was exacerbated when Mr Gummer accelerated action on making the England and Wales Regulations.\textsuperscript{344} They were signed and laid before Parliament on 9 November and came into effect on 13 November.

\textbf{10.31} On 15 November 1989 Mr Rennie put a submission to Lord Sanderson recommending that bovine intestines should also be banned from human consumption in Scotland. This submission followed consultation with Scottish meat trade interests and colleagues in SHHD. Both the Scottish Association of Meat
Wholesalers and the SFMTA made representations to DAFS about the loss in trade which would result from the ban, although neither specifically mentioned haggis. SHHD told DAFS that they agreed with MAFF and DH that bovine intestines should be banned: permitting the continued use of intestines would have been inconsistent with the purpose for which the ban was imposed. Mr Rennie made the point that, although haggis was an emotional issue for Scots, there were alternative sources available for haggis casings. Ultimately health arguments should prevail.345

10.32 Lord Sanderson agreed and contacted Mr Gummer, explaining:

The Scottish retail and wholesale trade associations foresee difficulties and strongly oppose such a ban, but I am content that these considerations should not take precedence over the health and consumer interests. As you know, I was particularly concerned about the implications of the ban for haggis manufacture; I am now satisfied that this will not be seriously affected, although the variety of permitted casings in use at present will undoubtedly alter. We shall make the corresponding Scottish regulations as soon as possible.346

10.33 Lord Sanderson’s Private Secretary then minuted Mr Rennie, advising that Lord Sanderson was concerned that the presentational aspects of these decisions should be handled very carefully. The Scottish Information Office should be briefed about the availability of alternative casings for haggis and the fact that the ‘most traditional’ haggis was made with sheep stomachs, which would not be banned. The Minister wished to avoid any ‘emotive, nationalistic’ claims by ‘uninformed MPs’ which might undermine his Office’s course of action, based as it was on concern about greater food safety.348

10.34 A meeting was subsequently held between DAFS and the SFMTA to discuss the latter’s concerns about the SBO Regulations, and their effect on the haggis trade in particular. SFMTA members argued that, in contrast to the Scottish Office view, over 50 per cent of haggis used ox-bungs as the casings.349 At a further meeting on 12 December at which the Chairman of UKRA and Scottish representatives of UKASTA were also present, DAFS countered concerns about the effect on the industry of the ban ‘on the basis that this was a public health matter which was of paramount importance’.350

10.35 A second issue that arose at this time was that of the safety of surgical sutures manufactured from animal intestines. A large part of the market was served by a Scottish manufacturer using UK cattle. Under the Regulations, SBO material, including intestines, was exempt from sterilisation and staining if it was going to the premises of a manufacturing chemist. However, suture manufacturers, like those of other medical products, were expected to comply with guidelines issued by DH under the Medicines Act 1968, which applied to the whole of the UK. The action taken to phase out UK materials for surgical sutures is set out in vol. 7: Medicines and Cosmetics.

345 YB89/11.15/10.1–10.2
346 YB89/11.15/11.1
347 YB89/11.15/10.2
348 YB89/11.15/14.1
349 YB89/12.15/6.1. The ox-bung is the terminal part of the intestine of cattle
350 YB89/12.15/7.2
10.36 In the meantime, the Bovine Offal (Prohibition) Regulations had run into problems in England. Not only were some corrections needed but they had been prayed against,\(^{351}\) and were to be debated in the Standing Committee on Statutory Instruments on 14 December. Mr Rennie advised Lord Sanderson on 13 December:

> The regulations applying to England and Wales were made at very short notice on 13 November. We had intended to follow suit quickly but it soon became apparent that the English regulations were giving rise to a few unintended effects. MAFF informed us of their intention to amend their regulations as soon as possible but they then learned that the original regulations had been prayed against. Consequently, we decided to defer putting the corresponding Scottish regulations to Ministers until after the debate on the prayer, when MAFF would publish their amendment regulations.\(^{352}\)

10.37 The amendments to the England and Wales Regulations were further delayed by the Christmas parliamentary recess.\(^{353}\) Meanwhile, on 22 December 1989, Mr Rennie sought ministerial approval of the terms of the Scottish Regulations, which had taken due note of the defects in the 13 November Regulations. The Scottish Regulations would be submitted for signature as soon as they were ready in the New Year.\(^{354}\) On 27 December 1989 Lord Sanderson agreed to the recommendations, subject to avoiding 25 January 1990 as the date on which the Regulations would come into force. He considered that there were ‘presentational problems’ with introducing a ban on the use of bovine intestines in haggis on Burns Night.\(^{355}\)

10.38 On 23 January 1990 Mr Rennie alerted Lord Sanderson to the ‘need to take rapid action to implement’ the Bovine Offal (Prohibition) (Scotland) Regulations 1990:

> At 22 December we understood that MAFF were putting the finishing touches to their draft amendment regulations and intended to lay them after Parliament resumed in the New Year. We intended to lay the Scottish regulations at the same time.

> We have not yet put up regulations for the Minister’s signature because the MAFF amendments are not finalised. However, at the Agriculture Council [of the EU] today, Mr Gummer expressed concern . . . that the Scottish regulations had not yet been made. He felt that this was undermining his position in the discussions in the Council about BSE . . . Mr Gummer is obviously very anxious to close this loophole in his defences.\(^{356}\)

10.39 Lord Sanderson agreed the same day that the Regulations should be implemented as proposed.\(^{357}\) He signed them three days later, on 26 January, and

\(^{351}\) This means that a Member of Parliament has a substantive objection to the Regulations. A debate is then held on the objection. Based on the outcome of the debate, the Regulations are either handed back to the Minister for redrafting or implemented in their original form

\(^{352}\) YB89/12.13/5.1

\(^{353}\) S262A Anderson para. 2. In fact the amendments to the English and Welsh Regulations were not made as anticipated during 1990. The first amendments to the Regulations were effected in 1992 by the Bovine Offal (Prohibition) Amendment Regulations of 1992 (see L2 tab 7A)

\(^{354}\) YB89/12.22/4.1–4.3

\(^{355}\) YB89/12.27/1.1

\(^{356}\) YB90/1.23/11.1–11.2

\(^{357}\) YB90/1.23/12.1
they came into effect on 30 January, some 76 days after the original Regulations in England and Wales.\textsuperscript{358}

10.40 In August 1990, in the face of increasing pressure from the animal feed industry and new scientific evidence that BSE could be transmitted experimentally to pigs, MAFF decided to ban the feeding of SBO to animals. The Regulations were made under the Animal Health Act 1981, and therefore came into effect simultaneously in England, Scotland and Wales on 25 September 1990. The events leading up to the making of the Regulations are described in vol. 5: \textit{Animal Health, 1989–96}.

The concerns of Dr Forbes about BSE

10.41 Sir Donald Acheson was the CMO in DH during 1983–91. Volume. 6: \textit{Human Health, 1989–96} of this Report covers events surrounding his public statement in May 1990 that ‘beef can be eaten safely by everyone’. This statement was endorsed by Dr Kenneth Calman, then CMO in the Scottish Office, although he did not issue a separate statement for Scotland on the basis that ‘several statements from several people might have been confusing in public terms’.\textsuperscript{359}

10.42 By this time, Dr Gerald Forbes had left his post as SMO at SHHD and had become Director of the Environmental Health (Scotland) Unit. On 22 May he gave a paper at the Royal Environmental Health Institute of Scotland, which listed his twelve concerns about BSE and the way it was being handled:

i. Why have recognised epidemiological principles not been followed in the investigation of the disease?

ii. Why is it accepted that there is vertical transmission of disease in scrapie and not in BSE?

iii. Why are calves from infected animals (30,000 approx. so far) allowed into the food chain?

iv. Why is the disease five times more common in England than in Scotland?

v. Has the fodder treatment method used in Scotland helped to limit the spread of disease here?

vi. Why are offals from animals under the age of six months allowed into the human food chain?

vii. Why are bovine offals allowed to be fed to pigs, poultry and used in pet foods?

viii. Has the change in temperature from 130 degrees C to 100 degrees C for the treatment of offals affected the spread of the disease?

ix. Is milk from an incubating or infected animal safe to drink?

x. Is full ante-mortem inspection of animals necessary as is undertaken at export approved plants?

\textsuperscript{358} See Annex
\textsuperscript{359} T66 pp. 28–9
xi. Is the use of mechanically recovered meat safe?

xii. Is it safe to remove the bovine brain from the cranium?\textsuperscript{360}

Many of these questions proved to be highly pertinent.

10.43 Just before this, Dr Forbes was asked by BBC Radio Scotland whether he believed the ‘Agriculture Minister’s assurances’ that it was safe to eat beef. He replied:

\begin{quote}
I think it is a statement that cannot be substantiated fully . . . we have to sort out this business of can this disease spread to humans. As far as I am concerned I don’t think that has been satisfactorily answered yet.\textsuperscript{361}
\end{quote}

10.44 The comments made by Dr Forbes caused some concern in the Scottish Office. The Head of SHHD, Mr (later Sir) Graham Hart, advised the Minister, Mr Forsyth, that, although Dr Forbes was undoubtedly motivated by genuine concern, his statements were likely to alarm the public and were at variance with the statements of Ministers and the CMO (England). Although he could not bar Dr Forbes from speaking publicly, the latter should have reflected and consulted before doing so.\textsuperscript{362} Dr Calman would therefore speak to Dr Forbes:

\begin{quote}
. . . pointing out that he has a special responsibility to weigh his words carefully and that he would be well advised to take advice from CMO before launching out on further public pronouncements.\textsuperscript{363}
\end{quote}

10.45 Dr Forbes told the Inquiry that he never felt that the Department was trying to gag him. Dr Calman had telephoned him and he described the ensuing conversation as follows:

\begin{quote}
Dr Calman had been virtually directed to contact me by telephone, and see what we could square out. This was in relation to the BSE issue. Now, he did contact me. We had a long talk and he said: ‘Is that what you believe?’ I said: ‘Yes.’ He said: ‘That is fine with me.’ This is what you get with someone who can understand the basic problems of epidemiology, or the problems in a disease such as this. But as I say, no-one attempted it. Dr Calman did as he [was] requested. He phoned me, it was just a very gentlemanly discussion.\textsuperscript{364}
\end{quote}

Dr Calman told the Inquiry that this accorded with his recollection of the conversation.\textsuperscript{365}

10.46 Dr Forbes continued to press his concerns in other ways. On 7 June 1990 he was invited by the House of Commons Agriculture Select Committee, which was investigating the handling of BSE, to submit evidence on the disease. He did so the next day by letter, enclosing a copy of the paper given to the Royal Environmental Health Institute of Scotland referred to in paragraph 10.42 above, as well as a paper he had published in the \textit{Journal of Infectious Diseases} in 1980 on the transmissibility of encephalopathies. Dr Forbes argued that the absolute assurances about the safety of beef which had been given by MAFF and DH could not

\textsuperscript{360} YB90/05.22/6.1
\textsuperscript{361} YB90/05.21/24.2
\textsuperscript{362} S180A Hart para. 5; YB90/5.23/5.1
\textsuperscript{363} YB90/5.23/5.1
\textsuperscript{364} T82 p. 39
\textsuperscript{365} T66 p. 57
be sustained. He summarised his main concerns about BSE and human health as follows:

i. Given that it was accepted that scrapie could be transmitted from sheep to lamb, and that scrapie and other diseases such as kuru and CJD had been transmitted to primates, it was irresponsible to state that BSE was not transmissible from cow to calf or from cow to human.

ii. BSE was a public health problem as well as an animal health problem and more input was needed from the medical profession.

iii. Calves from infected cows should not be allowed into the food chain at all.

iv. A research project should be undertaken immediately to determine why Scotland had much lower levels of BSE.

v. As there was a distinct possibility that BSE had passed to cats which had eaten bovine offal, SBO should not be fed to any other animals, nor should SBO from calves under six months old be fed to humans.

vi. It was highly doubtful whether the practice of producing mechanically recovered meat should be considered safe.

vii. The different standards of meat inspection between meat for the domestic market and meat for the export market could not be justified.

10.47 In May 1991 Mr Davison and Mr Kenneth MacKenzie (Under Secretary in SHHD) were informed by Mr Leo Cunning of SHHD that the Environmental Health (Scotland) Unit, of which Dr Forbes was Director, was about to publish its first annual report, and that the report contained some ‘unfortunate and impolitic comments’ on matters of interest to SHHD and other Departments. For example, in the draft report Dr Forbes cited ‘the failure to introduce an adequate investigation and control programme for bovine spongiform encephalopathy’ as one of the environmental and public health ‘failures’ of the year.

10.48 The reaction of Scottish Health officials was that Dr Forbes had seriously overstepped the mark and had abused his position. However, in the light of the fact that his contract of employment allowed him to publish his views without consultation with his employers, it was thought that, if he could not be dissuaded from modifying or publishing the report, nothing more could be done but be ready to brief Ministers to face possible questions from the press. In the event, the published version of the Report referred simply to the ‘lack’ of an adequate investigation and control programme for BSE.
Graham Hart’s concern over the handling of the BSE risk

10.49 On 27 August 1990 Mr Davison at DAFS minuted Ministers and senior Scottish Office personnel, including Mr (now Sir) Graham Hart, the Head of SHHD, about the Agriculture Select Committee’s report on BSE. This Report had recommended that there should be a statutory ban on the inclusion of SBO in pet food; that offal from calves under 6 months of age should be banned; and that farmers should be discouraged from breeding from BSE-infected cattle. Mr Davison advised Ministers to reject these recommendations but suggested that the pet food issue should be referred to SEAC for further investigation. He also suggested that Ministers could undertake to reconsider a ban on offal from calves under 6 months should new scientific evidence come to light. Mr Davison’s minute made several recommendations about responding to the Report, with which Mr Hart did not entirely agree.

10.50 Mr Hart wrote to the Head of DAFS, Mr Loudon Hamilton, a week later expressing his concerns, which he said were shared by the CMO. He said that he was ‘suspicious’ of the argument that certain practices, such as the use of offal from calves under 6 months old, should be allowed to continue simply because there was no evidence that it was harmful. A judgement had to be applied. A good deal of caution was necessary, not in maintaining the status quo but in assuming something was safe because no one had yet shown it to be unsafe. He said:

It seems to me important to give no ground for reasonable people to think that it is the economic considerations which are dictating policy on human health issues. References to the well being of the knacker industry don’t cut much ice if there is risk to human health.374

10.51 In response to this, Mr Davison minuted Mr Scudamore with his view that:

. . . some of our own medical colleagues consider that the English CMO had been manipulated into echoing Mr Gummer’s ‘beef is safe’ statement. Our CMO kept his counsel at that time and I know from Dr McIntyre that the medics are taking a good deal of interest in BSE and CJD. They have more questions than are expressed or implied in Mr Hart’s minute.375

10.52 Mr Davison suggested that a seminar should be held to allow Health officials ‘a chance to air their concerns’ and Agriculture officials ‘a chance to explain our position’. This duly took place during January 1991 and Dr Richard Kimberlin from SEAC gave a presentation on BSE. Mr Hart moved from the Scottish Office in March 1992 to become Permanent Secretary of the Department of Health in Whitehall, a position he continued to hold until November 1997.377
**Dissection of bovine eyeballs in schools**

**10.53** During 1988 Dr Diana Ernaelsteen, a Senior Medical Officer with DH and Senior Medical Adviser to the Department of Education and Science (DES), identified a potential risk to pupils and teachers from dissecting bovine eyeballs.\(^ {378}\) She sent a minute detailing her concerns to colleagues in the DES in Whitehall which was widely circulated within that Department.\(^ {379}\) During 1989 various officials discussed the issue in MAFF, concluding that the risk was remote and could be eliminated by using either porcine eyeballs or eyeballs from bovine animals under 6 months of age, by ensuring proper sterilisation of instruments used and by wearing gloves.\(^ {380}\)

**10.54** In February 1990 Mr Graham Watkin, a health and safety adviser for the Tayside Regional Council, telephoned Mr G Currie in SHHD to say that he was concerned about the safety of bovine eyeball dissection, given that the use of head products from cows had been banned. He noted that there were no regulative powers to prevent abattoirs from supplying bovine eyeballs to schools, and wanted to know whether he could advise schools in his area to discontinue the practice of dissecting them.\(^ {381}\)

**10.55** Mr Currie sought the views of Dr Thores (SHHD), sending a copy of his letter to Mr N R Atkinson, Principal in the Scottish Education Department (SED) branch responsible for the curriculum in schools.\(^ {382}\) Dr Thores favoured advice to schools to ban the practice.\(^ {383}\) It was agreed that a letter should go to all Directors of Education, and Mr Atkinson wrote accordingly in March.\(^ {384}\)

**10.56** Her Majesty’s Inspectorate of Schools (HMI) were concerned that the letter had been sent without appropriate clearance by them, the Scottish Scientific Equipment Research Centre (SSERC), the Health and Safety Executive (HSE), SHHD or the Department of Education and Science in Whitehall.\(^ {385}\) Mr John Richardson, Director of the SSERC, said in a letter to the Secretary of SED that while the letter contained ‘unfortunate mistakes of wording’, he could not seriously quarrel with its substance:

> The advice is at least consistent with what little real scientific evidence is currently available.

**10.57** However, he could see no reason to abandon or restrict either bovine or ovine heart and lung material, for example, and concluded:

> We strongly caution anyone against being over zealous in these matters. This is especially so when the ground on which to base advice is none too firm and the potential for real educational damage is so obvious.\(^ {386}\)

**10.58** The advice issued by the Scottish Office was copied to Dr Ernaelsteen among others, who subsequently copied it to Dr Pickles in June 1990. Dr Pickles had,
however, been alerted to the issue in February 1990 by a Scottish Office colleague and had written to Dr Ernaelsteen and others on the subject.\footnote{YB90/2.20/15.1} Discussions with colleagues in HMI, MAFF and DH ultimately resulted in Dr Pickles submitting a paper for consideration by SEAC entitled ‘Route of Possible Transmission of Bovine Spongiform Encephalopathy to Man via the Practice of Eyeball Dissection’.\footnote{YB91/1.22/1.7–1.10} SEAC considered the issue of eyeball dissection at their meeting of 2 July 1990. The minutes record that the Committee agreed:

\ldots to advise that the \ldots eyes of cattle more than six months old should not be used for dissection in schools.\footnote{YB90/7.2/3.4}

\section*{10.59} Despite this advice, for reasons which are fully described in vol. 6: \emph{Human Health, 1989–96}, it was not until December 1992 (33 months after Mr Atkinson’s initiative in Scotland) that a letter was sent to schools and other educational institutions in England and Wales advising that the practice of dissecting eyeballs should cease.

\section*{10.60} During 1995 new research indicated that the retina of the bovine eye was infective, and eyeballs were subsequently included in the list of banned offal with effect from 20 July of that year.\footnote{The Specified Bovine Offal 1995 (SI No. 1928 of 1995) (L2 tab 13)} On 25 July the Department for Education in England (DFE – previously DES) issued a letter to schools indicating that, as a result of the ban, bovine eyeballs would be unavailable in schools but that pigs’ and sheep’s eyes could be safely be used for dissections.\footnote{YB95/7.25/9.1–9.2} During August, the Scottish Education Department considered DFE’s letter and, after consultation with Mr Richardson of the SSERC, decided that similar advice would be included in SSERC bulletins to schools in Scotland.\footnote{YB95/8.27/1.1; For information about the treatment of bovine eyeballs in England and Wales, see vol. 6: \emph{Human Health, 1989–96}}

\section*{Communication with the CMO for Scotland}

\section*{10.61} By 1995 Dr Robert Kendell had been CMO for Scotland for four years.\footnote{His predecessors in the post were Dr Iain Macdonald (1985–88) and Dr Kenneth Calman (1989–91)} He was a psychiatrist by training and told the Inquiry that he had little prior knowledge of public health issues.\footnote{T102 p. 72} He relied heavily on Mr Scudamore (the ACVO) for advice on all animal health issues.\footnote{S260B Kendell para. 5} He told the Inquiry that, at that time, he was unaware that BSE had been transmitted to a pig in 1990. He knew that a similar spongiform encephalopathy had been reported in several domestic cats, and in a zoo puma, but he did not know the scale of the feline epidemic.\footnote{T76 p. 49} He was aware that the majority opinion of the time was that BSE had indeed crossed the species barrier.\footnote{T102 p. 60}
10.62 During 1995 there was increasing general concern about the possibility of a link between BSE and CJD. The occurrence of CJD in humans was discussed in a number of SEAC meetings throughout that year. Dr Kendell, however, said in oral evidence that he never received copies of SEAC minutes during his term as CMO. Moreover, ‘no Scottish Office official attended meetings of SEAC, nor were the Committee’s minutes sent to the Scottish Office until April 1996’. Dr Kendell had assumed at the time that any important information emanating from SEAC would have reached him via Dr Ailsa Wight, DH ‘observer’ of SEAC, who was in close contact with Dr Rosalind Skinner, an SMO in the Scottish Office. Dr Skinner said that she never encountered problems in obtaining information from the SEAC meetings. Indeed, she told the Inquiry that in her view the Scottish Office’s lack of representation on the Committee did not hamper them in any way because they could ‘readily’ turn to Dr Robert Will of the CJDSU to discuss issues that came up at SEAC.

10.63 Dr Kendell also received information directly from Dr Calman, who was the DH CMO from 1991 to 1998 and had previously been CMO for Scotland. Dr Kendell said that his Department did not make an issue out of the failure to receive the SEAC minutes because the method of obtaining information in the way described above was ‘fairly standard’. He went on to explain that:

Whitehall Departments are often reluctant to give territorial Departments their documents and on many issues we have to rely on – it is really relying on a good personal relationship between somebody in the Whitehall Department . . .

This system usually worked ‘fairly well’, but Dr Kendell thought, with hindsight, that it would have been ‘enormously helpful’ for him to have seen the SEAC minutes at the time he was CMO.

10.64 Mr William Gardner, Veterinary Head of Section (Scotland), told the Inquiry that the vets in Scotland did not receive full sets of SEAC papers until after 1997, when MAFF and DH decided that SEAC should report to Ministers in England, Scotland and Wales. However, Mr Gardner said that he and his colleagues ‘always heard through one channel or another the substance of SEAC deliberations’.

10.65 Mr Scudamore said that he did not recall seeing SEAC papers except when he asked for specific items. In those instances he was not necessarily provided with documents that had been placed before the Committee, but often just with summaries of specific experiments. He also asked for and received updates about the Committee’s work from time to time.

10.66 On the administrative side, Mr Davison could not recall having received any SEAC minutes, but his successor, Dr Matheson (1994–96), told the Inquiry that these were sent to his Head of Branch (Mr N Kernohan and, from May 1995, Mr J Symington), who passed them to him. Because the papers were bulky and
technical, he merely scanned them briefly and sent them to be filed. He recalled that Mr Symington had at one stage requested that a more formal system of sending the papers be instituted, and that they had arrived with more regularity after that.\footnote{377 pp. 37–9}

\section*{vCJD}

\subsection*{10.67} Although the CJD Surveillance Unit in Edinburgh (see paragraphs 9.28–9.29), was partly funded by the Scottish Office, it did not report directly to it. Dr Will, Director of the Unit, told the Inquiry that:

\ldots\ the arrangements of reporting with the Department of Health have always been fairly clear to me and [what I] agreed with the Department of Health is that I will report to London and any information will then be disseminated to the territorial Departments. And that is still the case now.\footnote{T138 p. 127}

\subsection*{10.68} Despite this Dr Kendell said that he was in close contact with Dr Will during 1995, and that they often discussed CJD. Dr Kendell had also kept fully up to date with the figures produced by the CJDSU showing the annual incidence of the disease. However, he said in evidence that up until mid-1995 he had thought it unlikely that there was a link between BSE and CJD.

\subsection*{10.69} During August 1995 Dr Kendell’s thinking began to change. He read the CJDSU’s fourth annual report two months before its publication.\footnote{T102 p. 6} The CJDSU’s findings suggested clearly to him that ‘the epidemiology of CJD was changing’ (with a noteworthy incidence in young people and in farmers), and that ‘potentially alarming things were happening but there were plausible explanations for all of them’.\footnote{T76 p. 91} Working on the assumption that the bovine brain and first two segments of the spinal cord were the infective organs of the greatest concern, he was unable to see how farmers might contract the disease when they were not in contact with these parts of the animal.\footnote{T102 p. 8} More importantly, although the number of farmers affected was high, it was not out of line with countries which were free of BSE, so it was probably chance.\footnote{T102 pp. 10–11} He was also reassured by the fact that some eight other cases of CJD in teenagers had been reported from other countries which did not have BSE, and that the original case description of the disease in the 1920s had been in a 23-year-old.\footnote{T102 p. 14} In addition, the pathology of one of the new cases was said by Dr Will to be unusual.\footnote{T102 p. 15}

\subsection*{10.70} Following the report’s publication and news of a case of CJD in a farmer who had had a case of BSE in his suckler herd, SEAC saw no reason to alter its advice on the precautions necessary to protect either public health (including that of farmers) or animal health. They issued a statement to this effect on 23 October 1995.\footnote{IBD2 tab 24}

\subsection*{10.71} On 25 October Dr Kendell and Dr Calman attended a meeting with the Permanent Secretary of MAFF, Mr Richard Packer, at which they were told that there had been four or five instances when spinal cord had been found still attached
to carcasses after processing. They subsequently learned that the correct incidence was four or five cases per 1,000 carcasses. Dr Kendell said in oral evidence that his ignorance of the correct incidence, together with his lack of access to SEAC minutes, and hence to the new knowledge of the infectivity of the spinal cord, had coloured his thinking about the safety of beef. As it was, he was satisfied with Dr Calman’s course of action, which was to seek assurances from the MAFF Minister, at that time Mr Douglas Hogg, that the situation would be remedied.

10.72 A month later MAFF issued a news release to the effect that SEAC had ‘expressed grave concern about the findings by the State Veterinary Service of a number of instances in which slaughterhouses had left small pieces of spinal cord attached to carcasses after dressing’. However, SEAC had ‘reiterated its advice that beef was a safe and wholesome product’. The news release also quoted Dr Calman, who said:

There is currently no scientific evidence that BSE can be transmitted to humans or that eating beef causes CJD.

10.73 In response to reports that Scottish schools had been advised by the Local Authorities Caterers’ Association to take beef and beef products off their lunch menus, and also to comments made by Sir Bernard Tomlinson in the media, Dr Kendell issued a statement on 7 December 1995:

The Government’s independent scientific advisers are saying consistently that there is no evidence at all that eating beef or other foods derived from beef is dangerous. My general advice to people is therefore to carry on eating what you want to eat as you were before.

We have no evidence of any connection between BSE and CJD. However, both conditions are being closely monitored and studied by scientists, in this country and abroad, as there is much about both that is still unknown.

10.74 Dr Kendell told the Inquiry that he strongly suspected that he made the statement at the request of the Scottish Office press office. However, he did not discuss the wording of his statement with the Secretary of State for Scotland, now Mr Michael Forsyth, or any other Minister before it was issued. He said in oral evidence that he did not feel that informing anyone was necessary as, in his view, what he was saying was ‘entirely in line’ with what other people were saying. Only after the statement was made did he send a minute to Scottish Office Ministers to inform them of his action. After quoting his public statement, he said:

The core of the dilemma is there is no evidence of any connection between BSE and CJD, but on the other hand neither I nor anyone else can give a cast iron guarantee that eating beef or beef products from UK farms does not carry any risk of transmitting the causal agent of CJD, a disease which is invariably fatal. Worse still, this uncertainty may last for 10 years or more.
10.75 Dr Kendell told the Inquiry that:

The statement reflected my own opinion, based on my assessment of the information available to me at that time, and I would not have been prepared to make any statement that was not based on my honest opinion. It was intended to reassure the people of Scotland that, despite the things they might have read or heard, there was no good reason for them to alter their eating habits, while at the same time making it clear that I was not in a position to give a categorical assurance that ‘beef was safe to eat’.423

10.76 However, Dr Kendell said that with hindsight he might have omitted the words ‘at all’ from the text of his statement, making it less emphatic.424

10.77 On 18 March 1996 Dr Kendell advised Scottish Ministers of the evidence of a new form of CJD, discussed at the SEAC emergency meeting two days earlier. In particular, he cautioned that if a new disease had emerged, a link with BSE should be suspected.425

10.78 Dr Kendell attended the subsequent SEAC meetings on 19, 23 and 24 March. He issued a public statement on 20 March immediately after the announcement of SEAC’s latest advice in Parliament. His statement reported that SEAC had concluded that the series of 10 cases of CJD in young people reported to the CJDSU in the past two years were most likely to be linked to exposure to BSE before the introduction of the SBO ban. He noted that SEAC had recommended a number of further controls ‘designed to reduce still further the risk of BSE spreading to people’ and that the Government had accepted these recommendations. He continued:

Against this background I would like to emphasise the following:

Although CJD is fatal and incurable it is very rare. (There were 55 cases in the whole of the UK in 1994 and only 40 in 1995.) It is also no commoner in the UK than in other countries whose cattle are free of BSE.

There remains no scientific evidence that beef itself (as opposed to the specific list of bovine offals) is not safe to eat, and the various controls that have been implemented since 1989 have reduced any possible risk still further.426

Scotland and trade with the European Union

10.79 The emergence of BSE posed a substantial threat to UK international trade in beef, both with the other Member States of the EU (which accounted for 90 per cent of it) and with the rest of the world.427 Various measures, imposed by the EU, were introduced to regulate exports of live cattle and beef from the UK during 1989–96.428 Exports of pedigree cattle and high-quality beef were particularly important to the Scottish farming economy, and in 1989–90 there were discussions

423 S260B Kendell para. 3
424 T102 pp. 97–8
425 YB96/3.16/5.1
426 YB96/3.20/31.2
427 For a discussion of the international trade aspects of the BSE story, see vol. 10: Economic Impact and International Trade
428 S260 Scudamore para. 55
in mainland Scotland and the Orkney and Shetland Islands as to whether Scotland should apply for certain derogations from the restrictions to allow exports to continue.\textsuperscript{429} The basis for this was that some pedigree breeds had not been affected by BSE. For example, in March 1990 no cases of BSE had been found in pedigree Galloway Cattle. The Galloway Cattle Society requested, via their MP, a meeting with Lord Sanderson to seek exclusion for pedigree Galloway cattle from the restrictions then in place.\textsuperscript{430} Mr Rennie described DAFS’ position on the question as follows:

Whilst we were disposed to be helpful, we were anxious to avoid any false implication that some beef was ‘safer’ than other beef; and we were also keenly aware of the reality of the UK’s negotiating position on BSE issues. MAFF were not unsympathetic to the proposal, but did not want to open the issue formally with the [European] Commission without some assurances that other key Member States would not object.\textsuperscript{431}

\textbf{10.80} However, many of these herds were subsequently affected by BSE, and it was concluded that although Scotland had a lower incidence of BSE than England and Wales, it would be difficult to justify a derogation.\textsuperscript{432}

\textsuperscript{429} S263 Davison para. 9; YB90/6.25/19.1
\textsuperscript{430} YB90/03.29/10.1–10.4
\textsuperscript{431} S285A Rennie para. 35
\textsuperscript{432} S280 Scudamore para. 55; YB90/06.25/19.2