



FOOD
STANDARDS
AGENCY

**REPORT OF THE TASK FORCE ON
THE BURDENS OF FOOD REGULATIONS ON
SMALL FOOD BUSINESSES**

TASK FORCE ON THE BURDENS OF FOOD REGULATIONS ON SMALL FOOD BUSINESSES

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The CD ROM contains all of the above plus all agendas and Task Force papers, all substantive consultation responses, and the anonymised transcripts of the interviews with small businesses.

Note to readers.

Superscripts indicated by numbers alone refer to the list of references. Those prefixed by 'V' refer to a visit made to a small food business by the Task Force. Those prefixed by 'R' refer to a response made to the consultation.

TASK FORCE ON THE BURDENS OF FOOD REGULATIONS ON SMALL FOOD BUSINESSES

REPORT

Acknowledgement

The Task Force is grateful to the organisations and individuals who responded to the consultation, to the organisations with whom we had many constructive discussions, and particularly to the 30 small food businesses who agreed to be interviewed and gave so generously of their time.

Summary

Introduction

1. The Food Standards Agency set up this Task Force to examine the burdens of food regulations on small food businesses in June 2000. Our task was to explore whether existing regulations were disproportionate, either in their nature or in their enforcement.

2. There being few relevant studies, we undertook an extensive consultation, writing to 495 trade associations and 140 other bodies. (see Annex B). Additionally, we visited 30 small food businesses across the UK, and had further meetings with relevant professional bodies. The 60 responses to the consultation and the findings from our discussions with the small businesses and professions provide the basis for this report (paras 3 - 9).

General Findings

3. It is a common complaint from small businesses that they are excessively afflicted by the overall burden of regulations. However, the overall picture from both the responses to our consultation and the findings from our visits is that the requirements of food regulations themselves do not impose a particularly onerous burden on small food businesses. Indeed, several businesses stressed to us the need for legislation to maintain food safety standards. There were some general issues that emerged which, in our view, warranted further investigation (paras 11-14). In addressing these, we have sought to encourage best practice, and tried to identify the features of the current system, which can be build upon and improved.

Demands of HACCP

4. Most of the businesses we visited had a HACCP plan of some sort, and some of them clearly found the discipline and structured approach invaluable. Others, however, experienced barriers to the effective implementation of

HACCP. One possible reason was insufficient technical knowledge of particular food processes (paras. 19-23). Some businesses appeared to us to have inappropriate HACCP plans.

5. The most common complaint about regulation expressed to us was the record-keeping requirements of HACCP-based controls. This is not necessarily due to regulation *per se*, but in our visits, we tried to find out the reasons. We concluded that some HACCP plans were over-complicated, and that training should be available to enable businesses to review their plans without compromising food safety standards (paras 24-28).

Enforcement

6. Small businesses made two general points to us related to enforcement. These were that the standards to which the law is enforced tended to be inconsistent, and that some enforcement officers were not sufficiently acquainted with specific food processes to be able to carry out effective inspections. The bodies representative of enforcement clearly recognise the importance of both issues, and there are some mechanisms in place to address them. We think that these should continue. In view of the importance of the enforcement function both for businesses and consumers, we concluded that the ways enforcement officers acquire expertise in food processes should be reviewed (paras. 29-48).

Keeping up to date

7. Small food businesses do have difficulties in keeping up to date with changes in legislation and getting advice on legal requirements, and failure to do so can prove expensive. We think that small food businesses need a facility to keep them abreast of developments (paras. 49-54).

Should small business have lower standards?

8. An argument was put to us that small food businesses should meet lower standards of food safety than larger businesses. Other responses from the industry disagreed. We can see no case for lower food safety standards for small businesses, since consumers have the right to expect the same level of protection irrespective of the size of the businesses. Many responses made the general point that controls in a business whatever its size should be related to the level of risk in the operation concerned. We agree that this should be the general principle applied, consistent with the HACCP approach (paras. 76-78).

Cheesemaking

9. The small cheesemaking sector submitted a substantial response to the consultation, and this is addressed in detail in Annex F. We concluded that the existing legal framework is not significantly burdensome (paras. 55-57).

Shellfish

10. The main issue raised by the shellfish sector was the difficulties caused by the current system of classification of waters. It was seen by the industry to be unnecessarily punitive on the industry while not delivering public health gain. Our conclusion is that the long-term solution is the improvement of water, but we do recognise that the classification system could be improved with benefit both to industry and consumers (paras 58-75).

Specific regulatory issues

11. A number of specific issues and proposals about regulations were raised with us in the consultation and visits. These are discussed in turn (paras. 76-100).

Background and Objectives

1. The formation of this Task Force was announced by the Food Standards Agency at its first Board meeting on 25 May 2000. The membership of the Task Force was announced on 19 June, along with the following terms of reference.

'In relation to the Agency's mission to protect the health of the public in relation to food,

(a) to evaluate quantitatively the impact of food safety requirements and other food regulations on the economic viability of small food businesses,

(b) to consider the long term impact of the above on consumer choice, and

(c) to consider what beneficial changes might be made from the consumer and small business point of view.'

The membership of the Task Force is at Annex A.

2. We recognised that food regulations have the fundamental purpose of protecting the public. Therefore our task was to identify any regulations that impose a burden on small business, and then to assess whether this regulation produced a correspondingly proportionate benefit in terms of public health and consumer protection as a whole. We also recognised the way regulations are enforced could be disproportionately burdensome to businesses.

Approach

3. Initially we sought to identify what work had already been done which was relevant to the regulatory burden of small food businesses. The most substantial study¹ was commissioned by MAFF on the Costs of Compliance with Food Regulations in the UK, and published in 1996. It was concerned with the compliance cost assessment process and its value, and the problems of identifying compliance costs. It did not focus on the regulatory burden itself, and nor on public protection, and was therefore of limited use to us. We found that other work²⁻⁵ on the regulatory burdens of small business was not related to consumer protection, and nor did it quantify the burden in financial terms.

4. We took the view that there was no better way to find out about the regulatory burdens of small food business than to ask them. Consequently

we decided to conduct a public consultation to give the small business sector the opportunity to tell us. A three month consultation exercise was launched on 16 August, and lasted until 7 November. We consulted 495 trade associations across the UK. Although the focus of this consultation was the industry, we also consulted 140 non-industry stakeholder organisations. A complete list of consultees is at Annex B. The consultation was conducted by post and by e-mail, and consultees were able to respond by post, fax or e-mail. The definition of small business we adopted was drawn from that used by the EU definition of a small business, namely one employing up to 50 people. We received 60 substantive comments from the consultation. Thirty four of these were from bodies promoting the industry interest, with a further 5 from individual companies.

The Visits to Small Food Businesses

5. We thought it important to hear not only from trade associations, but also directly from small businesses themselves. Consequently, in the consultation letter to industry, trade associations were invited to nominate up to five of their members who would be willing to be visited and interviewed about the burdens they face.

6. A delegation from the Task Force visited 30 small businesses in October, November and December 2000 from those nominated by trade associations. When resources permitted, the Task Force was supported by an EHO from the Agency. Before the visit, each business was sent a list of questions to guide and focus the discussion (see Annex D). Each interview was recorded, and at a later date the anonymised transcript of the interview and a summary of the main points was sent to the business to give them a further opportunity to comment.

7. We took no steps to verify or corroborate the responses by small businesses in the interviews. To do so would have undermined the assurances of confidentiality, which we gave to the businesses. That said, we have absolutely no reason to doubt either the truth of what was said to us or the sincerity of individual businesses, but we do recognise that we have heard only one side of the story. For this reason we have been cautious in relying too much on the outcome of any one particular interview, and we have sought to assess the evidence presented to us as a whole.

8. After the visits to small businesses, we had meetings with Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS), the Chartered Institute for Environmental Health (CIEH), the Royal Environmental Health Institute of Scotland (REHIS), the Scottish Food Co-ordinating Committee (SFCC), the Food Standards Agency Northern Ireland, Food Knowledge and Know-how (FKK) at the University of Reading, the South Bank University, Kings College London, the Shellfish Association of Great Britain (SAGB), the British Retail Consortium (BRC), and the United Kingdom Accreditation Service (UKAS). We also had a background briefing

from specialists in Food Standards Agency on shellfish hygiene legislation and enforcement.

The meat sector

9. At the start of the consultation, the regulatory burden of this sector had been the subject of both the Pooley⁶ and Maclean⁷ reviews, and their recommendations were either being implemented or under consideration. The Government had not responded to the key recommendation of the Maclean review on meat hygiene charges in small abattoirs. Further, the BSE Controls Review⁸ was underway. We were concerned not to duplicate any of these initiatives, and therefore we decided to exclude the meat sector, with the exception of retail butchers, from the scope of this consultation. We did visit three businesses that at least in part came under the control of meat hygiene legislation. The general points which came out of these visits are incorporated in this report.

The approach to regulating food safety and standards in the UK

10. The Food Safety Act 1990 (and its equivalent in Northern Ireland) is the principal primary legislation controlling food safety and standards. However, the main corpus of food legislation is the regulations made under the Act, of which there are well over 100. Most derive from EU legislation. However, most of the food law which in practice has a direct impact on food businesses is hygiene law. It is important to recognise that the current hygiene regime is undergoing a shift from prescriptive based regulations to a risk-based approach to hazard control (the HACCP-based approach). When properly implemented, the HACCP approach has important gains for both businesses and consumers, but it also has important consequences for businesses and enforcement authorities in terms of what they need to know, and the allocation of responsibilities. The enforcement of food law is the responsibilities of local food authorities, although meat hygiene legislation is enforced by the Meat Hygiene Service. Some dairy hygiene legislation is also enforced centrally in England, Wales and Northern Ireland.

The overall burden of regulation

11. There were consistent comments both among the responses to the consultation and in the interviews about the overall burden of all regulation (e.g. environment, waste, employment, tax, etc). Businesses and trade associations say that although no single regulatory measure is excessively onerous in itself, the cumulative effect is often significantly burdensome. This is manifested not so much as specific constraints on production but as providing information for local and central authorities. This task often falls upon the proprietor, diverting him or her from the central purpose of the business, or is delegated to staff recruited for the purpose, and therefore adds to staff costs. The consequences of any regulations other than food

regulations are outside our remit, and the assessment of burden is for others responsible for these policy areas to carry out. In some cases we considered the overall burden to be particularly heavy. However, we are not in a position to assess the justification for regulations outside our terms of reference. Our task was to focus on food regulations, and to assess any burdens they impose in the context of the benefits they deliver in consumer protection.

The overall burden of food regulations

12. The total number of responses to the consultation exercise from the industry sector (39) was relatively low compared to the number of trade bodies consulted (495), a response rate of under 8%. There were also 21 responses from non-trade bodies. In our view, this in itself indicated that most trade associations have no significant burdens to report on behalf of their members. However, we do accept that this low response rate in no way detracts from the force of the points that were made to us. In these responses, a number of general points were made about particular aspects of food regulations. These are addressed in detail below. A few of these responses indicated that specific legal requirements were burdensome and unnecessary, and again, these are discussed specifically later in the report. Some responses^{R32, R56} stated clearly that there were no problems with the regulations themselves. Several^{R8, R24, R44, V10} expressly supported the need for regulations to maintain food safety standards.

13. The visits to the 30 small food businesses revealed a similar picture. The vast majority stated that there was little, if anything, that was required by the regulations that they would not continue to do even if the regulatory requirement disappeared. Some stressed the need for legal standards to maintain good practice in the industry. There were specific issues about particular requirements of the legislation and the way that they were enforced that are discussed in detail below. The most common complaint was the burden of record keeping, and again this is addressed later. Several of the responses and some of the visits mentioned the extensive requirements that can flow from audits carried out by or on behalf of their customers. Sometimes there is an assumption by the business that these requirements all stem from legislation, when in fact this may not be true. The overall picture from both the responses and the visits is that the requirements of food regulations themselves do not impose a particularly onerous burden on small food businesses.

14. Our conclusions are,

- the overall response rate to the consultation exercise indicated a low level of concern with the burden of food regulations;
- food regulations themselves do not impose a particularly onerous burden on small food businesses;

- several businesses stressed the need for legislation to maintain food safety standards.

The Hazard Analysis and Critical Control Point System (HACCP)

15. Probably the most important change in food control over the past decade or so has been the move from prescriptive controls on food safety in food businesses to HACCP-based controls. HACCP is a structured approach for firstly identifying food safety hazards in food operations, and secondly putting a system in place to control them. This trend towards HACCP has been reflected in changes in legislation, and is continuing, as can be seen in the European Commission's proposals for consolidation of hygiene directives. The adoption of this type of approach is being reflected in food standards across the world.

16. This change has important advantages for both food businesses and consumers. A HACCP-based approach to food control will make the business focus on what really matters in the process, rather than implement prescriptive measures which may or may not control food safety. The HACCP approach makes it clear that day to day responsibility for the management of food safety lies with the business. A properly implemented HACCP-based system should be both the most secure and cost effective way of delivering food safety in food businesses, because by its nature it is risk-based, and the controls should be proportionate to the nature of the hazards. Therefore, the HACCP approach should be an important way for businesses to minimise regulatory burdens.

17. All but one of the businesses visited had a HACCP plan of some sort. Most of the responses and the majority of the businesses visited welcomed the HACCP approach, and recognised its merits in the context of their business. They regarded it as the control method of choice, and would not wish to move away from it. Some businesses found the discipline of a structured approach invaluable. Other businesses visited found it difficult to implement, and several of the responses^{R10, R16, R17, R24, R26, R31, R58} drew attention to this. Why then do some businesses find it difficult and burdensome?

18. Initially HACCP undoubtedly requires considerable effort from the management both in terms of developing a HACCP-based system and in staff training. Business proprietors need first to learn about the HACCP approach and how it can be applied in their business, and they also need to have enough technical knowledge to be able to identify hazards. This is crucial, because if a business is unable to identify the hazards, then the HACCP approach cannot be used to control them.

Technical knowledge of the small business sector

19. One of the advantages of our visiting small food businesses was that we were able to assess the technical knowledge in the business first hand. Some of the businesses visited demonstrated a very high level of technical expertise, the knowledge vesting either in the proprietor or in his or her staff. However, this was not always the case. We also visited businesses that had extensive knowledge of the food process itself, but, in our estimation did not have sufficient understanding of the food safety aspects of it. For example, we encountered poor knowledge of vacuum packing, of the risks posed by raw meat, of the risks of botulism, and uncertainty of the factors that made foods stable. In short, we doubt whether these businesses knew enough about the technical aspects of their particular processes to be able to identify the hazards in them and therefore to control them. Some information might be difficult to obtain. For example, it was pointed out to us on one of the visits^{V21} that some important information on food safety on a particular process is known in the industry generally, but may not be known by new or small businesses.

20. Further, we think that the some of the difficulties which some businesses had with their HACCP plans were a consequence of not understanding the nature of the hazards which the HACCP plan was designed to control. We certainly do not think that they need general training in food science or food technology. However, they do need to understand enough about the nature of their process. The level of appropriate knowledge will depend on the process concerned.

21. We believe that the solution is training which is focused on particular products or processes. There are probably not enough small food businesses of a single type in any one area to justify the provision of local courses. We envisage therefore the provision of information sheets on different food processes which could readily accessed by small businesses and written with this audience in mind, and be available on the internet. This is consistent with a suggestion made in one of the visits^{V3}.

22. Our conclusions are,

- in order to implement HACCP, a business needs to understand the principles of HACCP and have sufficient technical knowledge or assistance to identify the hazards inherent in the process;
- the technical knowledge of small food businesses is variable;
- some of the businesses visited had potentially serious misconceptions about food safety.

23. We recommend that,

- the Agency discusses with the DTI Small Business Service (and its equivalents in the devolved administrations) and Government

Departments responsible for food industry sponsorship the provision of information sheets on different food processes. These should be accessible via the internet, and would explain in as non-technical way as possible the nature of the various food processes and the hazards inherent in them. We think that they should be developed by food technologists in partnership with specialists in education and communication.

The record keeping burdens of HACCP

24. Of the responses^{R10, R13, R24, R39, R42, R46, R55, R58} and small businesses^{V4, V8, V11, V12, V17, V18, V22, V23, V24, V28} that did describe regulatory burdens to us, most were concerned with the record keeping requirements of HACCP or hazard analysis plans. This is not a burden necessarily imposed by regulation, but it is clearly related to the requirement for a HACCP-based approach, and we tried to establish the reasons for it. Some small businesses^{V2, V20, V25, V26} recognised that the records provide them with a valuable documented record that the checks had actually been done. Others regarded record keeping as onerous. Of these, when asked some said that the records only took up a few minutes a day, but for others the burden was more significant. Some businesses told us that, because of pressure of work throughout the day, in practice the forms would be filled in only at the end of the day or possibly later. Their value as a record of what actually went on was therefore in question. One business made the point that food safety lies in the practices in the factory, not in the filing cabinet.

25. It might well be that following HACCP implementation, a business finds itself keeping more records than before because in that particular operation, more records are justified on food safety grounds. But whatever the record keeping burden, it should properly reflect the nature of the food operations, and of course should flow from the HACCP plan itself. HACCP plans that are inappropriately over-elaborate can be simplified by review, but to do this an understanding of both the plan and the hazards is needed. This in itself is a problem for some small businesses, as we have observed. Businesses therefore should be encouraged to look critically at their HACCP plans, and to review them with the objective of simplifying them without compromising food safety standards. There is scope for training to be made available to businesses to achieve this.

26. We recognise that the meat sector is in a special position with respect to record keeping, because the detailed legal provisions are in transition from a prescriptive based regime to a HACCP-based system. Although we visited one or two businesses subject to meat hygiene legislation (retail butchers aside), these were formally outside the scope of the consultation.

27. Our conclusions are,

- most of the businesses visited had HACCP-based systems in place;

- overall, small food businesses welcome the HACCP approach and recognise its merits;
- some record keeping is inherent in applying HACCP principles;
- some businesses that find record keeping burdensome may have unsuitable or over-complicated HACCP plans;
- businesses need to understand their HACCP plans in order to be able to review them.

28. We recommend that,

- the Food Standards Agency in its initiatives to promote HACCP in food businesses should take into account the possibility that HACCP plans might be over-complicated and that consequently the record keeping requirements in individual businesses might be greater than necessary. This might include, for example, guidance on what sort of system might comply;
- small food businesses should be encouraged to review and where possible, simplify their HACCP plans;
- training should be available to enable businesses to review their HACCP plans without compromising food safety standards.

Enforcement Issues

29. Two themes related to enforcement emerged very clearly from both the responses^{R8, R10, R11, R13, R18, R25, R26, R36, R39, R40, R46} and the visits^{V4, V6, V7, V14, V16, V19, V21, V23, V24, V25, V27, V29}. The first was that some businesses reported that the standard to which the law is enforced tended to be inconsistent, both within and between authorities. The second was a perception among some businesses that some enforcement officers were not sufficiently acquainted with specific food process to be able to carry out effective inspections. We did not raise these issues with the enforcement authorities concerned at the local level since that would have been a breach of the assurances of confidentiality given to the businesses. We did, however, have five subsequent meetings with representative bodies of the enforcement sectors in England and Wales, Scotland and Northern Ireland, and had discussions on these two issues.

Inconsistency

30. Businesses regarded this as a burden for two reasons. A business might be constrained from a particular practice by the local authority when it is aware that it is permitted elsewhere. Second, the demands of enforcement officers often cost the business money. This creates a sense of unfairness

and injustice when the same demands are not being made on all such businesses. Additionally, different approaches within and among enforcement authorities to similar circumstances undermine confidence in the enforcement service in the industry generally.

31. From our meetings with the representative enforcement bodies it is clear that the need for consistency is recognised by local government and within the professions. We were impressed with the various initiatives in place, some of which are listed in Annex E. LACOTS pointed out to us that businesses should be aware that they can challenge the decisions of EHOs, and that there are mechanisms promoted by local authorities to allow for this (e.g. letters to businesses following inspections). In Scotland, a major part of work of the Scottish Food Co-ordinating Committee is to promote uniformity and consistency. This includes the production of a policy document on the interpretation of Regulation 4(3) of The Food Safety (General Food Hygiene) Regulations 1995, an annual survey of the performance of councils in achieving compliance with Regulation 4(3), and a risk assessment guide for smaller food businesses. In Northern Ireland there is an additional layer of administration within the local authority structure which is dedicated to provide co-ordination, monitoring, training and expert advice to District Councils on food law enforcement. The Northern Ireland approach was probably the most effective mechanism in the UK to promote consistency (although not immune from criticism^{R25}). The province's relatively small geographical area makes liaison more straightforward than in other areas.

32. In addition to all this, the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement sets a standard for food law enforcement in local authorities, and sets out the arrangements through which the Agency will audit local authorities' enforcement activities. This includes the identification and dissemination of good practice to aid consistency.

33. All these initiatives are valuable, and should of course continue. We recognise that there are two further measures in place to promote consistent application of standards. First, there are Industry Guides developed in accordance with Article 5 of the Council Directive on the hygiene of foodstuffs (93/43/EEC), and agreed between the enforcement sector, central government and the industry sector concerned. They set out in considerable detail guidance on compliance with legal requirements, and give advice on good practice. Currently they only cover the application of the General Food Hygiene Regulations in relevant industry sectors covered by the Regulations. However it is anticipated that they will cover all food industry sectors following the consolidation of the hygiene directives now underway. Currently other Food Safety Act Codes of Practice cover other product specific areas (dairy, etc) provide similar detailed guidance. Second, the Food Safety Act Codes of Practice 9⁹ and 19¹⁰ set out the purpose of a food hygiene inspection, and what it should comprise within a risk-based approach.

34. The retail sector faced a similar problem of inconsistent inspections of food manufacturers carried out by their own technical staff. Their solution was to promote a uniform approach by developing the BRC Technical Standard¹¹

to provide a common basis for the inspection of food production premises. In addition, inspections against the standard must be made by inspection bodies that have been accredited to European standards by the United Kingdom Accreditation Service (UKAS) as appropriate for the specific field of inspection. The UKAS scheme for food inspection bodies provides assurance about the inspector's ability to produce a trustworthy assessment. There are features of this approach that could be usefully be adopted in enforcement practice. Indeed, LACOTS has issued advice to local authorities on the application of the relevant European standard to their inspection services.

35. Our conclusions are,

- the enforcement sector generally recognises the need to minimise inconsistent enforcement;
- there are various mechanisms in place at both local, regional and national levels to reduce inconsistency;
- Industry Guides provide detailed guidance with compliance of legal requirements, and have been agreed with the industry sector concerned;
- the retail sector has established standards for both food manufacturing premises and inspection bodies in order to reduce inconsistency.

36. We recommend that,

- the existing mechanisms in place to minimise inconsistent enforcement should continue, and their importance should be further promoted and improved where appropriate;
- businesses are always informed about their option to challenge particular decisions of enforcement officers, and should be prepared to do so;
- the approach adopted by the retail sector should be examined further to establish to what extent it could reduce inconsistency in enforcement;
- the Agency takes further steps to promote the importance of both the Food Safety Act Codes of Practice and Industry Guides.
- the Agency should support the development of Industry Guides in food processes, which are outside the scope of the General Food Hygiene Regulations.

Knowledge of food processes

37. The demands on EHOs when inspecting food businesses have changed over the past few years. There is now a much greater focus on food process control within the risk-based, HACCP approach. The emphasis has moved away from prescriptive requirements, and without doubt this trend will continue. Code of Practice No.9 makes it very clear that the purpose of an inspection is, among other things, to identify the potential hazards, assess the effectiveness of controls, and assess the HACCP-based food safety management system being operated. Code of Practice No.19 requires Local Authority Officers to be able to assess the quality of food hazard identification in a food business, the quality of critical control point identification, the suitability of controls, and verification and review of HACCP-based management control systems.

38. We regard the need for enforcement officials to be properly informed about food processes as essential. Without such knowledge, the requirements of Codes of Practice 9 and 19 simply could not be met. First, the control of hazards by the HACCP approach cannot begin until the hazards are properly identified, and any HACCP-based controls cannot be assessed for effectiveness unless the enforcement officer knows what the hazards are. Crucially, the only occasion when the consumer is protected against a food business that does not have effective controls in place is when the enforcement officer visits it. In some visits we encountered some potentially serious misconceptions on food safety in the businesses. While it is up to the business to identify the hazards and control them in their operation, many small food businesses look to the local authority as a source of information and advice on food safety, as has been established by our study and by Agency research^{12, 13}. Enforcement officers are in any case required to take an educative approach⁹. Much depends on the effectiveness of that visit, both for the business and the consumer.

39. We asked the enforcement sector about the training of environmental health officers. In England and Wales and Northern Ireland the training has changed from a diploma-based system to a degree course, the first degrees being awarded in 1974 and the last diplomas in 1996. In Scotland, the training has been degree based for over 20 years. The Chartered Institute of Environmental Health (CIEH) defines the core curriculum for the universities and training authorities in England and Wales. The CIEH curriculum is in two parts. The first covers the general knowledge and skills required, and has sections on the law and its enforcement, inspection techniques, administrative procedures, investigative techniques, interpersonal skills and professional conduct, pest control, the factors which impact on human health, epidemiology, the built environment, risk assessment and management, problem solving, health promotion, and business and commercial awareness. The second part covers the technical knowledge in specialist areas, and covers environmental protection, food safety and standards, housing, occupational health and safety and port health. The Royal Environmental Health Institute of Scotland (REHIS) core curriculum consists of three parts. The first part 'underpinning academic knowledge' covers the sciences, statistics, law and legal systems, and local, Scottish, UK and European

government, while the second part 'core academic/technical knowledge' covers environmental protection, food safety and food standards, waste management, the built environment, public health, occupational health and safety, and hazard and risk management. The third part covers 'professional practice' investigative and inspection techniques, compliance strategies, research techniques, administration and information technology, interpersonal skills and professional conduct. About 25% of the technical content of the course is on food safety, although there is slightly more emphasis on food in the practical training component.

40. The training in England, Wales and Northern Ireland includes a minimum of 48 weeks of professional training, during which students must gain documented practical experience of over 60 topics of the work of an EHO, including HACCP auditing, inspection rating and assessment of food premises. After graduation, qualification as an EHO depends upon passing professional examinations in food safety, occupational health and safety, public health, the built environment, and environmental protection, risk assessment and a professional interview. In Scotland the system is very similar to that in the rest of the UK. On satisfactory completion of the REHIS Scheme of Practical Training for Student EHOs the students must pass the professional examinations which cover seven programme areas. Successful candidates receive the REHIS Diploma in Environmental Health which allows them to practice anywhere in the UK and to join the Institute as a full member.

41. Both the CIEH and REHIS administer Continuous Professional Development (CPD) schemes for their members to enable them to update their knowledge and skills in accordance with technological developments. The current requirement is an average of 20 hours of CPD a year, and the CIEH is considering increasing this to 30 hours to enable them to update their knowledge and skills in accordance with technological developments. However, membership of one of the professional institutes is not a condition of employment as an environmental health officer, and not all are members, and so may not avail themselves of CPD. Overall, the academic and practical training is broad-based, properly reflecting the range of responsibilities of an EHO in professional practice.

42. Although food technology is part of the curriculum, whether a particular EHO has sufficient knowledge of particular food processes depends largely on his or her post-qualification training and experience. Clearly many EHOs have acquired the necessary knowledge about particular food processes. Under Code of Practice No.19, local authorities must appoint at least one officer with specialist knowledge who has lead responsibility for food law enforcement. We asked the enforcement representatives what happens in practice when an EHO prepares to visit a business operating a process with which he or she is unfamiliar. It would be up to individual EHOs and their management to assess whether there is a need for further training, and to take action where necessary. They could read up on processes themselves, or find a colleague who can help. Various networking arrangements are in place within local authorities. The arrangement which seem to work best is in Northern Ireland, where the 26 district councils are organised in five groups

with an additional layer of professional staff and formal liaison systems. The Food Standards Agency with LACOTS and relevant professional bodies are active in identifying training needs and facilitating the further training of enforcement officers in particular processes. There are courses in a number of areas (e.g. canning, meat products, milk pasteurisation, cheesemaking).

43. In addition to EHOs, many local authorities employ technical officers with a variety of qualifications and backgrounds to undertake the inspection of food premises. To a business, anyone who makes an inspection is seen as an EHO, and we recognise that at least some of the comments made by businesses might have been about technical officers, who of course have not undergone the same training as an EHO, but who might have other specialist skills. It is the duty of local authorities to ensure that technical officers are properly trained for the duties they perform. The local authority relies largely on their qualifications, but they must pass an examination at ONC or HNC level on the inspection of food premises.

44. An important aspect to all this is the number of food manufacturing businesses to be inspected. There are about 600,000 food businesses in the UK, 62% of which are caterers, and a further 31% are retailers. Food manufacturers of all types only make up 2.9% (comprising 3.6% of inspections), and so it is perfectly appropriate for the pre-qualification training of EHOs to concentrate on the inspection of retail and catering businesses. Unless there is a concentration of a specific type of food manufacturing businesses in a particular area, it is unrealistic to expect enforcement officials generally to be as practised or experienced in inspecting food manufacturing businesses as they are in the inspection of catering or food retail businesses.

45. There are clearly opportunities for EHOs to acquire the necessary knowledge, through specific training and networking, and local authorities can appoint technical officers with particular expertise, but whatever the current arrangements, on the basis of the evidence collected from the small food business sector in this study, they are not working well enough. In view of the importance of the enforcement function both for businesses and consumers, we think that the whole process would benefit from being more structured. We see no case for making further demands on students of environmental health by adding more subjects to their course curricula. They would be spread even thinner over an already wide subject range. Even if student EHOs did learn about particular food processes in sufficient detail, this knowledge might very well be outdated or forgotten by the time they were called upon to apply it to a food process perhaps several years later.

46. The mechanisms for networking within the profession clearly should continue. We are also keen to ensure that there is provision for training on specific processes as the need arises. The internet-based information resource for small businesses we recommend in paragraph 23 should also help. Overall however, we see the need for more specialisation on food processes within the enforcement sector. This could take the form of provision of advice and support from individual experts in particular food processes who would attend inspection visits to food businesses with

enforcement officers, or a dedicated enforcement effort for particular sectors, as is the case at present for hygiene in milk production holdings in England and Wales.

47. Our conclusions are,

- the advent of HACCP-based controls and the requirements of Code of Practice No.9 and 19 mean that enforcement officials need to know much more about the nature of food processes than they used to, and in particular they must be able to identify hazards and to assess whether they are under control;
- many small food businesses rely on enforcement officials to give advice on the production of safe food in their operation;
- the consumer is only protected from food businesses that do not have hazards under control when the enforcement official carries out an inspection and effective action is taken to ensure hazards are under control;
- the extent to which an EHO has sufficient knowledge of a particular food process will depend on his or her post qualification training and experience;
- it is unrealistic to expect enforcement officials generally to be as practised or experienced in the inspection of food manufacturing businesses as they are in the inspection of catering or food retail businesses;
- on the evidence collected from the industry in this study, the mechanisms for ensuring enforcement officials have sufficient knowledge of food processes is not working well enough.

48. We recommend that,

- liaison and networking mechanisms within the enforcement sector to improve knowledge of food processes should continue and be formalised where possible;
- the Agency should continue to provide training for enforcement officials on particular food processes;
- the Agency should examine what scope there is for further specialisation of enforcement on food processing businesses;

- the mechanisms for ensuring that enforcement officials (EHOs and technical officers) have sufficient knowledge of food processes should be reviewed, in the context of the requirements of Codes of Practice 9 and 19.

How the small food businesses keep up to date

49. Several of the responses^{R2, R12, R17, R30, R25, R31, R40, R42, R45, R55, R61} and several of the visits^{V9, V30} highlighted the difficulty small food businesses have in keeping up to date with changes in legislation, understanding what the law means, and getting advice on the current legal requirements. The visits to several of the small business revealed a similar problem but one in particular^{V9} demonstrated what consequences could flow from not being up to date with the legislation.

50. This business manufactured a range of foods for the major retailers. The proprietor found out one day by reading the trade press that one of his most important products was illegal under new compositional regulations. The same company did not get enough notice of the introduction of QUID, and so had to re-label all their products. The cost of this was high in the context of the business as a whole, but would have been much lower, perhaps nothing, if he had had adequate warning.

51. It appears that sometimes the trade association provides a good source of such information, and some of the businesses spoke highly of the service they received. But sometimes the trade association mechanism does not work well. Often, small food businesses do not belong to any trade association at all, and companies rely on colleagues in the industry, or the enforcement authority. It is not of course the job of local authorities to ensure that local businesses are alerted of legal developments. Some organisations provide a professional alerting and advice service, but the cost is usually prohibitively high. Small food businesses need a facility within their means to keep them abreast of developments. Some^{V30} already have it, but the need is wider.

52. The proprietor of this particular business found the service provided by FKK (Food Knowledge and Know-how) at the University of Reading very useful in this regard. We therefore decided to visit FKK. It was established in 1999 as one of a number of technology transfer centres in the UK with the purpose of providing a consultancy service to local small businesses in the south east of England. It is able to draw upon a concentration of food expertise at the University of Reading and its vicinity, including specialist expertise on food law. It produces a Newsletter for its members twice a year. On the basis of the experience of two^{V9, V30} of the small businesses we visited, this is the sort of provision that small businesses value. We believe that all small businesses need a channel of advice to keep them informed and up to date about regulatory matters.

53. Our conclusions are,

- failure to keep up to date with the requirements of regulations can have serious consequences for some small businesses;
- small businesses need a facility within their means which enables them to keep abreast of developments;
- small businesses can benefit from having formal, routine linkages to sources of knowledge, rather than relying on chance or informal networks.

54. We recommend that,

- the DTI Small Business Service and its equivalents in the devolved administrations, together with Departments responsible for sponsorship of the food industry should explore how they might fulfil this need, possibly by building on existing facilities.

The cheesemaking sector

55. The most substantial response received in the consultation process was from the Specialist Cheesemakers' Association (SCA) which detailed a relatively large number of regulatory burdens in a separate document. The points made by the SCA were addressed individually by the Task Force, with the benefit of comment by the Food Standards Agency. The discussion of these points is in Annex F. We also received a number of responses from individual cheesemakers.

56. Of the 30 visits, five^{V6, V16, V19, V22, V28} were to small cheesemakers. We had planned to visit a sixth, but the business^{R56} wrote to us before the visit took place to assure us that they had no regulatory burdens, and a visit would serve no purpose. Some important points were picked up in these visits, mainly concerned with enforcement, which are addressed elsewhere in this report. Some of the cheesemakers mentioned issues addressed in Annex F. Only one of those cheesemaking businesses was taking measures in production that they would not normally do if it were not for the legislation. The exception concerned record keeping, and in that particular case the record keeping requirement did not flow from the HACCP plan. We concluded from the visits that in terms of day to day operation, the legislation does not inhibit small cheesemakers from producing and selling cheese to any significant degree.

57. Our conclusion is,

- subject to the general findings discussed in paras 15-54, the existing legal framework is not significantly burdensome for small cheesemakers.

The shellfish sector

58. The main issue raised by the Shellfish Association of Great Britain (SAGB) concerned the way in which shellfish waters are classified in the UK, which they say contrasts markedly with the way it is done in neighbouring Member States. This is not an issue that relates specifically to small companies in the shellfish industry, but because many companies in the industry are small, we decided to study this particular issue in some depth. We met the SAGB, and were briefed on shellfish legislation and classification by staff from the Agency.

59. Shellfish beds must be classified into one of three categories, A, B and C. The classification criteria are microbiological in nature, and are laid down in European legislation, Council Directive 91/492, but the system within which these criteria are applied is left to Member States.

60. In the UK, one sample of shellfish is taken by local authorities each month from each bed and submitted for analysis. In any one year, the microbiological criteria in the Directive are applied to the 12 results from each bed, and the beds are classified accordingly. The criteria are,

Class A all samples must contain less than 230 *E. coli*/100g.

Class B 90% of samples must contain less than 4,600 *E. coli*/100g.

Class C all samples must contain less than 46,000 *E. coli*/100g.

Shellfish from Class A waters can be marketed for human consumption directly. Shellfish from Class B waters must be depurated before marketing, and shellfish from Class C waters must be relayed for two months before they can be marketed. In the UK there are few beds suitable for relaying shellfish, and therefore a Class C classification in practice takes a bed out of commercial production. All major supermarkets only source molluscan shellfish from Class A waters, irrespective of subsequent purification. Thus the economic effect of a downgrade in classification is severe.

61. The SAGB makes essentially three points. First, it says that under the UK system, periods of the year when water quality is poor can lead to one or two shellfish samples having high *E. coli* counts, which mean that a bed is downgraded when the criteria for Class A or B beds are applied. This is so even if the contamination is transient and anomalous in the context of the long term microbiological status of the water. It says that this is unjust, especially when a downgraded classification does not take effect until the year after the samples were taken for analysis, and may well not reflect the current microbiological status of the water. The Agency's position is that changes in classification are subject to detailed discussion at the local level, with a view to determining the source of the contamination to establish whether it is likely to reoccur. The Agency does accept though that often no reason for the

deterioration in microbiological quality is found. The Agency also says that the criteria are not applied rigidly, and the results of previous years are examined to identify the long term trend. The SAGB makes the related point that single samples are subject to very wide imprecision. The Agency says that this is taken into account when assessing the results.

62. The second point is that the historical stream of single results is not subjectable to statistical analysis, as required by the Directive, which demands (for Class B waters) 90% compliance of current samples. The Agency says that this is a matter of interpretation of the Directive, and the European Commission is content with the way in which the UK is applying it¹⁴.

63. The third point the SAGB make is that in any case, the current system, while applying the Directive correctly, does not protect public health, for two reasons. Firstly, when the transient contamination occurs, the classification remains unchanged and the shellfish are sold. Even if the Local Authority were concerned by a high result, the shellfish in question would have been harvested and sold before the results are available. Whatever the classification, the public is not protected from ephemeral pollution. Secondly, the SAGB says that most food poisoning from shellfish is caused not by bacteria but by viruses, which do not form part of the classification scheme, and which are the result of human rather than animal faecal contamination.

64. The Food Standards Agency is currently reviewing the classification system in England and Wales, involving relevant stakeholders. Within this, the SAGB has proposed a new system that they say both meets the requirements of the Directive and protects public health.

65. Under this proposal, the classification would be based on current analysis. More than one sample of shellfish would be taken for analysis and the results expressed as a geometric mean. Class A waters would be those where more than 50% of the geometric means were less than 230 *E. coli*/100g, and Class B waters would be those where 90% of the geometric means were less than 4,600 *E. coli*/100g. In addition, current data would need to show compliance.

66. The use of averages, either geometric or otherwise, has the effect that a significant number of shellfish from a Class A water could contain more than the Directive criterion of 230 *E. coli*/100g, especially since the criterion would only apply to 50% (a figure which seems to have no basis) of the results. This places too much burden on current analyses to protect public health. Shellfish from Class A waters can go directly for human consumption, and, while no system requires 100% of compliance with the criterion in the Directive, in our view the SAGB proposal would set too low a standard.

67. The proposal also provides for suspension of classification (and presumably therefore of production) if current results indicate relatively high levels of microbiological contamination. This would be an improvement on the current system, which does not include any provision for immediate response.

68. The SAGB argue that the systems under which the criteria are applied in other Member States are superior, and it has submitted reports of their visits to the Netherlands and France. In the Netherlands, classification is based on weekly analysis of five samples per bed. If results exceed certain limits then classification is suspended until results are back within the criteria. Historical data is not taken into account. In France, historical data over 6 years is the basis for long term classification. Shellfish beds in classes A and B are sampled every 2-3 months, and there is provision for immediate suspension if set limits are exceeded, and, as in the Netherlands, classification being restored when results are back within limits. The SAGB says that this is the most important difference between the system in the UK and those in other Member States.

69. We believe that the best way to raise and maintain microbiological standards in the shellfish sector is to improve water quality, and this must be the long term goal. An important principle of public health is to control pollution at source. The Agency and industry sponsorship departments should continue to urge environment departments and the water industry to take whatever steps are practical to secure long term improvement to water quality in the vicinity of shellfish beds. Second, the potential effect of any discharges on shellfish waters needs to be fully taken into account in order to minimise their impact on water quality. This means that the rapid communication of information on planned discharges to both the Agency and CEFAS is essential, and public health concerns need to be respected.

70. As far as the current classification regime is concerned, we agree with the SAGB that the current system could be improved to better serve the needs of both the industry and the consumer. It is not responsive to short term changes in water quality, and the classification itself is based on the analysis of too few samples. Of the two alternative systems promoted by the industry, that in the Netherlands is suited to a situation where water quality is both high and stable, and where the shellfish beds are concentrated in a small geographical area. These conditions do not prevail in the UK, and therefore the French system of long term classification supplemented by a rapid short term response to sudden changes in quality seems to us to be more appropriate. There are microbiological records of shellfish beds over some years, and we do not see why the 6 year period used in France (strictly two successive periods of three years each) could not be implemented effectively in the UK, but based on the current UK regime of monthly sampling, or possibly more frequently. In the Netherlands, shellfish beds are sampled weekly.

71. With such long term classifications in place, the consumer needs to be protected against occasional short term deteriorations in water quality. The more frequent the sampling, the more protection there is. More frequent sampling would increase both sampling and analytical costs, but the industry has argued that overall sampling costs would be reduced if samples taken by the industry were accepted, and that analysis could be carried out at lower cost laboratories. The SAGB says that the industry currently augments official sampling in order to meet due diligence requirements. We see no difficulty

with taking industry samples into account, provided sampling by local authorities remains, i.e. there are both official and industry samples to compare. Equally, we see no difficulty with any laboratory carrying out the analysis provided minimum standards of competence are met. The crucial factor is that results need to be reported rapidly to local authorities, the Agency, CEFAS and the shellfish companies concerned so that action can be taken to stop shellfish from contaminated waters from being marketed. High results should initiate discussions at a local level to establish the source of contamination, and if necessary classifications could be suspended until water quality improve. Guidelines would need to be developed for this.

72. The SAGB has also argued that the classification system is based on bacterial analysis, but most food poisoning from shellfish is viral, and viruses are not part of current analytical regimes. We agree. Clearly virus standards should be included in EU classification criteria. When virus methodology is sufficiently mature to be used routinely, it should be incorporated into routine testing.

73. Long term classification based on historical data combined with regular sampling to monitor short term changes in water quality should give the industry the stability they need, along with more confidence in the safety of their product on a day to day basis. Regular sampling to monitor for short term changes in water quality would give greater consumer protection, particularly if analysis for viruses is included. We believe that overall this would be a much more effective system both from the industry and consumer points of view. It would, however, be more expensive, and therefore the Agency should explore ways in which the increased costs could be met, including joint Government/industry funding as in other countries.

74. The SAGB also raised two other issues. The first concerns technical problems associated with the bio-assay procedures for PSP (paralytic shellfish poisoning) and DSP (diarrhetic shellfish poisoning), which it says mean there is a considerable time lag prior to closures and their being lifted. We understand that the Agency has a programme of research in place to develop an alternative to mouse bio-assay, and any new method is likely to be quicker. Second, the SAGB say that the reluctance of authorities in Great Britain (but not Northern Ireland) to adopt a 'graded' scheme of analysis for scallops has placed the industry in Scotland at a severe financial disadvantage. The Agency has told us that it recognises that there is a difference in approach. However, we understand that these differences are being currently addressed both within the UK and at EU level.

75. Our conclusions are,

- the long term solution is the improvement of water quality;
- the current classification system could be improved;

- analysis for viral contamination should be introduced when it becomes available.

76. We recommend that,

- the Agency and industry sponsorship departments should continue to urge environment departments and the water industry to take whatever steps are practical to secure long term improvement to water quality in the vicinity of shellfish beds. This would require multi-agency co-ordination;
- the potential effect of discharges on shellfish waters needs to be fully taken into account in order to minimise their impact on both the shellfish industry and public health. This means that the rapid communication of information on planned discharges to both the Agency and CEFAS is essential;
- shellfish beds should be classified on the basis of the last six years of data, as in France;
- sampling of shellfish beds should be weekly rather than monthly, and the results should be communicated rapidly to all interested parties. These additional results could be supplied by the industry;
- the short term suspension of classifications should be among the mechanisms to protect the consumer from short term deterioration in water quality;
- measures of viral contamination should be introduced when the methodology is available;
- sampling and analysis by industry should be accepted, provided that official sampling remains to provide a check;
- the Agency should explore ways to meet the increased costs of more frequent sampling and analysis.

Specific regulatory issues

Lower standards of food safety for small food businesses

77. Some of the responses^{R40, R42, R54} argued that small food businesses should enjoy a lower standard of food safety or a some relaxation of hygiene standards because of the smaller scale of production, the fact that foods are locally produced and sold, and because they are more likely to have manual intervention and control at all stages of production. Other responses^{R1, R2, R7, R8, R20, R35, R37, R55} from industry and consumer organisations alike argued strongly against such double standards, saying that there should be no

concessions to food safety based on business size. Consumers need confidence in the food they are purchasing and can see no acceptable reason why small businesses should not have to meet the same standards as smaller businesses. The DTI Small Business Service takes a similar view, arguing such discrimination is not in the interests of small businesses or consumers. We agree. We can see no case for lower food safety standards for small businesses, since consumers have the right to expect the same level of protection irrespective of the size of the businesses. Two respondents^{R7,R16} mentioned that a small business was associated with the deaths of 21 people. Many responses made the general point that controls in a business whatever its size should be related to the level of risk in the operation concerned. We agree that this should be the general principle applied, consistent with the HACCP approach.

78. Our conclusion is,

- there should be no relaxation of food safety standards for small food businesses.

79. We recommend that,

- the focus of Government and business strategy, in which the Food Standards Agency should play its appropriate role, should be to help small food businesses achieve the requisite high standards.

Tax breaks for the purchase of equipment

80. Differential tax breaks were proposed^{R1} on the grounds that compliance costs for food regulations (in this case chillers) were higher for smaller stores because an entire stand alone unit is required rather than the addition of a cabinet to a system serviced by a single compressor. This does not take account of the higher cost of the larger single compressor, and it is not clear to what extent chilling is a legal requirement. Further, no information was submitted on the effect of this differential cost of compliance on the viability small businesses, and none of the small businesses we visited which required refrigeration (and there many) mentioned this as a burden at all.

81. Our conclusion is,

- this differential compliance cost, if it exists, does not have a significant effect on consumer choice.

A clear procedure for reviewing the effect of proposals on small businesses

82. Several responses^{R1, R31, R32} felt that insufficient thought was being given to the impact of legislation on SMEs, and that legislation is drafted exclusively from the perspective of large organisations. The Government's principles of better regulation require that Government departments have particular regard

to the need of small businesses, and we are aware that specific mechanisms are in place within Government (Regulatory Impact Assessments and the Small Business Litmus Test) to ensure that any proposals are sensitive to the consequences of regulation on small businesses. Even so, we recognise that hard evidence on which to base a judgement can be difficult to come by. We feel that the quality of evidence collected in this exercise was greatly enhanced by the actual visits to small businesses nominated by trade associations.

83. We recommend that,

- the Food Standards Agency also considers making visits to individual businesses when preparing proposals for regulation.

FSA should publish guidance notes with new Regulations

84. This point was put to us by one respondent^{R1}. We understand that this is normal practice where they are justified, but we endorse the principle.

GM labelling

85. Some of the responses^{R25, R46} made particular mention of the requirement to provide GM labelling as burdensome, or requiring a level of technical knowledge which small food businesses did not have. One from a trade association in the catering sector^{R57} said that the rules were complicated and ineffective, and represented the biggest burden. This was in contrast to the small businesses^{V2, V7} visited, who, of those affected, regarded it as unwelcome and a nuisance, but none of them thought it was particularly onerous. The catering businesses visited said that once undertakings had been obtained from their suppliers, it caused them little or no additional work. None found the information difficult to obtain.

86. Our conclusion is,

- this particular provision does not constitute an unreasonable burden on small food businesses.

Lack of effective enforcement a burden

87. One company in the watercress industry^{R8} argued that the whole industry sector was being put unnecessarily at risk, as well as consumers, by a failure to take action against watercress producers who do not follow the industry Code of Practice. The company alleges that several growers of watercress continue to produce watercress, contrary to the industry code of practice, in unclean water. A subsequent submission by a consultant to the industry^{R11}, an ex-environmental health officer, said that local authorities are

aware of the problem, but production of such watercress continues. He was critical of inspections, saying that they are too infrequent and lacking in depth to be of any real value.

88. The company has long argued that the Government should make the industry code of practice statutory. We sought legal advice on the extent to which, under current legislation, an enforcement officer could require improvements to the growing conditions of watercress. The advice is that the Food Safety (General Food Hygiene) Regulations 1995 requires the proprietor of a food business to identify any step in the activities of the food business which is critical to food safety, but this requirement does not apply to primary production, i.e. to growing plants. Therefore this regulation could not be used against a grower who fails to identify water quality as critical to ensuring food safety. The Food Safety Act 1990 makes the sale of contaminated watercress an offence, but it appears that the control of this particular hazard is currently not a legal requirement since it arises when the watercress is growing.

89. This is clearly unsatisfactory. We are aware that current EU proposals for consolidation of hygiene directives under discussion in the Council of Ministers would require hygienic practices (but not a HACCP approach) to be applied in primary production. We support this proposal, but unless and until this provision is made law, it would appear that in this instance neither the consumer nor responsible watercress producers are sufficiently protected. We suggest that the Agency convenes a meeting with the relevant industry sector and enforcement authorities with a view to producing a supplement to the Industry Guide on Fresh Produce, or issuing a technical note to enforcement authorities.

90. Our conclusion is,

- watercress producers should be under an obligation to control this hazard in primary production.

91. We recommend that,

- the Agency examines what scope there might be to introduce the necessary measures;
- the Agency explores ways to promote best practice to raise hygienic standards in the watercress industry.

Audit requirements of customers

92. Many responses^{R10, R15, R40} and indeed small businesses^{V9, V10, V11, V14, V16, V19, V21} that were visited emphasised the resources required to fulfil the audit requirements of their customers, often the major retailers. The small businesses say that each audit lasts a day, which requires them to commit significant staff resources to it, and that they might get five, six or more audits a year. They say that the audits are extremely thorough, and the

requirements of inspections by local authorities are usually regarded by the business as trivial by comparison. They are also audited independently to an industry standard scheme that they say was intended to replace individual audits, but in practice has had limited effect. One response^{R40} suggested that the increasingly demanding factory audits have reached a level where they threaten the continuity of business. The proprietor of one businesses^{V9} visited also took this view.

93. Some businesses assume that the detailed requirements of these audits flow from food law. While undoubtedly some of them are a consequence of legal requirements (e.g. hazard analysis plans), they probably include the elements needed for a due diligence defence as well as other information required for purely commercial purposes. Due diligence is not a legal requirement, but should a business be prosecuted for a food offence, it is the only defence available under the Food Safety Act.

94. We fully accept that all of this is a consequence of normal private contractual arrangements. If small food companies want the business, they must meet the needs of their customers. We also recognise that the existence of these arrangements makes a considerable contribution to consumer protection.

95. We took legal advice on the requirements of the due diligence defence. One of the many general principles of due diligence is that the precautions and checks to be taken depend on the size and resources of the company. But when a larger company is the customer, then the due diligence appropriate for a company of its size might be demanded of its smaller supplier. It follows that the due diligence requirements might be disproportionate to that of the smaller company, and greater than if that smaller company was supplying the consumer directly. This was also pointed out by a respondent^{R15}. She suggests that the Food Standards Agency could produce guidelines on interpretation of what are “reasonable precautions” within a due diligence defence.

96. It also occurs to us that local authorities could establish to what degree businesses are inspected by other bodies. They could then make an assessment of their thoroughness, and take this into account as part of their own inspection. This factor could be incorporated into the appropriate Food Safety Act Code of Practice.

97. Our conclusion is,

- further work needs to be done to establish to what extent these audit requirements actually do flow from the need for due diligence, and if guidelines were to be produced, whether they would be likely to make any difference in practice to small food producers.

98. We recommend that,

- audits undertaken within commercial arrangements should be taken into account by local authorities when formulating their own inspection plans.

Lack of statutory obligations on labelling of origin

99. One respondent^{R41} and one business visited^{V1} said that the central weakness of the present food regulation in the UK is the lack of statutory obligations on labelling of origin. Their concern is that this puts the home industry at a competitive disadvantage because it allows imports to be passed off to consumers as if produced to UK standards. Without commenting on the assumptions underlying this statement, we understand that the Agency has accepted the need for country of origin labelling, and is seeking a change in the law to that effect. We support this policy, not only because a sector of the industry regards it as a burden not to have such labelling, but also because such labelling enables consumers to make a more informed choice. However, we recognise that other responses regarded additional labelling as a burden *per se*.

100. Our conclusion is,

- country of origin labelling can provide information to consumers on which to make an informed choice.

Inconsistencies in interpretation of QUID

101. Some of the responses^{R25, R46} and one of the visits^{V26} highlighted the difficulty of consistent application of QUID (Quantitative Ingredient Declaration). The small business we visited sympathised with her Trading Standards Authority struggling with the QUID rules, with the result that advice was not consistent.

102. We recommend that,

- the Food Standards Agency considers what further assistance it could give to simplify the application of the QUID rules.

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Annex A

Task Force Membership

Mrs Dorothy Craig	Consumer representative
Dr Richard Harding	Food Standards Agency (Chairman)
Mrs Zmira Hornstein	Economic consultant
Professor Tim Lang	Professor of Food Policy, Thames Valley University
Sir Julian Rose	Organic farmer

Secretariat

Mr Steve Catling (June 2000 - December 2000)
Mr Aaron Kidd (September 2000 – November 2000)
Mr Richard Porter (January 2000 – March 2001)

Annex B

List of consultees.

United Kingdom-Wide

Alliance Of Independent Retailers
Allied Brewery Traders Association
Amalgamated Master Dairymen Ltd
Anglo-European Livestock Association
Anglo-Scottish Fish Producers Organisation
Arena
Asparagus Growers' Association
Association Culinaire Francaise
Association of Approved Meat Suppliers to Caterers
Association of Bakery Ingredients
Association of British Abattoir Operators
Association of British Abattoir Owners Ltd
Association of British Fresh Milk Manufacturers
Association of British Meat Processors
Association of British Salted Fish Curers and Exporters
Association of Catering Equipment Manufacturers and Importers
Association of Cereal Food Manufacturers
Association of Cheese Processors
Association of Convenience Stores
Association of Dealers in Crystallised Fruits
Association of Deer Management Groups
Association of Fish Salters and Curers
Association of Fish Cannery
Association of Licensed and Multiple Retailers
Association of Livestock Exporters
Association of Malt Products Manufacturers
Association of Non-Brewed Condiment Manufacturers
Association of Pastry Chefs
Association of Sea Fisheries Committees
Association of Unpasteurised Milk Producers
Automatic Vending Association of Great Britain
Bakery Allied Traders Association
Bangladesh Caterers Association In Great Britain
British Compressed Gases Association
Bee Farmers Association
Biscuit Cake Chocolate and Confectionery Alliance
Bottled Water Association
Bottled Water Cooler Association
Brassica Growers Association
Brewers and Licensed Retailers Association

British Association of Canned Foods Importers and Distributors
British Association of Catering Butchers
British Association of Feed Supplement and Additive Manufacturers
British Association of Leisure Parks Piers and Attractions
British Association of Nutritional Therapists
British Association of Ship Suppliers
British Beekeepers Association
British Bison Association
British Caramel Manufacturers Association
British Commercial Rabbit Association
British Confectioners Association
British Crayfish Association
British Deer Farmers Association
British Domesticated Ostrich Association
British Edible Pulse Association
British Egg Products Association
British Essence Manufacturers
British Essential Oils Association
British Fishermen's Associations
British Food Manufacturers Industries Research Association
British Frozen Food Federation
British Fruit and Vegetable Manufacturers Association
British Fruit Juice Importers Association
British Goat Society
British Health Food Trade Association
British Hospitality Association
British Hotels, Restaurants and Caterers Association
British Iceberg Growers' Association Ltd
British Importers Association
British Independent Fruit Growers Association
British Independent Grocers Association
British Meat Federation
British Meat Manufacturers Association
British Multiple Retailers Association
British Natural Mineral Waters Association
British Oat and Barley Millers Association
British Onion Growers' Association
British Organic Farmers
British Pasta Producers Association
British Pig Association
British Poultry Meat Federation Ltd
British Refrigeration Association
British Resin Manufacturers Association
British Retail Consortium
British Rice Association
British Sandwich Association

British Sheep Dairying Association
British Soft Drinks Association
British Soluble Coffee Manufacturers Association
British Starch Industries Association
British Trout Association
British Wheat Starch Association
British Wild Boar Association
Canned Food Importers Association
Confederation of British Industry
CCSB
CENTA
Cereal Ingredient Manufacturers Association
Chamber of Fishing
Chilled Food Association Ltd
Chocolate Society
CICL
Civic Catering Association
Co-Operative Milk Trade Assoc
Co-Operative Retail Services
Co-Operative Union Ltd
Co-Operative Wholesale Society Ltd
Cocoa Association of London
Coffee Trade Federation
Cold Storage and Distribution Federation
Combined Edible Nut Trade Assoc
Commercial Queen Rearers' Association
Commercial Rabbit Association
Cookery and Food Association
Council of National Beekeeping Associations of the United Kingdom
Country Landowners Association
Countryside Alliance – Honest Food
Crab Processors Association
Creamery Proprietors Association
Crystallised Fruit Dealers Association
Dairy Industry Federation
Dairy Trade Federation
Dairymen's Association
Dessert and Cake Mixes Association
Direct Sellers Co-Operative Ltd
Duck Producers Association
European Snacks Association
Family Farmers Association
Farm and Food Society
Federation of Agricultural Co-operatives
Federation of Bakers
Federation of British Port Wholesale Fish Merchants Association

Federation of Fresh Meat Wholesalers
Federation of Licensed Victuallers Associations
Federation of Oils Seeds and Fats Association
Federation of Small Businesses
Federation of Wholesale Distributors
Feed Fat Association
Fish and Meat Spreadable Products Association
Fish Foundation
Fleetwood Fish Producers Organisation Ltd
Flour Advisory Bureau
Food and Drink Federation
Food Additives Industry Association Ltd
Food Casings Association
Food Manufacturers Federation
Food Manufacturers Industrial Group
Forum of Private Business
Fresh Produce Consortium (UK)
Fruit and Vegetable Canners Association
Fruit Importers Association
Fruit Juice Importers Association
Gin and Vodka Association
Goat Producers' Association
Goats' Milk Processors Federation
Grain and Feed Trade Association
Grimsby Mobile Fish Retailers Association
Guild of Bangladeshi Restaurateurs
Guild of Fine Food Retailers
Halal Meat
Hamper Industry Trade Association
Health Food Manufacturers Association
Home Brewing and Winemaking Association
Honey Importers and Packers Association
Hospital Caterers Association
Hotel Catering and Institutional Management Association
Ice Cream Alliance Ltd
Ice Cream Associates
Ice Cream Federation
Incorporated National Association of British and Irish Millers
Independent Food Retailers Confederation
Independent Milk Producers and Processors
Infant and Dietetic Food Association
Institute of Brewing
Institute of British Bakers
Institute of Cattle Officers
Institute of Grocery Distribution
Institute of Health Food Retailing

Institute of Refrigeration/ Refrigeration Industry Board
 International Association of Cold Storage Contractors
 International Bottled Water Association- European Chapter
 International Cocoa Organisation
 International Distillers and Vintners
 International Federation of Essential Oils and Aroma Trades
 International Fish Meal and Oil Manufacturers Association
 International Flavours and Fragrances GB Ltd
 International Flight Catering Association
 International In-Flight Caterers Association
 International Meat Trade Association
 International Pectin Producers Association
 Joint Consultative Council For Meat Trades in the United Kingdom
 Joint Council of Vegetable Merchants Association
 Joint Industrial Council For The Slaughterhouse Industry
 Lard Association
 Leaf
 Licensed Animal Salvage and Slaughter Association
 Liquid Food Carton Manufacturers' Association
 Livestock Auctioneers Association
 Livestock Auctioneers Market Committee
 Livestock Traders Association
 Local Authorities Caterers Association
 London Fish Merchants Association
 London Retail Meat Traders Association Ltd
 Mail Order Fine Food Association
 Maltsters Association of Great Britain
 Margarine and Spread's Association
 Meat and Livestock Commission
 Meat Industry Liaison Group
 Mushroom Growers Association
 National Association of British and Irish Millers
 National Association of British Market Authorities
 National Association of Catering Butchers
 National Association of Cider Makers
 National Association of Farmers Markets
 National Association of Fruit and Potato Traders Ltd
 National Association of Health Stores
 National Association of Licensed House Managers
 National Association of Master Bakers, Confectioners and Bakers
 National Association of Perry Makers
 National Association of Poultry Suppliers
 National Association of Shopkeepers
 National Association of Speciality Food and Drink Processors
 National Association of Speciality Food Groups
 National Association of Tripe Dressers

National Beef Association
National Catering Federation
National Chamber of Trade
National Cold Storage Federation
National Council of Hotels Association
National Dairy Council
National Dairymen's Association
National Dried Fruit Trade Association
National Edible Oil Distributors' Association
National Farmers Union
National Federation of City Farms
National Federation of Fish Friers Ltd
National Federation of Fishermen's Organisations
National Federation of Fishmongers
National Federation of Inland Wholesale Fish Merchants
National Federation of Licensed Victuallers
National Federation of Meat and Food Traders
National Federation of Produce Merchants Ltd
National Federation of Wholesale Poultry Merchants
National Game Dealers Association
National Independent Supermarket Association
National Joint Council of British Potato Merchants
National Market Traders Federation
National Outdoor Events Association
National Pig Association
National Pig Breeders Association
National Poultrymeat Specialists
National Rendering Association
National Sheep Association
National Snail Farming Centre
National Summer Fruits Association
National Union of Retail Confectioners
National Vegetable Society
National Wholesale Meat Joint Advisory Committee
Natural Mineral Water Association
Natural Mineral Waters and Bottled Waters Association
Natural Sausage Casings Association
New Spirits Association
North Sea Fishermen's Organisation Ltd
Northern Food and Drink Federation
Pea Pickers and Pea Packers Association
PFMA
Pickles and Sauces Association
Pizza and Pasta Association
Pizza, Pasta and Italian Food Division
Potato Marketing Board

Potato Processors Federation
Poultry Processors
Prepacked Flour Association
Prepared Fish Products Association
Preserved Milk Manufacturers Association
Produce Packaging and Marketing Association.
Quality British Celery Association
Quality Meat and Livestock Alliance
Radish Growers Association
Refrigerated Food Industry Confederation
Refrigeration Industry Board
Restaurant Association GB
Restaurateurs Association of Great Britain
Retail Distributors Association Inc
Rice Association
Roast and Ground Coffee Association
Rough Fell Breeders Association
Royal Agricultural Society of England
Royal Association of British Dairy Farmers
Rusk Manufacturers Association
Salmon and Trout Association
Salt Manufacturers' Association
Sea Fish Industry Authority
Seasoning and Spice Association
Seed Crushers and Oil Producers Association
Self-Raising Flour Association
Shellfish Association of Great Britain
Sherry Shippers Association
Small and Family Farms Alliance
Small Farmers Association
Small Independent Brewers Association
Smithfield Market Tenants Association
Snack Nut and Crisp Manufacturer Association Ltd
Society of Independent Brewers
Soil Association
Soup and Gravy Manufacturers Association
Specialist Cheesemakers Association
Speciality Salad Producers Association
Spice Trade Association
Stilton Cheesemakers Association
Suffolk Meat Traders and Consumers Association
Sugar Bureau
Sustainable Agriculture, Food and Environment (SAFE) Alliance
Sustained Food and Farmers Alliance
Table Jellies Association
Tea Buyers Association

Tea Council Ltd
Tea Packers Association
Tenant Farmers Association
Thames and Chiltern Vineyards Association
United Kingdom Association of Frozen Food Producers
United Kingdom Association of Manufacturers of Bakers Yeast
United Kingdom Baking Industry Consultative Committee
United Kingdom Cheese Guild
United Kingdom Dairy Association
United Kingdom Egg Producers Association Ltd
United Kingdom Federation of Business and Professional Women
United Kingdom Federation of Milk Producer Organisations
United Kingdom Fellmongers Association
United Kingdom Maize Millers Association
United Kingdom Potato Processors Association
United Kingdom Preserves Manufacturers Association
United Kingdom Provision Trade Federation
United Kingdom Register of Organic Food Standards
United Kingdom Rum Importers Group
United Kingdom Sugar Industry Association
United Kingdom Tea Association
United Kingdom Vineyards Association
United Kingdom Warehousing Association
United Milk Producers
Vegetable Protein Association
Vinegar Brewers Federation
Water Buffalo Herd Association
Watercress Association
West Sussex Growers Association
White Oils Association
Wholesale Confectioners Alliance
Wine and Spirit Association
Wine Standards Board
Women's Farming Union
Women's Food and Farming Union
Worshipful Company of Butchers

Welsh Trade Associations

Agri-Food Partnership
CBI Wales
Country Landowners Association
Farmers Union of Wales
Federation of Small Businesses
National Farmers Union (Wales)

National Federation of Women's Institutes
Wales Young Farmers' Club
Welsh Beef and Lamb Promotions
Welsh Beekeepers Association
Welsh Food Promotions Ltd
Welsh Specialist Cheesemakers

Scottish Trade Associations

Aberdeen Angus Cattle Society
Aberdeen Angus Producers (Scotland) Ltd
Aberdeen Fish Curers and Merchants Association Ltd
Aberdeen Fish Producers' Organisation Ltd
Anglo Scottish Shellfishermen's Association
Association of Bed and Breakfast Operators
Association of Deer Management Groups
Association of Independent Crop Consultants
Association of Scottish Chambers of Commerce
Association of Scottish Shellfish Growers
Blackface Sheep Breeders' Association
Brewer Association of Scotland
British Deer Producers Society Ltd
British Deer Society
British Hospitality Association
CBI Scotland
Chilled Food Association Ltd
Clyde Fishermen's Association
Co-Operative Union
Crofter Commission
Eyemouth and District Fishermen's Association
Eyemouth Fish Merchants Association
Farming and Wildlife Advisory Group
Federation of Highlands and Islands Fishermen
Federation of Small Business Scottish office
Fife Fish Producers Organisation Ltd
Fife Fishermen's Association
Fish Salesmen's Association (Scotland) Ltd
Fishermen's Association Ltd
Fishermen's Mutual Association (Eyemouth) Ltd
Fishing Co-Operatives
Forum of Private Business
Freight Transport Association Ltd
Glasgow Wholesale Fruit and Vegetable Traders' Association
Herring Buyers Association Ltd
Highlands and Islands Enterprise
Highlands and Islands Fishermen's Association

Institutes of Auctioneers and Appraisers In Scotland
Live Shellfish Traders' Association (Scotland)
Mallaig and North West Fishermen's Association
Malt Distillers' Association of Scotland
Meat and Livestock Commission
National Chamber of Trade Scottish Council
National Farmers' Union of Scotland
National Livestock Traders and Producers Association
North of Scotland Milk Co-Operative
Orkney Fisheries Association
Quality Meat Scotland
Salmon Net Fishing Association of Scotland
Scotch Whisky Association
Scotland's Tomatoes Ltd
Scottish Agricultural Organisation Society Ltd
Scottish Association of Master Bakers
Scottish Association of Meat Wholesalers
Scottish Association of Young Farmers Clubs
Scottish Beekeepers' Association
Scottish Corn Trade Association Ltd
Scottish Council Development and Industry
Scottish Council For Voluntary Organisation
Scottish Dairy Association
Scottish Egg Producer Retailers Association
Scottish Egg Trade Association
Scottish Enterprise
Scottish Federation of Fishmongers
Scottish Federation of Meat Traders Associations Inc.
Scottish Fish Merchants Federation
Scottish Fishermen's Federation
Scottish Flour Millers Association
Scottish Food and Drink Federation
Scottish Food Trade Association
Scottish Health Food Retailers
Scottish Healthcare Supplies
Scottish Landowners Federation
Scottish Licensed Trade Association
Scottish Live Shellfish Buyers Association
Scottish Meat Wholesalers
Scottish Milk Ltd
Scottish Organic Producers Association
Scottish Pelagic Fishermen's Association Ltd
Scottish Pig Industry Initiative
Scottish Potato Trade Association
Scottish Retail Consortium
Scottish Salmon Farmers Marketing Board

Scottish Salmon Smokers' Association
Scottish Scallop Fishermen's Association Ltd
Scottish Seed and Nursery Trade Association
Scottish Shellfish Marketing Group Ltd
Scottish Soft Fruit Growers
Scottish Tourist Board
Scottish Whitefish Producers Association
Scottish Women Rural Institutes
Seafish Industry Authority
Shetland Agricultural Association
Shetland Fish Processors Association
Shetland Salmon Farmers' Association
Shetland Seafood Quality Control
Skye and Lochalsh Fishermen's Association
The Fishermen's Association Ltd
The Independent Farming Group
The Scottish Agricultural Contractors Association
The Wick and Scrabster Fish Traders Association
Ullapool-Assynt Fishermen's Association
United Kingdom Association of Fish Producers Organisations
VTSC Growers Association
West of Scotland Fish Producers Organisation
Western Isles Fishermen's Association
Wholesale Grocers' Association of Scotland
Women's Farming Union

Northern Irish Trade Associations

Anglo North Irish Fish Producers Organisation Ltd
Foyle Fisheries Commission
Livestock and Meat Commission
Lough Erne Fishermen's Association
Lough Neagh Fishermen's Association
North Irish Sea Fishermen's Association
Northern Ireland Agricultural Producers' Association
Northern Ireland Bakers Union
Northern Ireland Chamber of Commerce and Industry
Northern Ireland Cold Stores Association
Northern Ireland Fish Producers Organisation Ltd
Northern Ireland Fish Processors Association
Northern Ireland Fish Salesmen's Association
Northern Ireland Fishermen's Federation
Northern Ireland Food and Drink Association
Northern Ireland Master Butchers' Association
Northern Ireland Meat Exporters' Association

Northern Ireland Small Business Institute
Northern Ireland Soft Drinks Association
The Federation of The Retail Licensed Trade Northern Ireland
Ulster Farmers' Union
Ulster Sea Fishermen's Association

Other Stakeholder Organisations - England

Additives Survivors Network
Age Concern
Anaphylaxis Campaign
Association of Community Health Councils
Association for Consumer Research
Association of British Healthcare Industry
Association of London Authorities
Association of London Chief Environmental Health Officers
Association of London Government
Association of Port Health Authorities
Association of Public Analysts
Baby Milk Action Group
Bakers Food and Allied Workers Union
Board of Deputies of British Jews
British Allergy Foundation
British Cattle Veterinary Association
British Deaf Association
British Diabetic Association
British Dietetic Association
British Federation of Women Graduates
British Heart Foundation Promotion Research Group
British Medical Association
British Nutrition Foundation
British Standards Institution
British Veterinary Association
Campaign for Real Ale Ltd
Centre for Study of Environmental Change
Chartered Institute of Environmental Health
Child Poverty Action Group
Co-operative Women's Guild
Coeliac Society
Commission for Racial Equality
Commonwealth Countries League
Community Practitioners' and Health Visitors' Association
Consumer Congress
Consumers Committee for Great Britain
Consumers in Europe Group

Consumers' Association
 Council for the Protection of Rural England
 Council of British Pakistanis
 CWS Parliamentary Office
 ENB Healthcare Database
 Environmental Health Advisory Board
 European Research Into Consumer Affairs
 European Union of Women
 Farm and Food Society
 Federated Union of Managerial and Professional Officers
 Federation of Muslim Organisations
 Federation of Synagogues
 Food Commission
 Freight Transportation Association
 Friends of the Earth UK
 GEMS Genuine Empowerment of Mothers in Society
 Genetic Food Alert
 Greenpeace UK
 Guild of Food Writers
 Halal Consumers
 Halal Food Authority
 Health Development Agency
 Help the Aged
 Hyperactive Children's Support Group
 Institute of Consumer Affairs
 Institute of Consumer Sciences
 Institute of Environmental Health Officers
 Institute of Food Science and Technology
 Institute of Trading Standard Administrators
 LEAF
 League of Jewish Women
 Local Authorities Caterers Association
 Local Authorities Co-ordinating Body on Food and Trading Standards
 Local Government Association
 Mind - National Association for Mental Health
 Muslim Council of Britain
 National Association of Citizens Advice Bureaux
 National Association of Teachers of Home Economics and Technology
 National Association of Women's Clubs
 National Asthma Campaign
 National Board of Catholic Women
 National Childbirth Trust
 National Children's Bureau
 National Consumer Council
 National Council for Voluntary Associations
 National Council of Women

National Federation of Community Organisations
National Federation of Consumer Groups
National Federation of Women's Institutes
National Food Alliance
National Heart Forum
National Housewives Association
Office of Fair Trading
Parliamentary Office of Science and Technology
Royal Association for Disability and Rehabilitation
Royal College of Physicians
Royal College of Veterinary Surgeons
Royal Institute of Public Health and Hygiene
Royal National Institute for the Blind
The Royal Society
Royal Society for Mentally Handicapped Children and Adults
Royal Society for the Promotion of Health
Royal Veterinary College
Scottish Consumer Council
Socialist Environment and Resources Association
Soil Association
Sustain - The Alliance for Better Food and Farming
Terrence Higgins Trust
The Small Farm Alliance
Townswomen's Guilds
Trades Union Congress
Union of Muslim Organisations of the United Kingdom and Eire
UNISON
VEGA Research
Vegan Society
Vegetarian Society
VIVA
Women's Environmental Network
Women's National Commission
Womens Royal Voluntary Service
Women's Unit Cabinet Office
Worldwide Fund for Nature

Other Stakeholder Organisations – Wales

LACOTS (Welsh Office)
Transport and General Workers Union
United Kingdom Home Economics Federation
Union Of Shop Distributive and Allied Workers
Wales TUC
Welsh Consumer Council

Welsh Council CIEH
Welsh Food Alliance
Welsh Local Government Association

Other Stakeholder Organisations – Scotland

Association of Public Analysts of Scotland
British Institute of Agricultural Consultants
Convention of Scottish Local Authorities
Friends of the Earth Scotland Ltd
International Federation of Environmental Health
Scottish Consumer Council
Scottish Food Hygiene Officers Association
Scottish Housewife Association
Scottish Trade Union Congress
Union of Shop, Distributive and Allied Workers

Other Stakeholder Organisations – Northern Ireland

General Consumer Council For Northern Ireland
Local Enterprise Development Unit
Union Of Shop Distributive and Allied Workers

Annex C

Consulation Letter

To: Interested Parties (see attached list)

16 August 2000

Dear Sir/Madam

TASK FORCE ON THE BURDENS OF FOOD REGULATIONS ON SMALL FOOD BUSINESSES

The Food Standards Agency has set up this task force in response to the concern that small food businesses might be constrained by the burden of food safety or other food regulations.

The terms of reference for the Review are,

In relation to the Agency's mission to protect the health of the public in relation to food,

- (a) to evaluate quantitatively the impact of food safety requirements and other food regulations on the economic viability of small food businesses:
- (b) to consider the long term impact of the above on consumer choice; and
- (c) to consider what beneficial changes might be made from the consumer and small business point of view.

The focus of this review therefore is the effect of the burden of food regulations and the way they are applied on the viability of small food businesses. The Task Force has adopted the EU definition of a small business, namely a business that has under 50 employees. Farming businesses are included within the scope of the study, but only to the extent that they sell their produce directly to the public, e.g. in farm shops or farmers markets.

The Task Force has decided to address these terms of reference by seeking views through a consultation exercise. I am writing separately to trade organisations inviting them to,

1. identify which regulations their small business members find are burdensome, and
2. specify in what way they find them a burden, and
3. describe how they affect the viability of small businesses in their sector.

These questions are of course for the industry. However, the Task Force is also interested in the views on these issues of other interested organisations within the food and agriculture sector, which is my purpose in writing to you.

Meat hygiene regulations

The regulatory burden (particularly the cost implication for small abattoirs) on the meat sector has been the subject of both the Pooley and Maclean reviews, and their recommendations are either being implemented or are under consideration. In addition the BSE controls are currently under review. The Task Force is anxious not to duplicate any of this work. Therefore the burden of regulations covered by these recent initiatives are outside the scope of this consultation. The outcome of these separate reviews will be taken into account by the Task Force at a later stage.

How to respond

The closing date for responses to this consultation exercise is 7 November 2000. Please send your responses to,

- Steve Catling, Food Standards Agency, PO Box 31037, London SW1P 3WG,
- or by fax on 020 7238 5696,
- or by e-mail to smallfoodbusinesses@foodstandards.gsi.gov.uk

It is normal practice in FSA consultations that all responses be made publicly available. Please make it clear if you wish yours to be kept confidential. We will put a summary of the responses on the FSA website and a copy will be sent to all respondents.

Yours sincerely

Dr Richard Harding
Chairman, Task Force on the Burdens of Food Regulations
on Small Food Businesses

Annex D

Questionnaire for small businesses

QUESTIONNAIRE FOR VISITS TO SMALL FOOD BUSINESSES

About the business

1. What are the main activities of your business?
2. When was it established?
3. How many people does the business employ?
4. What is the gross annual turnover of the business? (A range would suffice)

About the regulations

5. Which requirements of food regulations do you find burdensome?
6. In what way are they burdensome?
7. Can you quantify how much these requirements cost your business? (in terms of money, time and other factors.)
8. Are these costs a) set up costs (fixed and once only) or b) recurring, running costs?
9. Can you help us put these costs into context by providing evidence of other costs in the business (e.g. rent, labour)?
10. What sort of relationship do you have with your enforcement authority?
11. What impact do you think the removal of these requirements of food regulations would have on your business?
12. What is the main source of your information on food regulations? (please state source, e.g. trade associations, central government, local government, food trade journals, colleagues in the industry, media, etc.).
13. Where do you get advice about the implications of food regulations for your business? (please state source, as for question 12).

Annex E

Initiatives to minimise inconsistency in local authority enforcement

At a local level

- documented policies and procedures to ensure a consistent approach to enforcement activities including team briefings/discussions
- officers specialising in food law enforcement and forming teams to inspect certain specialist processes
- management systems to validate inspections eg follow-up/accompanied/team/mock inspections
- requesting feedback from businesses following inspections eg questionnaires
- meetings with local businesses including formal business partnerships

At a regional level

- meeting with neighbouring authorities on a regular basis in liaison groups to consider, amongst other issues, the implementation of new legislation and compliance strategies, issues of interpretation to ensure a consistent approach
- organising inter authority auditing and peer review exercises to assess authorities compliance with national expectations and identify good practice
- identification of joint training needs and organising training events
- coordinating regional projects eg sampling exercises, seminars for businesses, developing guidance for officers to aid consistency

At a national level

- publishing guidance and advice on enforcement approach and legal interpretations eg LACOTS guidance on inspections, risk assessment, hazard analysis and inter authority auditing
- resolving matters of interpretation from liaison and specialist groups, trade associations and others

- promoting examples of good enforcement practice and trade initiatives through dissemination on LACOTS website
- promoting the home authority principle, ensuring businesses have an appropriate home authority partnership, effective authority liaison takes place and facilitating dialogue and/or meetings of home authority interest groups
- assessing training needs and developing appropriate courses
- LACOTS expert advisory groups that provide a focus for discussing issues, meeting with government, trade and consumer bodies

Annex F

The discussion of detailed points made by the Specialist Cheesemakers' Association (SCA)

1. In their response to the consultation, the SCA listed a number of regulatory issues, which are addressed individually below. Each begins with a summary of the point made. We invited the Agency's comments on each issue.

Temperature control

2. The SCA pointed out that European law requires that cheeses be kept at a temperature that will not endanger human health. Scotland keeps to that wording, but England insists on less than 8°C. Agency officials informed us that the relevant provision in EU law is Council Directive 93/43, which does not mention the storage of cheese specifically. The regulations that apply in England and Wales do not insist that cheese is stored below 8°C, although 8°C or below is required unless the business can demonstrate that storage at the higher temperature in combination with the designated shelf life does not represent an unacceptable risk to health. The figure of 8°C was chosen because most pathogens do not grow significantly below this temperature. The difference between English and Scottish law reflects that fact that retail level temperature controls are a matter of national competence, and different administrations are entitled to take different views.

3. The Task Force notes the differences between English and Scottish law, but does not consider that this difference creates a significant burden for the cheesemaking industry.

Microbiological derogations

4. Existing regulations allow derogation from certain provisions, including microbiological standards for "cheeses of traditional character". There is a current proposal to amend the regulations that would remove these derogations. The SCA says concedes that no cheese is registered in the United Kingdom as a cheese of traditional character, but also say that it was told that it was not necessary for anyone to apply because all cheeses would be covered automatically. It argues that the removal of the derogations would be to consign such products to history, and would mean that no one would be able to produce them in future.

5. Agency officials inform us that this issue has been the subject of protracted correspondence with the SCA. The existing regulations grant a derogation from the microbiological criteria for cheeses with traditional characteristics, but the Agency is not aware that any cheesemaker in the United Kingdom has sought to take advantage of this derogation.

6. Moreover, the Agency's view is that there is no authority in law for this derogation in the UK regulations. Further, if Ministers decide to remove this derogation, then the door is not closed. Cheesemakers could still apply to the Food Standards Agency, who would in turn have to apply to the European Commission. The Agency is not aware that any Member State has ever applied for authority to grant such derogations, so has no practical experience of how the European Commission would approach such an application. The Commission has indicated to the Agency that it would be unlikely to contemplate derogations in respect of pathogenic micro-organisms since quite apart from any public health issue, it would be unlikely that a cheesemaker could demonstrate that the presence of pathogens was intrinsic to the traditional characteristics of a cheese.

7. As to handling in the UK, the Agency would need to consider carefully whether any application made to us could be supported and forwarded to the Commission. This may involve consulting the Advisory Committee for the Microbiological Safety of Food. Further, the Agency would need to have a description of the micro-organisms concerned, and how they are intrinsic to the cheese's production, and an indication of how the traditional characteristics of the cheese are jeopardised by the microbiological criteria in question.

8. The SCA has said elsewhere in their submission that microbiological criteria are not hard for cheesemakers to meet. It is therefore difficult to see how the need for the derogation can be maintained.

9. In the light of all this, we are not convinced that derogations from the standards for pathogens is an issue of any practical importance for the cheesemaking sector given that,

- the industry has said that it is not hard for cheesemakers to meet the standards,
- there would appear to be no justification on public health grounds for some exposing consumers to pathogens in some cheeses but not others,
- it does not appear to be a burden in practice.

Frequency of microbiological testing

10. The SCA has pointed out that the Dairy Product (Hygiene) Regulations 1995 leave open the frequency of testing, and therefore it is possible that every batch may be tested by an overzealous EHO. They say that this is acceptable if a cheesemaker produces 1000 cheeses, but not if production is limited to 10 cheeses. The Agency says that it is true that the Regulations leave open the frequency of testing, but argue that it is unreasonable to assume that any EHO could require 100% testing, since this would not be proportionate enforcement action. Most of the testing of cheese should be done by the producer as part of verification within HACCP-based controls.

Further, the Agency says that there have no evidence that EHOs are or have been overzealous in this respect.

11. We conclude that although there is theoretically scope for disproportionate enforcement in relation to microbiological sample testing, it would be contrary to guidance and does not seem to be a problem in practice.

Challenge of microbiological test results

12. The SCA point out that there is no provision in the regulations for the challenge of “official” test results. The Agency accepts that this is so, but indicates that appeal procedures are set out in the Food Safety Act. However, the Agency has also pointed out that Local Councils should have in place customer care and complaint procedures that embrace mechanisms to resolve complaints outside courts of law.

13. It appears that there is provision for appeal, and therefore there would be the opportunity to introduce other analytical evidence, depending on the individual circumstances of the case. However, this will rarely be a feasible option for small businesses, which would in practice need to rely on discussions with the Local Authority, as indicated by the Agency. We recommend in paragraph 36 that businesses are always informed about their option to challenge particular decisions of enforcement officers, and should be prepared to do so. We think that this should meet this particular point.

Zero tolerance for Listeria

14. The SCA say that the regulations impose a zero tolerance for Listeria, which is a discrimination against cheese. It does not apply to other foods such as paté, meats and salads that are just as likely if not more so to contain Listeria. The Agency says that it is not aware of any instance of a cheesemaker in difficulty with the enforcement authorities on the basis of low levels of listeria. Further, they say that although the regulations set a zero tolerance, the scientific consensus is that low levels (up to 100cfu/g) are unlikely to pose a threat to public health. Listeria is a hazard which should be controlled by HACCP-based procedures.

15. It seems to us that the issue is whether cheesemakers have actually been challenged on levels up to 100 cfu/g. We therefore wrote to the SCA to ask them if they knew of any instances where a cheesemaker had been in difficulty with the enforcement authorities over levels of Listeria in cheese up to 100 cfu/g. The SCA replied that they were aware of one case where low levels of Listeria monocytogenes had been detected, but did not say whether the level was above or below 100cfu/g. In that case, the producer withdrew the relevant batch, and undertook further testing, all with the knowledge and support of the local EHO.

16. The SCA also argued that the requirement to ensure that levels of *Listeria monocytogenes* in cheese remain below 100cfu/g could impose a considerable burden on businesses as the cheesemaker would be responsible for storage conditions that the customer and consumer might reasonably be expected to apply. They say that since these cheeses are best consumed above 8°C, the storage conditions applied by some customers, especially in catering establishments, might result in levels of *Listeria monocytogenes* that exceed the legal limit.

17. The industry is only aware of one case where low levels of *Listeria monocytogenes* led to withdrawal of product, but the actual level of *Listeria* is not known. On storage conditions, we believe that the cheesemaker would be responsible for indicating appropriate storage conditions on the label, but could not be accountable for the storage conditions that the customer and consumer might apply. We therefore conclude from this that the illegality of levels of *Listeria monocytogenes* in cheese between 0 and 100cfu/g is not in practice a significant regulatory burden on the industry.

Fixed nature of microbiological criteria

18. The SCA say that the fixed nature of microbiological criteria is burdensome not so much in that they are hard for cheesemakers to achieve, but that it is inevitable that there will be occasions when results are outside the criteria. Therefore the SCA argue that the criteria should be guidelines rather than standards, because all too often a dogmatic approach condemns a cheesemaker for a single result outside the criteria. The Agency says that they are not aware of any cheesemaker in difficulty with the enforcement authorities because of occasional results outside the criteria when public health is not an issue.

19. We believe that the key phrase here is, 'when public health is not an issue.' In the absence of any evidence coming forward of problems caused to the industry when a single result is outside the criteria when public health is not at issue, we do not consider that the criteria constitute a significant regulatory burden on the industry.

Microbiological criteria unsound

20. The SCA point out that the European Union Scientific Committee on Veterinary Measures Relating to Public Health concluded that the current microbiological criteria in hygiene legislation generally were not established on the basis of a formal risk assessment, many do not appear meaningful in terms of consumer health protection, and methodology can result in different outcomes of repeated sampling. However, in spite of this, the committee continues to recommend zero tolerance for *Listeria Monocytogenes*. The Agency indicated that the conclusions of this committee were always intended to inform the current review and consolidation of all hygiene legislation.

21. We find it difficult to see that this has any practical importance, given that it does not seem to be causing any difficulties in the industry.

HACCP

22. The SCA say that HACCP is a good system but its logical conclusion, which is adopted all too frequently by both legislators and enforcers in an attempt to attain zero risk, is to analyse all hazards however remote or insignificant, and take steps to control or eliminate them. It argues that such an approach is unbalanced, uneconomic and ultimately futile, and that safety should not be considered in isolation. Other factors such as flavour, nutrition, consumer choice, gastronomic quality, diversity, employment benefits, financial costs, environmental considerations, social benefits of small rural businesses etc should also be taken into account when considering the requirements placed upon food businesses.

23. The Agency says that this comment shows a lack of understanding of what HACCP as a food safety management tool is intended to achieve. It is aware that there are barriers to the implementation of HACCP in small businesses. Consequently the FSA is working on an initiative to assist small cheesemakers to introduce HACCP-based controls in their operation. A subsequent letter from the SCA makes it clear that it fully supports this initiative.

24. We note that the SCA now fully supports the Food Standards Agency initiative to assist small cheesemakers to introduce HACCP-based controls in their businesses.

Too many approval systems

25. The SCA say that cheesemakers are bombarded with too many schemes to ensure quality, with separate inspections by MAFF, EHOs, customers, etc., and that all approval schemes should be integrated with the SCA Code of Best Practice and Self Audit Scheme. The Agency points out that food businesses are responsible in law for the safety of their products, and MAFF (in England and Wales) and EHO inspections to monitor compliance with the legislation do not overlap. It says that whatever other schemes exist as part of commercial arrangements are matters for the market.

26. As we have indicated in paragraph 94, we regard any schemes outside the standards imposed by the legislation to be commercial matters. However, we have commented on the implications of audit schemes for inspections carried out by local authorities (see para. 98).

Overzealous enforcement

27. The SCA say that in 1995 officials in Lanarkshire accused Humphrey Errington of producing cheeses with exceptionally high levels of *Listeria monocytogenes*. The matter went to court. The Sheriff found in favour of Mr Errington and commented that *Listeria monocytogenes* is a common bacterium and rarely causes illness. There was no evidence that *Listeria monocytogenes* serotype 3A was pathogenic. The Sheriff said that enforcement actions should be based on risk assessment and public health judgements, not on product testing alone.

28. The Agency says that without prejudice to the circumstances of the Lanark Blue case, it would agree with the Sheriff in that enforcement actions should be based on risk assessment and not on product testing alone. It also points out that since this case, an outbreak of listeriosis due to *Listeria monocytogenes* serotype 3A associated with the consumption of butter occurred in Finland¹⁵. Listeriosis developed in 18 individuals aged 18 – 85, of whom four died.

29. We note the Agency's comments, and support the risk assessment approach.

Duckett Cheese Case

30. The SCA say that in 1998, following a single case of illness attributed by the authorities to consumption of a cheese produced by Duckett and Co., the Department of Health issued the first ever Emergency Control Order. The proprietor of the business was forced to destroy over £40,000 worth of cheese without compensation, which effectively destroyed his business. The Agency points out that the case pre-dated the Agency, and therefore it would be inappropriate for it to comment, other than to observe that the courts completely vindicated the action taken by the Department of Health. In relation to any future use of Emergency Control Orders, the Agency would wish to consider very carefully all the circumstances as part of a risk assessment. If the size of the business were relevant, then it would be taken into account as part of this process. The lack of provision for compensation when Emergency Control Orders are made was a decision taken by Parliament when the Food Safety Act 1990 was passed.

31. We note that a lack of such compensation is a burden on the businesses affected.

Tuberculosis

32. The SCA point out that TB is spreading in the UK. If a herd gets a positive reactor, the farm loses its TB free status and is obliged to pasteurise, even though 55% of positive reactors prove, upon examination, to be false. Pasteurisation must then continue until there have been two clear tests (120 days), despite the fact that all positive reactors are slaughtered and that therefore presumably the rest of the herd are TB free. The question of what

happens to cheese already in stock then remains uncertain despite repeated requests over a two year period for definitive guidance. The SCA argue that this is a severe disincentive to make raw milk cheeses.

33. The SCA proposes that the following points be incorporated into guidance.

- Positive or inconclusive reactors should not result in loss of Officially Tuberculosis Free (OFT) status.
- All positive reactors should be checked on post mortem for lesions of the udder. If no lesions are found, stocks of cheese may be sold.
- If lesions are found, stocks of cheese made from milk from those cows should be tested for the presence of tuberculosis organisms according to International Committee for Microbiological Safety of Foods (ICMSF) protocols.
- If testing proves satisfactory, stocks of cheese made from milk from positive reactors can be sold.
- The maker should be compensated for any cheese which is withdrawn from sale at the request of the authorities whether this withdrawal is permanent or temporary.

34. The Agency says that the Joint Food Safety and Standards Group, the predecessor to the Agency, responded to these general concerns. Guidance issued on 13 March 2000 gave information on the procedure to be adopted with respect to dairy products if TB is found in dairy herds which provided the milk. Essentially this guidance indicates that in such circumstances, the risks to human health should be assessed locally taking all relevant factors into account.

35. The first point on whether positive or inconclusive reactors should result in the loss of OFT status for the herd is a matter for Agriculture Departments. The second point that all positive reactors should be checked on post mortem for lesions of the udder, and if no lesions are found, stocks of cheese may be sold, is covered in the guidance, which makes it clear that TB bacilli can sometimes be present in milk even in the absence of obvious udder disease.

36. We note that current guidance is that when TB is present in the herd, an assessment should be made of the risks to public health in each case. Of the points raised by the SCA, the first is not a matter for the Food Standards Agency, the second appears to have no basis in fact (see FSA comment). The third and fourth would be considered as part of any risk assessment, although it is not possible to ensure safety by testing.

Annex G

Glossary

BRC	British Retail Consortium
CEFAS	Centre for Environment, Fisheries and Aquaculture Science
CIEH	Chartered Institute of Environmental Health
DTI	Department of Trade and Industry
EC	European Commission
EHO	Environmental Health Officer
FSA	Food Standards Agency
FKK	Food Knowledge and Know-how
GM	Genetic modification
HACCP	Hazard Analysis and Critical Control Point. A structured system for the control of hazards in a food processes.
ICMSF	International Committee for Microbiological Safety of Foods
LACOTS	Local Authority Co-ordinating Body on Trading Standards
OFT	Office of Fair Trading
MAFF	Ministry of Agriculture, Fisheries and Food
QUID	Quantitative ingredient declaration
REHIS	Royal Environmental Health Institute of Scotland
SAGB	Shellfish Association of Great Britain
SCA	Specialist Cheesemakers' Association
SFCC	Scottish Food Co-ordinating Committee
SME	Small and medium sized enterprise
UKAS	United Kingdom Accreditation Service