SAFER FOOD: LOCAL AUTHORITIES AND THE FOOD SAFETY ACT 1990

SUMMARY

The Audit Commission has an important duty under section 27 of the 1982 Local Government Act, to report on the impact of government statutory provisions on the achievement of economy, efficiency and effectiveness by local authorities. This paper discusses the implementation of the Food Safety Act 1990. The paper is unusual in its nature in that rather than observe on the effect of government regulations after they have been implemented, the Commission has sought to participate in the debate over the content of those regulations, anticipating their likely effect on local government.

It is now generally accepted that the style of operation of the food industry has outpaced its regulatory regime. The Commission's own survey of more than 5000 food premises showed that Environmental Health Officers (EHOs) believed that 12 per cent presented a significant health risk. The Food Safety Act 1990 contains provisions which should empower local authorities to deal with most of the problems they now experience in enforcing safety regulations. But the ability of local government to implement the legislation effectively remains to be demonstrated.

The Commission is pleased to note that the government has accepted its view that 'foreign body' responsibilities should be discharged at district council level. Discussion with the local authority associations and the Institution of Environmental Health Officers indicates that the Commission's conclusions about widening the professional complements of regulatory departments with the inclusion of specialists to supplement the work of generalist environmental health officers, will gain momentum.

Because of its participation in the debate, many of the Commission's recommendations have already been accepted. Unlike previous section 27 reports, therefore, this paper is more of a 'signing off' statement than an attempt to stimulate a fresh debate in difficult areas. But in one important respect the conclusions of the paper remain 'live': the relationship between local government 'coordination' and central government 'control' to achieve common standards of food law enforcement.

The EC Food Control Directive places an imperative on member governments to achieve adequate standards of food inspection at the point of production, by 1992. The UK Government
faces the difficult task of achieving this through almost 500 individual local councils. Models of coordination between local authorities exist, but systems to secure the effective enforcement of standards voluntarily amongst them do not. The power to intervene lies with the government, but the Audit Commission believes that local government should devise its own system of self regulatory quality assurance. The paper outlines a check-list of the elements in that quality assurance system.

Although interested parties are competing for the role of coordination, the Commission believes the first stage in the discussion should be on the issue of necessary processes. Only once that is resolved should the question of appropriate structures be determined. In advocating this approach the Commission recognises that self regulation amongst local authorities is novel and difficult; but it is the way forward in developing a nationally coherent food regularity regime, implemented locally. The direction in which food regulation should develop is clear; how to achieve success on that path is not.

This report is the second of a series on the responsibilities of environmental health services. In addition, the Commission's appointed auditors will review the steps which individual local authorities are taking in absorbing those new responsibilities, as part of their audit work in 1991.

INTRODUCTION

1 The Audit Commission is undertaking a general review of environmental health functions in local government. Environmental health departments are "in the front line", in regulating food production, distribution, retailing and catering.

2 The case for a review of the way these functions are carried out by local authorities is strong, for two reasons: public concern about food safety has risen sharply in recent years;

the new Food Safety Act changes the legal environment within which councils operate.

3 Food is the basis of one of the largest manufacturing industries in the United Kingdom. Food manufacturing in 1987 represented 9% of the country's total manufacturing output and currently employs 11% of the manufacturing workforce – approaching ½ million people. In 1988, 12% of total household expenditure was spent on food. The turnover of the food and drink industry in 1988 was about £42 billion. 80% of the food consumed in this country is processed in some way: perhaps an inevitable consequence of our essentially urban society.

4 The industry is continually changing in response to changes in the life-style and appetite of the general public. The number of meals eaten outside the home is rising sharply: consumers' expenditure on meals eaten out rose by 53% between 1984 and 1988 at constant prices, accounting for 5.2% of total consumers' expenditure in 1988, compared with 4.2% in 1984. The number of women in paid employment has increased steadily, leading to a greater demand for convenience foods and to a shopping pattern based on less frequent purchases of food in larger quantities. Many consumers try to minimise the time they spend on shopping, preparation and cooking of food. As a result, food is stored in the home for longer periods; use of 'ready meals' and microwave ovens has increased markedly. Other considerations such as health, the environment and animal welfare, are also influencing purchase decisions. The demand for 'natural' or 'organic' products has grown steadily despite problems of definition and supply.

5 Techniques of food manufacturing are becoming more complex, with developments occurring at all stages from the farm to the table. Farming practices are also changing. Genetically engineered products are entering the food chain; new ingredients such as fat substitutes are becoming available; irradiation will shortly be legalised; packaging and distribution systems are increasingly sophisticated. All of these innovations raise new safety issues and the public must have confidence in the regulatory arrangement which protect their health.

6 In making use of new technology the structure of the food industry itself has changed. From a pattern of local companies, locally owned and supplying a local market, the industry is moving to a pattern of national and international companies serving the whole country. The ten largest food manufacturers, for example, produce one-third of national turnover; the five largest food retail chains are responsible for two-thirds of national sales. But there are also increasing numbers of small specialist food manu-
facturers serving the national market.

7 In parallel with these changes in food consumption and production, public and media interest in food has soared. The number of reported cases of food poisoning has more than tripled in the last 8 years (Exhibit 1). Salmonella and campylobacter have been major factors. Most experts consider that reported food poisoning cases seriously understate the true number. And there is mounting public concern about the impact of food handling practices on this growth in food poisoning. In addition the emergence of previously little known micro–organisms, most notably Listeria monocytogenes, has given rise to public concern.

8 This concern is not without basis. In a recent survey carried out by the Audit Commission and Institution of Environmental Health Officers (IEHO) (Ref) 12% of more than 5,000 food premises were judged by environmental health officers (EHOs) to present a significant health risk. For take–away fast food outlets, almost one in five was judged a significant risk (Exhibit 2). Similarly high figures were obtained for restaurants and food manufacturers (although in the latter case, the problems are mainly confined to small firms producing potentially high risk foods – meat and dairy products, for example). As there is no comparable information for previous years, it is not possible to assess whether the position is getting better or worse. Repeats of the survey, perhaps at five–yearly intervals (i.e. similar to the English and Welsh House Condition Surveys) would provide a means of monitoring change over time. Nevertheless, the high percentage must be a cause for concern.

9 The changing patterns of food production and consumption compel a consideration of existing regulatory arrangements to assess whether they can offer an assurance of safety to the public. Under current food legislation, local authorities have a key role in safeguarding the public. The purchaser wishes to be assured that food is not only safe but also that it is of acceptable quality, is properly described and is honestly labelled and advertised . . .

10 Although this paper is primarily concerned with the impact of the Food Safety Act on the environmental health function, it also has regard to...
the responsibilities of other local government professions which play a part in the complex enforcement of food safety legislation, including both food safety and consumer protection. Local authority environmental health & trading standards (TS) staff, veterinary officers and meat inspectors are all involved. The public analyst (PA) for each authority, a statutory appointment, also has an important role, as does the public health laboratory service. There are about 15,000 EH staff in local authorities in England & Wales, of which about a third are qualified EHOs. Most of the remainder are meat inspectors, technicians and technical assistants, and admin/clerical staff. Overall, about a quarter of EHO activity broadly falls into the food and meat inspection areas. This fraction represented gross expenditure of about £75 million in 1988-89.

11 It is less easy to identify the time (and expenditure) of the TS and PA functions on food since their activities are carried out under a wide variety of legislation in addition to the Food Act (e.g. Weights & Measures legislation). Perhaps between a quarter and a third of all TS effort can be associated with food law enforcement – in the region of £20 – £30 million (including that spent with public analysts). But much of this total is relevant only indirectly to food and includes agricultural feeds and fertilisers as well as food for human consumption.

12 So total expenditure on food regulation is perhaps as much as £100 million. Does the current legislative and structural framework ensure that this money is spent in the most effective way?

THE PRESENT POSITION

THE REGULATORY FRAMEWORK

13 The Food Safety Act 1990 – the most recent piece of legislation in a series running back to the Adulteration of Food and Drugs Act of 1872 (Exhibit 3) – replaces and amends the 1984 Food Act, but carries forward much of the existing framework. It has a number of provisions covering hygiene, safety, composition and labelling which are to be expanded and clarified by regulations. (Exhibit 4).

14 Other non–food legislation also applies to food products: examples are the Weights and Measures Acts and the Trade Descriptions and Consumer Protection legislation. There is therefore some overlap between food and non–food legislation. For example, prosecutions can sometimes be taken under the Food Labelling Regulations, derived from the Food Act 1984, or...
under the more general Trade Descriptions legislation, or both, to improve the chances of obtaining a prosecution. The Public Health Act 1984 is also relevant in some situations.

15 Four main types of offence are commonly recognised by enforcement officers:

- Offences relating to poor hygiene affecting premises or products, and to food that is unfit for human consumption because of microbiological contamination;

- Offences relating to contamination by non-food substances, whether by extraneous matter, generally referred to as foreign bodies, or of chemical or microbiological origin.

- Offences that arise because the composition of the food is not what is required or expected;

- Offences arising from food falsely described i.e. with inadequate or faulty labels or advertisements.

16 Each of these offences concerns the protection of the consumer’s health and the prevention of deception, but the balance of these two factors differs in each case (Exhibit 5). Hygiene and foreign body offences are weighted on the side of health protection while composition and labelling offences are more concerned with prevention of deception. Food law enforcers recognise that there is no clear demarcation between safety and deception, and there is potential overlap between the different sections of the legislation (although this is sometimes necessary to prevent gaps in the enforcement process).

THE ENFORCEMENT STRUCTURE

17 In the unitary authorities (London boroughs and metropolitan districts, representing just over a third of the population of England and Wales), a single authority discharges all responsibilities under the Food Safety Act. In the shire areas where both counties and districts co-exist, the responsibilities are divided between the two tiers. Responsibility for food hygiene is generally in the hands of the districts whilst enforcement of compositional and labelling regulations is largely vested in the counties. This division does not hold completely as some counties have delegated some or all of their powers to districts under agency agreements, as is the case in Lancashire.

18 Paralleling this division of responsibilities in shire areas, a segregation of professional functions has also developed. Shire districts maintain EH departments but not TS departments while the reverse is true in counties. Food hygiene responsibilities in shire areas therefore fall to the environmental health function while food composition and labelling responsibilities are covered by the trading standards function.

19 In the unitary authorities there is no such division of responsibilities and in many places, efforts have been made to eliminate the professional divisions. In almost all London Boroughs, all responsibilities are now covered by a single, combined, department, with the work largely carried out by EH staff. But in the metropolitan districts the food function is frequently split between the environmental health and trading standards functions, although often again in a single department.

20 Despite the organisational integration achieved in some areas, the responsibilities of the three main professional functions involved in the enforcement of food safety legislation in local authorities overlap. (Exhibit 6 overleaf). Where food is concerned, confusion can arise. Both EH and TS professions have a legitimate concern and the degree of co-operation and responsibility can vary. The position of the public analysts is rather different in that they are not enforcement officers, but provide a service to both functions.
COORDINATION MECHANISMS

21 There are differing priorities and differing standards of enforcement between local authorities, affecting both the consumers and industry. These differences are inevitable and may be desirable when variations can be justified by local circumstances. But with an industry that is increasingly structured on a national (or international) scale, such variations should not detract from minimum national guidelines.

22 Contact between authorities is needed to ensure that enforcement activities are coordinated across council boundaries. Various mechanisms have been established over the years to improve standards of coordination and consistency. At the shire district level, groups of enforcement officers meet together to discuss common problems, to share experience and equipment, and, sometimes, to agree standards. Similar coordination exists amongst unitary authorities: officers of the London boroughs meet together in this way and there are similar groups in the metropolitan areas.

23 In the shire areas of England and Wales, the two-tier structure of enforcement makes coordination between the tiers potentially more difficult. In some counties there are regular meetings between the county and the districts. In Lancashire the county analyst, as part of the Lancashire Food Panel under the agency agreement, regularly meets district officers to coordinate sampling programmes, factory inspection procedures and general enforcement procedures and priorities.

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24 Coordination is also assisted by recent developments of electronic network systems. A number of environmental health departments are linked to the IEHO’s information service using the British Telecom Gold system. By this means there can be rapid exchange of information and immediate notifications of problems and emergencies. Trading standards departments operate a similar system.

25 Rather more formally at the national level, the Local Authority Coordinating Body on Trading Standards (LACOTS) was set up in 1978 by local authorities to coordinate guidance on trading standards. One area of coordination is the ‘home authority’ system, operated by trading standards authorities around the country, by which individual companies deal with the trading standards authority in their own area to establish standards for their products. Such standards will normally, but not always, be accepted by other authorities throughout the country. This approach is voluntary. The system is seen by manufacturers and large retailers to be both successful and helpful.

26 No similar body exists to coordinate environmental health standards for food hygiene, perhaps because it is less easy to apply the concept where food products may deteriorate over time. However, in London, and the Metropolitan Districts, (also in Northern Ireland and Scotland) where EHOs undertake a wider range of food responsibilities than their colleagues in the shire districts, they do undertake to enforce the home authority system for composition and labelling in accordance with the LACOTS system. Indeed environmental health officers from these areas are active within the LACOTS structure. Environmental health officers also have national coordination bodies on other topics organised either by themselves or through other agencies, in such areas as Health and Safety, Industrial Air Pollution, Meat Inspection, Infectious Diseases, etc. Attempts have been made at the professional level by the IEHO to develop codes of practice applicable across the country, but this work has not yet come to fruition.

27 The Association of District Councils (ADC) has recently resolved to consider whether LACOTS or a similar body is the appropriate mechanism to coordinate food hygiene at the district level. A joint review team, consisting of chief executives drawn from the local authority associations is currently considering the question.

28 In other parts of the UK, where the enforcement structure is different, formal mechanisms for coordination of EH work do exist, for example the group system in Northern Ireland and the Scottish Food Coordination Committee (SFCC) (see Appendix). The government has recently accepted the need for a more consistent approach to food law enforcement and
has established an Implementation Advisory Committee (IAC) of local enforcement officers and central government officials to develop codes of practice on the enforcement of the Food Safety Act. The first codes have been issued in draft for public consultation.

29 The local authority approach to enforcement of food law has undergone changes in recent years, but during those years the industry which the law regulates has also changed markedly. The time is now appropriate to consider whether the present system of enforcement can deal adequately with the changing local and industrial situation.

2. PROBLEMS

30 There are several indications that the present system is inadequate. Some problems arise from deficiencies in the legislation; others have arisen or been aggravated by the increasing complexity of the food chain. Still others stem directly from the enforcement structure as defined in the current legislation: from the divided responsibility at central government level, to the way it is implemented by the local authorities.

DEFICIENCIES OF CURRENT FOOD LEGISLATION

31 The White Paper which preceded the Food Safety Act recognised that regulations made under the Food Act 1984 left significant gaps. New food businesses could be established without any system of vetting or prior approval, either of the people involved or of the premises themselves (although authorities could exercise some limited control through the planning system, where there is a change of use, and building regulations). EHOs sometimes become aware of the existence of new food businesses only by a chance encounter. In some cases the staff in such businesses have only a rudimentary knowledge of basic food hygiene principles.

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32 Until regulations under the Food Safety Act comes into force early in 1991, current enforcement powers lack a statutory improvement notice procedure of the sort that exists under housing, health and safety and environmental protection legislation. Nor do the regulations currently permit the immediate closure of businesses which are an imminent health hazard.

33 Equally, until the Act is fully implemented, Crown properties such as prisons, defence establishments and government offices remain outside local authority hygiene control because of crown immunity. Crown immunity was removed from hospitals in 1987, and a Department of Health circular (HC(86)14) asked health authorities to request six-monthly visits from local authority EHOs. These moves are thought to have improved standards dramatically. The relatively good state of hospital kitchens has been demonstrated in the Audit Commission's food premises condition survey. (Exhibit 3, above).

THE INCREASE IN COMPLEXITY

34 The increasingly complex food environment generates problems for enforcement authorities in terms of expertise, organisation and enforcement 'muscle' – the ability and resources to accept and pursue major cases.

35 Control of food safety is becoming more scientific. Increasingly, enforcement authorities will require expertise that goes beyond the standard training of EHOs and TSOs. The 'holistic'
degree course for EHOs, for example, covering the full range of EHO responsibilities, inevitably allows less time for food-related study than an equivalent degree course in food technology. The major companies in the food industry employ many specialists with such qualifications and the enforcement authorities need to match this expertise.

36 In addition to the need for specialist skills there is a reported shortage of EHOs – as with many other local government professions. In December 1988 a survey by the Society of EHOs estimated an overall shortfall (in local government) of about eight percent of the existing establishment of EHOs, although this varies from 15 percent in Greater London to 3 percent in North Wales (Exhibit 7). Although some part of this vacancy rate will be due to normal staff turnover, and some also to 'frozen' posts, there are nevertheless some authorities, particularly in London, where there are significant staff problems. (More recently some of these shortages are being reduced by recruiting EHOs from overseas).

37 Major food companies spend heavily to defend their reputations. If they are threatened by local authority action these companies are likely to invoke all legal defences. A local authority must be prepared to pursue the matter through the legal system – an expensive process. This is a problem for small authorities which could be called upon to risk relatively large amounts of chargepayers' money in protecting consumers who are likely to live outside the authority's boundaries. Many small authorities have neither the resources nor the relevant expertise to cope with the increasing complexity of enforcing standards on food producers.

ENFORCEMENT STRUCTURES

38 The enforcement structure itself creates difficulties for consumers, enforcement agencies and food businesses. The problems for the consumer are mainly those of unclear responsibilities. Even in unitary authorities there are sometimes different departments involved within the single authority, while in shire areas there may well be two different authorities involved. Evidence from consumer representatives suggest that the general public can be confused by the fine dividing line between different responsibilities.

39 The structure may also cause problems for the enforcers. The consequence of the division in food control responsibility between shire districts and counties is one area of debate, emphasising the need for close cooperation between enforcement officers working for the two tiers. For example some offences under the Food Act 1984 can be prosecuted under more than one section of the Act. The most common example is in foreign body offences where the presence of a foreign body can be considered to render food unfit or to make the food 'not of the nature, substance and quality demanded'. Defendants, when charged with one offence have been known to argue that the case should have been brought under the other and have escaped conviction. This area has been particularly confusing when the 'foreign' body is mould.

40 Waste and inefficiency can arise from the failure of authorities to coordinate sampling plans. Products of major manufacturers are sampled at the factory and again separately by many local authorities in different parts of the country. Where deterioration of perishable products might be expected it is reasonable to sample regularly for microbiological contamination. For products with a long shelf life that have been sampled at source, repeat samples throughout the country can divert resources that might more profitably be used in other directions. Even with the widespread microbiological sampling carried out by local authorities it is not possible to obtain a national picture because of inadequate co-ordination. For trading standards functions, the LACOTS home authority principle and the regional sampling groups help to avoid some of the difficulties of interpretation and duplicated sampling.

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41 The Food and Drink Federation and the British Retailers Association complain of inconsistent local interpretations of legislation which adversely affect their national suppliers. The significance of this is disputed by enforcement authorities but variation in inter-
pretation is acknowledged by all. A standard internal design of, for example, a supermarket may be acceptable in most authorities, but an individual authority may require a different design in particular details. When variation and interpretation reflect the needs of a community it is defensible; where it is local idiosyncrasy in the absence of national standards it is less defensible.

42 The present system of local food law enforcement is rooted in the idea of local control, which was entirely sound when the industry consisted mainly of local producers serving local markets. This is still true to some extent, and there will always be a need for local enforcement. But, increasingly, residents in all local authorities’ areas are likely to be served by the same major suppliers for a significant proportion of their food purchases. The suppliers provide nationally identical products in response to a demand which is supported by national marketing campaigns. Yet the enforcement and interpretation of the relevant food legislation is still based on local arrangements.

43 The introduction of the national non–domestic rate has broken the link between local funding and local enforcement. Although the presence of a large food producer within a local authority imposes substantial enforcement duties, the council derive no resources from that factory to pay for the enforcement process. It is therefore questionable whether the cost of a national enforcement programme should fall upon individual local authorities acting alone. Authorities need a greater incentive to stimulate local enforcement action.

3. SOLUTIONS
THE RESPONSE OF GOVERNMENT

44 Prompted by rising concern about food safety and rapid changes in the food environment the government has taken a number of steps in recent years. Several comprehensive reports have been commissioned including the Acheson Report – “Public Health in England” (Ref) – and the report of Richmond Committee on the microbiological safety of food (part 1 published in 1990) (Ref). In late 1989 some of the Ministry of Agriculture Fisheries and Food (MAFF) functions were reorganised into a Food Safety Directorate to integrate all aspects of food safety. The Department of Health has also recently been reorganised, and a separate division dealing with environmental health and food safety set up alongside the two existing medical and scientific divisions dealing with microbiological and non–microbiological safety food hazards. A food Consumer Panel has been established under the Chairmanship of the MAFF Minister for Food. Most recently, the Food Safety Act provided the first comprehensive rethink of food legislation since 1955.

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45 In addition to these national moves, the European Community (EC) exercises an increasingly influential role. For example, the EC food labelling regulations have been largely harmonised since 1979. The directive on The Official Control of Foodstuffs (89/397/EEC) will have far reaching effects. It calls for the regular inspection of all stages of production, manufacture, import, processing, storage, transport and distribution of foodstuffs, additives and materials in contact with...
food. Inspection is defined very broadly and it is envisaged that the nature and frequency of the inspections will be laid down by the European Commission. Additionally, the EC will be collecting national statistics from member states for collation to produce community figures. This will have major implications for enforcement authorities when implemented in 1991.

46 Considerable changes are also planned in the organisation of meat inspection and meat hygiene under Community rules. By 1 January 1993, all slaughterhouses will be required to meet the standards prescribed by the Community and meat inspection will have to be supervised by veterinary officers. This will inevitably affect the role of local authority professional staff.

47 Many of the gaps in enforcement powers should be closed when the Food Safety Act 1990 comes into force. The Act gives local authority officers the power to issue improvement notices, and emergency prohibition notices on food premises, equipment, or processes. The courts will have power to prohibit the use of premises, equipment or processes, and also to stop an individual from operating a food business. In addition the Minister will have powers to issue emergency control orders. The introduction of these new powers increases the need for consistent guidelines for their application. The Act will also largely remove crown immunity from many premises by April 1992 (although some small exceptions will remain). The Food Safety Act Implementation Advisory Committee will assist with the production of codes of practice and guidance notes.

48 There are also provisions in the new Act for the registration or licensing of food premises. Enforcement authorities generally favour licensing of premises rather than registration. Registration will ensure that all authorities have knowledge of all food premises in their area, but good practice authorities already know this. The concept of licensing was advocated by the Richmond Committee.

49 A case could be made for extending licensing beyond the major processes such as irradiation, to some of the major producers of food as exists in Sweden. A large proportion of the food supply passes through a relatively small number of premises for which some system of progressive licensing is desirable. A scheme, with rigorous criteria, covering the most significant businesses (and never becoming fully comprehensive) need not be too bureaucratic and burdensome. Enabling powers do exist in the Act which would make such an extension relatively simple.

50 Basic hygiene training must be beneficial, as the Audit Commission/IEHO survey showed (Exhibit 8). The government has already completed consultation on the proposals for hygiene training for food handlers. The Act also recognises that serious health problems can arise through ignorance of the principles of the safe operation of processes. But food safety can never be assured simply by regular inspection. There must be cooperation between food law enforcers and food businesses towards a common end – the provision of safe food for the consumer. Food businesses themselves have the responsibility for maintaining a safe environment based on systems and attitudes. This applies equally to individual working in food premises. A parallel can be drawn with Health & Safety at Work legislation: those working in a business are individually responsible for their own safety even though local authority environmental health officers are largely responsible for enforcing the relevant legislation.

51 Self regulation is becoming increasingly important. The extension of British Standard 5750 to the food industry is increasing. It is now an internationally accepted standard (and has been adopted by the International Standards Organisation). The basic principles can be applied to all areas of the food industry. Producers must employ competent people to design and operate processes where safety depends upon adequate knowledge, (for example, a ‘competent person’ is already required in the pharmaceutical industry). EHOs have an important role in the ‘audit’ of systems for safe operation, as a complement to their enforcement role. Trading Standards staff have already undergone quality assurance training (funded by DTI via LACOTS). Some EH staff have also received training in quality assurance,
although not on a national basis with government funding. All staff will eventually need such training.

WHAT ELSE SHOULD BE DONE?

52 While the new Act directly addresses some of the problems, its enabling powers have the potential to overcome many more. In the Commission’s view most remaining difficulties can be addressed by making changes to the enforcement structure and by encouraging a better use of resources by local authorities, in particular through the recruitment of specialist staff.

53 The recommended changes are:

(i) Clarification of the responsibilities of local government in the shire areas by transferring all enforcement responsibilities for ‘foreign body’ offences to the districts.

(ii) The examination by local authorities of the benefits to be derived from the modification of departmental structures and career paths to accommodate specialists of disciplines other than environmental health.

(iii) The establishment of a national mechanism for the coordination and assurance of standards, preparation of codes of practice and as a pool of advice and expertise.

TRANSFER OF ENFORCEMENT RESPONSIBILITIES

54 The Food Safety Act confirms that the bulk of food law enforcement will continue to be discharged by local authorities. Unitary authorities have fewer difficulties in implementing the new Act. But in shire areas there is a sound case for examining the allocation of enforcement responsibilities.

Foreign body complaint work, i.e. where non-food substances are found to be present, should be transferred from the counties to the shire districts. The government has already recognised the need for this change. The draft statutory code of practice on responsibility for enforcement of the Food Safety Act 1990 states: “All work which may lead to a prosecution under sections 7, 8 and 14 for contamination by foreign bodies or other extraneous matter (such as glass or metal shavings found in food) should be dealt with only by district councils. This also applies to mould found in or on food.”

55 In the main, public concern about foreign bodies in food relates to their effects on health. Foreign bodies can be of several kinds but in many cases the presence of foreign bodies can indicate a hygiene or control problem.

56 Even though responsibilities under the legislation are split between districts and counties there is no need for this division to cause inconvenience to the public. Any complaint brought to any local authority office should be accepted and passed on to the appropriate person for action (even if so doing requires more effort from the authorities). It is not acceptable merely to refer the consumer to some other, possibly distant, office.

RESOURCE AND EXPERTISE SHORTAGE

57 There is a need for greater expertise

![Diagram: Training in different types of premises](Source: Audit Commission survey 1990)
within local authorities. A partial solution to this problem would be to recruit appropriately qualified non-EHO specialists, e.g. food technologists, to carry out some of the duties in what is rapidly becoming a family of related specialities rather than a single coherent discipline. If such people are to play a full part, there must be a recognition of the value of such equivalent qualifications, and acceptance that promotion to higher levels in an EH department should be on merit and management ability, and not restricted to those with the EH professional qualification. Another part of the solution would be to sacrifice some degree of flexibility and to accept that some EHOs prefer to specialise in different fields of work and to arrange for intensive extra training for those opting for food.

58 Employment of specialists such as food technologists would also help to alleviate the problems caused by an overall shortage of qualified EHOs. A further way to overcome the problems of staff shortages would be for authorities to make greater use of environmental health technicians to carry out, where appropriate, some of the duties currently performed by EHOs. (These issues, largely concerned with the efficient use of resources, will be considered further in the Audit Commission’s later reports on the study).

NATIONAL FOOD ENFORCEMENT CO-ORDINATION

59 With the abandonment of cross-boundary food quality inspection after 1992, member states need to convince the EC that their internal food regulatory systems meet EC requirements. For many member states, food inspection is undertaken by specialists employed by the national government. Such states will have little difficulty in assuring themselves that their procedures are adequate. Britain faces greater difficulties, as food regulation is delegated to local authorities over whom central government has influence, but does not have direct control.

60 For the British Government to be confident that food regulation meets EC requirements, it needs to develop a package of measures enabling it to operate through local authorities.

61 Firstly, guidelines and codes of practice, to provide consistent criteria for enforcement at local level need to be produced. The Food Safety Act Implementation Advisory Committee is addressing this task, but there is a need for the work to be continued on a more permanent basis. There is a need for a local authority sponsored body to develop the work of the IAC. Some possible models exist. LACOTS has proven a useful and effective body for the coordination of activity by trading standards officers. Whether it could continue to operate successfully if expanded to embrace all district councils and the food regulatory function of EHOs is under discussion by the joint local authority associations’ review team. Such an expansion is a candidate for consideration, but should be assessed against other organisational models such as the SFCC and Health and Safety Executive/Local authority liaison group (HELA).

62 Secondly, the government needs to be assured that the regulatory guidelines are in use locally. It will need a mechanism for collating inspection information as required under the official Control of Foodstuffs Directive. In addition, it will require returns from local authorities confirming that those authorities have “willed the means” to implement the legislation to an adequate standard, have systematic programmes of inspection and sampling, and are demonstrating a willingness to intervene if necessary through the courts where food production standards are inadequate. A coordinating body for national sampling programmes would help to ensure that local authorities’ own inspection programmes are proving effective.

63 The Food Safety Act provides the appropriate Minister with the reserve powers to intervene should local authorities be judged inadequate in their regulatory work. The Minister needs information to indicate when such intervention would be appropriate. Waiting until a serious food poisoning incident occurs is not good enough. The system should be sufficiently sensitive to trigger intervention when the pre-conditions of serious risk are detected. Therefore, returns from local authorities should be sufficiently precise to enable key indicators of potential shortcomings to be discerned.

‘But there is a need for the work to be continued on a more permanent basis. There is a need for a local authority sponsored body to develop the work of the IAC . . .’
As well as establishing channels of information to trigger intervention, the Minister must possess the capability to intervene. As an alternative to employing a specialist cadre of government officers, the Minister could consider working through a local authority liaison body, as proposed above, to direct its staff, whether full-time or seconded, to give attention to those councils experiencing difficulties.

"For large scale food production and distribution the regulatory regime needs to be overhauled and improved..."

The Minister should consider, in consultation with local authority associations, the application of quality assurance to local councils' food regulatory practices, so that central government and the EC can be confident that guidelines are effectively applied at the local level. A regional structure of local authority coordination wherein officers from other authorities audit a council's professional systems could provide a model for development. Such an approach would also address the frequently heard complaint from manufacturers that the rigour with which standards are enforced varies between authorities. Other models may of course be possible.

Enforcement authorities must be able to match the relevant knowledge, expertise and experience of an increasingly complex food industry particularly the large scale food production and distribution facilities serving national and international markets. A national coordinating body could be extended to provide support for the role of local authorities. If it employed a small body of skilled staff including food technologists and legal experts it could become a central repository of knowledge, expertise and experience upon which local authorities could draw. It would need to have resources to supplement the action of local authorities in enforcement actions against powerful offending companies, and also provide consistent criteria for the operation of national guidelines.

In considering the way forward the first task of both central and local government should be to determine a checklist of criteria which a new system should fulfil. It should at least include the need for national coordination, information returns from local government, quality assurance procedures and sources of assistance from which local government can draw. As such, new mechanisms are needed which will be different from pre-existing models. Bodies such as HELA and LACOTS contain some of the ingredients but not all. Once a checklist of criteria is agreed, appropriate structures can be confirmed and one selected.

The impact of the Commission's recommendations is shown in Exhibit 9 overleaf.

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The pattern of food production, distribution and consumption has changed radically over the last 30 years. The two central trends are those of technical specialisation and concentration of production and distribution. Food production is no longer a simple local function. The industry has outpaced its regulatory regime. Supervision of the hygiene and safety aspects of food production remains largely in the hands of generalist EHOs employed by local councils. For many purposes, particularly food retailing and catering, local regulation remains appropriate. But for large scale food production and distribution the regulatory regime needs to be overhauled and improved. The Food Safety Act will meet a number of the deficiencies in the present situation. But more needs to be done if the public is to have confidence in the safety of food.
The transfer of responsibilities for foreign bodies, and steps to deal with shortages of expertise, can be taken fairly quickly. In addition, urgent attention must be given to the training of staff and complementing of their skills with specialists to enable them to engage major food producers.

In the short term the government and local authorities should agree a checklist of criteria for the new system and then test alternative models against that list. In the longer term, the government should also provide local authorities with financial incentives to give proper enforcement attention to large food producers. One option for consideration could be to allow authorities to charge an inspection fee (perhaps similar to the authorisation fees and charges for air pollution control work under the Environmental Protection Act 1990).

By these means, the Commission believes that the important new powers of the Food Safety Act can be applied to good effect by a regulatory system tuned to the change in nature of the food system in the 1990s.

REFERENCES

"Environmental Health Survey of Food Premises". Audit Commission, June 1990.


APPENDIX

THE ENFORCEMENT OF FOOD LAW IN SCOTLAND

1. In contrast to England and Wales, in Scotland, (where there is a similar two tier system of districts and regions) all the major provisions of the Food Act (Scotland) 1985 are enforced by the districts. This arrangement is of a fairly recent origin. Between 1975 and 1982, the division of responsibility between districts and regions in Scotland was similar to the division between districts and counties in England and Wales. The change followed the report in 1981 of the Committee of Enquiry into local government in Scotland, chaired by the Rt Hon Anthony Stodart (Ref) which concluded:

- that the demarcation lines between the responsibilities of district and regional authorities were far from distinct;
- that there is merit in concentrating all functions under the Act on one authority;
- that, arguably, the public health implications of Sections 1 and 2 of the Act lend themselves to enforcement by districts.

2. For these reasons, the Stodart Committee recommended that the Scottish districts should re-assume some of the responsibilities they held before 1975. Following the implementation of these recommendations in 1982, a mechanism was developed to provide coordination at the national level, and in particular to bring together the activities of the smaller districts. The Scottish Food Coordination Committee (SFCC) covers the whole of Scotland and includes all relevant professions. It has successfully coordinated sampling programmes and provided a forum for constructive debate. The SFCC is now extending its activities into areas such as the production of voluntary guidelines and standards. The SFCC is funded entirely by the cooperating districts on the basis that the costs lie mainly where they fall.

3. The operation of the SFCC is assisted in its aim of improving consistency of enforcement by the working of the Scottish legal system under which all food prosecutions must be approved by the Procurator Fiscal before they can proceed. This introduces an external scrutiny of the evidence which contributes to consistency. It is common for the Procurator Fiscal and the local director of environmental health to agree on criteria and guidelines for prosecutions which are then used by all officers. In one district it was claimed that, following the agreement of guidelines in 1985, no cases had been rejected by the Procurator Fiscal and only one case had failed in court.