8. Statutory framework and responsibilities

The Secretary of State for Scotland

8.1 The Secretary of State for Scotland had joint responsibility with the Minister of Agriculture, Fisheries and Food in Whitehall for animal health in Scotland. Until 1990, the Secretary of State for Scotland exercised separate responsibilities for food safety in Scotland. Under the Food Safety Act 1990, however, he had joint responsibility with the Secretary of State for Health. He was advised by an Assistant Chief Veterinary Officer of the State Veterinary Service, and by the Chief Medical Officer for Scotland. While the Ministry of Agriculture, Fisheries and Food (MAFF) and the Department of Health (DH) in Whitehall took the lead on matters affecting the UK as a whole, the Secretary of State for Scotland was consulted on policy issues and, as a member of the Cabinet, could raise issues there. Mr (later Sir) Michael Forsyth described his role as Secretary of State as ‘Scotland’s man in the Cabinet, not the Cabinet’s man in Scotland’.

8.2 During the period covered by the Report, successive Secretaries of State held office: Mr Malcolm Rifkind up to 1990, Mr Ian Lang up to 1995, and Mr Michael Forsyth thereafter. Lord Sanderson, as Minister of State with responsibility for Agriculture between 1987 and 1990, played a direct role in the initial action taken on BSE.

The Scottish Office

8.3 The Scottish Office was the collective title of a group of Departments located in Edinburgh which advised the Secretary of State on all matters affecting Scotland.

8.4 Two of these Departments were concerned with the response to BSE:

   i. the Department of Agriculture and Fisheries for Scotland (DAFS). This took the lead on both animal health and food safety legislation; and

   ii. the Scottish Home and Health Department (SHHD). The Chief Medical Officer and his team provided the main link with the Department of Health in London and advised on the public health implications in Scotland.

8.5 The Scottish Office Education and Industry Department also played a minor role, giving advice to schools about dissection of bovine tissue. The structure and scope of these Departments changed during 1986–96, and these changes are described later in this chapter.

238 The State Veterinary Service was headed in Scotland by an Assistant Chief Veterinary Officer. See paragraphs 9.9–9.11
239 T91 p. 144
240 Charts of Ministers and of DAFS and SHHD personnel can be found on pp. 99–103
8.6 When matters affected the UK as a whole, and MAFF or DH took the lead, the Scottish Office was consulted. Where there was shared or devolved responsibility, it was also open to the Secretary of State for Scotland to initiate policy of his own accord. Dr Andrew Matheson, Assistant Secretary (Grade 5) in the Scottish Office with responsibility for meat hygiene and animal health between 1994 and 1996, said:

Had something quite distinctive and unique to Scotland occurred I think it is very, very probable that Scotland would have initiated and taken forward that policy. But that did not happen in the case of BSE.  

8.7 Generally the Scottish Office limited itself to contributing a Scottish perspective to policy formulation, considering draft legislation, and making implementation arrangements where necessary. The primary function of officials in relation to BSE as described by Mr Ian Anderson, head of the branch dealing with meat hygiene matters between 1989 and 1996, was to:

. . . keep in touch with developments, to inform policy when possible, to ensure that due consideration was given to Scottish circumstances and to consult or inform Ministers on appropriate courses of action.

Legislation on animal health

8.8 Following the 1955 Transfer of Functions Order, the Secretary of State for Scotland was jointly responsible with the MAFF Minister for most animal health matters. This arrangement was consolidated in the Animal Health Act 1981, which provided that the two Ministers would be jointly responsible for determining policy but that operational responsibility for endemic disease would lie with the MAFF Minister. The exception to this was control of disease caused by *Brucella melitensis*, *Brucella abortus*, tuberculosis and warble fly. The Secretary of State for Scotland had full policy and operational responsibility for handling outbreaks of these diseases in Scotland. In the case of BSE, almost all the secondary legislation introduced in response to the outbreak was made under the Animal Health Act 1981, which applied to the whole of Great Britain and therefore could be used to make joint Orders and Regulations.

Legislation on food safety

8.9 Where measures were being introduced specifically to protect human health, as in the case of the ban on Specified Bovine Offal (SBO) in food for human consumption, the legislative framework was not so straightforward. Until June 1990, separate legislation applied to Scotland on the one hand (the Food and Drugs (Scotland) Act 1956) and to England and Wales on the other (The Food Act 1984). This meant that separate Scottish Regulations had to be made for the SBO ban, to reflect the different parent legislation. The Food and Drugs (Scotland) Act 1956 gave the Secretary of State for Scotland the power to make Regulations in respect

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241 T77 p. 10  
242 S262 Anderson para. 5  
243 S. 8(b)(i) Animal Health Act 1981 (L1 tab 1)
of food hygiene matters: including the inspection of animals intended for slaughter
and of carcasses to ascertain whether their meat was fit for human consumption;244
and the requirements for staining, sterilisation or disposal of meat that was unfit for
human consumption.245 While the meat hygiene arrangements for Scotland mostly
mirrored those in England, an additional requirement in Scotland was that all
animals entering the slaughterhouse had to undergo an ante-mortem examination
by a meat inspector or, later, a qualified vet.

8.10 The Act also required consultation with interested parties before the making
of most Orders or Regulations under it.246 This meant that draft Regulations or
Orders had to be published once in the *Edinburgh Gazette* and once at least in each
of the two successive weeks in one or more newspapers circulating in the areas
affected by the Regulations. If the Secretary of State wished to modify the terms of
the draft at any stage, he was required to give additional notice of the amendment
in a manner he thought appropriate.

8.11 In 1990 the Food Safety Act247 replaced the Food Act 1984 (in England and
Wales) and the Food and Drugs (Scotland) Act 1956, consolidating their separate
provisions into one Act. The new Act retained the major provisions of the previous
two Acts, but introduced a new regime of food law designed to control modern food
manufacture and distribution practice. Under the 1990 Act it was possible to make
joint Statutory Instruments applying to the whole of Great Britain, subject to
consultation and negative resolution.248

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244 S. 13(2)(f) Food and Drugs (Scotland) Act 1956
245 Ss. 13(2)(g) and (h) Food and Drugs (Scotland) Act 1956
246 S. 56(6) Food and Drugs (Scotland) Act 1956
247 L1 tab 2
248 Negative resolution is one of the procedures by which a Statutory Instrument (SI) may be brought into force. An SI which is
subject to negative resolution is laid before Parliament, but may be objected to within 40 days of being laid. If this happens, a
debate is held and, depending on the outcome, the SI may be withdrawn or amended