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Innovation & Skills

**FOCUS ON ENFORCEMENT
REGULATORY REVIEWS**

Enforcement of Regulation in
Small Food Manufacturing
Businesses

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Introduction

Objectives and scope

1. This paper summarises the interim findings of the first of a series of regulatory reviews examining the impact of regulation, as delivered by local and national enforcement bodies, on businesses in particular areas of the economy. This review focuses on the front-line experience of regulation by small businesses in food and drink manufacturing, and sets out interim findings.
2. The paper presents the interim conclusions of the policy team, which in practice entails identifying a number of areas where regulatory enforcement in the small food manufacturing sector appears to impose unnecessary burdens on business, as well as some examples of good practice.
3. The formal scope of the review is attached at Annex A. Whilst the term “food” is used as a convenient short-hand, the review also covered the experiences and views of the manufacturers of drinks, both alcoholic and non-alcoholic.
4. In practice, therefore, there are two main areas of focus of this paper, both of which are regulatory services delivered by local authorities: food hygiene (enforced by District Councils and Unitary Authorities), and composition and labelling (enforced by County Councils or Unitary Authorities).
5. This review has been carried out in a rapid timeframe, and focused on gathering views directly from affected stakeholders. The review team took evidence from a range of business in England (including conversations with 12 individual businesses representing micro-brewers, cider-makers, carbonated mineral water producers, bakers, meat-products manufacturers, charcuterie, cheese-makers and confectioners), and evidence from 23 comments posted on-line and five trade associations – see Annex D for details. The team also consulted the Local Government Association, the Chartered Institute for Environmental Health, Trading Standards Institute, individual environmental health and trading standards enforcers, and the Food Standards Agency.

The Food and Drink Sector

6. Recent data suggests that food and drink manufacturing accounts for around 1.7% of UK Gross Value Added (£21.9bn) (in 2010); this has reduced slightly over the past decade, having represented 2.2% of GVA in 2000¹. The sector

¹ Source: National Accounts

employs 391,000 people (349,000 in food and 42,000 in drink manufacturing) – around 1.5% of the UK total². Of the 13,430 enterprises manufacturing food and drink in the UK, the majority - 12,390 - are small businesses: that is, employing fewer than 50 people; and of these over 6,000 have no employees at all.

7. The ONS defines food and drink manufacturing to cover a very wide variety of activity, including: processing and manufacture of dairy, meat, poultry, fish, grain-mill, bakery, sugar, oils, vegetable, fruit and confectionary products, and alcoholic and non-alcoholic drinks.

Food manufacturing: the regulatory landscape

8. This review is focused on small food manufacturing in England. Food policy is a devolved matter, and its delivery by local authorities is also devolved. That said, comments posted on the Focus on Enforcement web site have been welcomed from all parts of the UK and it is recognised that some of the issues faced by businesses in the sector are similar across the UK.
9. Annex C provides an overview of the roles and responsibilities of the various enforcement bodies in relation to food manufacturing³. The key bodies are local authorities, Food Standards Agency (FSA), Department for Environment, Food and Rural Affairs (DEFRA), Department of Health, and the Health and Safety Executive (HSE)

Food hygiene

10. Food hygiene can be defined as: ‘the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use⁴’. The purpose of food hygiene regulation is to ensure that food intended for human consumption is being handled, processed, stored and produced safely.

Hygiene legislation relating to food manufacture

Annex B sets out in more detail the principal legislation governing food hygiene. In practice, the requirement imposed by this legislation on businesses can be summarised as follows:

² Source: Employee Jobs (ONS)

³ A fuller guide to the complexities of this regulatory landscape can be found in *Mapping the Landscape (2009)*, available at <http://www.bis.gov.uk/assets/brdo/docs/publications-2009/09-1654-mapping-the-landscape.pdf>

⁴ as defined in Regulation EC 852/2004

(i) that the business carries out an analysis of hazards and identify critical control points and put in place procedures to monitor and control hazards in their processes based on the HACCP principles (“HACCP” – Hazard Analysis and Critical Control Points). An example of a hazard might be the presence of bacteria in a food resulting in the need to heat the food to a certain temperature for a period of time to ensure destruction of any dangerous (food poisoning) bacteria present;

(ii) that the business documents and records this in such a way that the management of critical control points can be assured by the business itself and verified by inspectors. Documentation should be appropriate to the size and nature of the business.

The legislation makes clear that HACCP requirements should provide sufficient flexibility to be applicable in all situations, including in SMEs. The Regulation provides an exemption for businesses involved in very simple food manufacturing process (an example might be slicing but not producing sandwiches); and provision of assured guidance to particular sectors (e.g. cheese making) on best practice in the application of HACCP to their type of business. It is important to note that the risks associated with the business are related to the activities and processes, not the size of the business.

Composition and Labelling and the new Food Information Regulation

11. Annex B sets out a brief summary of the existing legislation that applies to most food businesses.

Enforcement of Regulation

12. European regulations set out how food regulation is to be enforced. At the highest national level there is to be a Central Competent Authority, which in the UK is the Food Standards Agency. The FSA is responsible for the application of the legislation, and for advice and guidance relating to it; it is also required to ensure that delivery of the legislation by local authorities is proportionate, risk-based and outcome-focussed. Further detail is provided in Annex C.

Professional and representative bodies

13. Aside from bodies with specific functions laid down by the regulations other bodies or groups play a role in the way in which the regulation is enforced:
 - The Chartered Institute of Environmental Health is a professional body and sets standards and provides training and qualifications to EHOs, as well as input to policy development in central Government;
 - The Trading Standards Institute is a professional body representing the interests of Trading Standards Officers
 - The Local Government Association - in the past Local Government Regulation provided guidance and advice on a practical enforcement issues relating to both food hygiene and labelling, from which local authority regulatory services could draw when giving advice to business and consumers. This work is being carried forward by

sector topic groups, supported by the LGA, FSA, Defra and local authorities, including the newly formed Business Expert Food Standards and Labelling Group.

Third party compliance schemes

14. Outside the regulatory system, industry itself, in particular driven by the large retailers, has taken separate initiatives to ensure quality and consistency in food manufacture and processing. Two principal schemes exist:
 - BRC: The BRC Global Standards specify requirements to be met by an organisation to enable the production, packaging, storage and distribution of safe food and consumer products. They were originally developed in response to the needs of UK members of the British Retail Consortium but now have gained increasing usage world-wide. Certification is achieved through audit by third party certification bodies who are UKAS accredited to deliver the audit scheme. BRC Global Standard Food (version 6) is the latest Version
 - Salsa: Safe and Local Supplier Approval: a nationally-recognised food safety certification scheme specifically developed for small and micro producers. It is promoted as suitable for those businesses who want to demonstrate both legal compliance and the enhanced expectations of professional food buyers, without all of the requirements imposed by the BRC scheme. It is a joint venture of the Institute of Food Science and Technology, The National Farmers Union, the Food and Drink Federation, the British Hospitality Association, and the British Retail Consortium but is not UKAS accredited.

Issues identified during fact finding

15. During the fact finding stage we identified the following features of the way in which the regulatory system is enforced:
 - Proportionality of HACCP implementation by small businesses
 - Issues with HACCP as a legal requirement
 - Expertise of and support to small manufacturing businesses from local authority enforcement officers (mainly Environmental Health Officers (EHOs) and Trading Standards Officers (TSOs))
 - Ease of understanding of regulatory requirements
 - Consistency of enforcement when businesses operated over more than one local authority boundary
 - Inspections: frequency and quality
 - Lack of appropriate appeals mechanisms

Proportionality of HACCP implementation by small businesses

16. The hazard analysis and critical control point system (HACCP) is a systematic way to manage food safety and prevent food-borne illness. Promoted by the World Health Organisation, HACCP appears to be the system of choice to protect consumer safety. HACCP shares a number of conceptual features (and advantages and disadvantages) of the risk assessment methodology used commonly in Health and Safety management.
17. In principle it is a flexible, preventative, risk based approach which can be applied proportionately in different sized businesses which employ processes of varying complexity and inherent hazard. For a business with technical expertise and resource developing and implementing a food safety management system based on HACCP principles probably requires little more than that business would be likely to undertake for its own quality assurance processes.
18. We observe that for smaller businesses with less resource to employ technical expertise however, HACCP can appear burdensome and bureaucratic, and the manner in which it should be developed and implemented may be very unclear. Similar conclusions appear to have been reached by a European Commission review of the application of 852/2004 of 27 July 2009⁵, and in the UK by a review carried out by the CIEH in 2007.

⁵ http://ec.europa.eu/food/food/biosafety/hygienelegislation/docs/report_act_part1_en.pdf

Issues with HACCP as a legal requirement

19. The 2006 Davidson Review on the implementation of EU legislation identified the implementation of 852/2004 as an example of gold-plating and what Davidson classified as ‘the regulatory creep’ in that uncertainty was created by lack of clarity about the objectives or status of regulations and guidance, or over-zealous enforcement by individual EHOs who were requiring food businesses owners to attend formal, certified training courses in food hygiene and safety and HACCP (formal certified training is not required by the Regulation); and that in some cases Local Authorities were publishing guidance on food hygiene and HACCP training requirements which indicated that formal, certified training was a legal requirement:

“Regulation 852/2004 is the cornerstone of food hygiene legislation and is directly applicable to all food businesses in the UK. The main concern raised with the review was that some local authorities, or some enforcement officers, were insisting that all food handlers attend formal training courses in basic food hygiene. Furthermore, some enforcers required handlers to attend refresher training courses every three to five years and managers or supervisors to have a higher level of qualification, implying that these were specific legal requirements.” (Davidson Report, page 63)

20. Some of the complaints we heard from small businesses and representative groups were that:
- the enforcement of HACCP in their business should be risk based and proportionate since often good food hygiene practices (e.g. around personal hygiene, cold storage and pests) processes were simple and precautions were already in place and well understood and applied by staff;
 - while EHOs were usually supportive in helping them understand what was required under a HACCP there could be a box ticking approach with the emphasis on putting more not less into the critical control point management plan, potentially extending controls more widely than necessary and losing focus on the one or two control points really critical to ensuring food safety;
 - this concern could be exacerbated even further where external consultants, with possibly limited industry specific experience, were involved in helping businesses develop the HACCP;
 - several reported having been strongly encouraged by their EHO to attend formal certified training courses to better understand food hygiene, including HACCP requirements (there is a requirement for businesses to ensure that food handlers are supervised and instructed and/or trained in food hygiene matters commensurate with their work activity but there is no legal requirement to attend a certified training course);
 - the requirement for data collection and internal auditing required under HACCP principles 6 and 7 to verify and validate the system is working was particularly burdensome and created a management headache and overhead in checking that the paperwork had been properly done. The risk of non-compliance was seen as higher as a result of the new approach, and there were concerns that potentially any

errors in documentation could be used in cases where members of the public sued the business.

21. We also noted that although it appears to be the intention to exempt certain businesses from formal compliance under the regulation, the Commission's own guidance document⁶ appears to have restricted this definition to a very narrow set of activities (one business we spoke to informed us that their EHO had advised that slicing sandwiches was the only activity they undertook that was exempted). Furthermore, the legislation provides for the development of industry specific guidance on HACCP (which seems very sensible given how many businesses are essentially operating highly similar processes – e.g. baking or cheese making), yet only six such documents appear to have been produced so far and even these are not available freely but have to be purchased from HMSO (for £10).
22. We note in addition that enforcement officers are required by the FSA to take account of the FSA E-Coli Guidance⁷ (“E Coli O157 – Control of Cross-Contamination”) which stipulates that businesses must have two sets of equipment used in the preparation, production or service of both raw and ready to eat foods to manage the risk of *E coli* contamination. The guidance states “*under no circumstances should it be considered safe to use the same complex equipment, such as vacuum-packing machines, slicers, mincers etc, for both raw and ready to eat foods....*” (p20). Some enforcement officers have questioned the practicality, proportionality and cost implications, of enforcing this in every circumstance. We also question whether the requirement under Regulation 852/2004 Article 5 for every businesses to develop and implement their own food safety management system based on HACCP principles i.e. conduct their own specific risk assessment and formulate appropriate controls, is borne out by the guidance, which appears to *prescribe* critical control points. Although not a Europe wide statutory requirement as such in that it is not entrenched in the requirements of Regulation (EC) 852/2004, consideration of *Agency* guidance is required by the FSA UK Food Law Code of Practice 2012 (page 48), which effectively makes consideration of the *E.coli* guidance mandatory for UK local authorities and UK businesses.

Competency of Environmental Health and Trading Standards Officers to support businesses

23. Training and ongoing professional development to maintain competency is key to effective enforcement, and this is a key role played by the two professional bodies – the Chartered Institute of Environmental Health and the Trading

⁶ http://ec.europa.eu/food/food/biosafety/hygienelegislation/guidance_doc_852-2004_en.pdf

⁷ <http://www.food.gov.uk/multimedia/pdfs/publication/ecoliguide0211.pdf>

Standards Institute. The Common Approach to Competency for Regulators, developed by the professional bodies in partnership with BRDO, is centred on the soft skills of competency and technical knowledge required.

24. As noted above, we heard of some good examples of work by enforcement officers to understand the businesses they were regulating and help them identify how best to manage food hygiene hazards and labelling and composition requirements. Equally we heard of some poor practice, which if it was true, was based on either limited understanding of the law or of the business being regulated – as for instance in the case of a business which had difficulty persuading an EHO who was insistent that neither “smooth and impermeable” shelving or the formation of mould was appropriate for cheese.
25. In a further example from a business manufacturer, the EHOs appeared to have taken considerable care to understand the business; however they appeared to have had to do this from first principles rather than by, for example, being able to call on specialist expertise in support. As a result, although relations were very positive between the business and inspector, the business felt it had been driven in unnecessary and unclear directions at times in developing its HACCP system.
26. The general view of those we spoke to was that local authority regulatory services operate quasi independently of the local authorities in which they sit and are left to go about their business and only rarely attracting the attention of senior managers in the case of a major incident or prosecution. However, it is noted that all services are required to prepare an annual food service plan, that reflects the priorities of the local authority, and operate in accordance with the local authority enforcement policy, as well comply with the Regulators Compliance Code.
27. There are inherent complexities in a system where food hygiene inspection is operated at district and food standards at county level (this was recognised in the creation of Primary Authority). These complexities seem to be a concern shared by the FSA which has partly motivated its Review of Delivery of Official Controls. Even if in practice this review does not conclude that food hygiene and food standards services should be consolidated centrally, it would seem sensible to develop more effective means of joining up management and delivery across authorities, for example building on Primary Authority.

Ease of understanding of regulatory requirements

28. Whereas there appears to be a good deal of good top level guidance produced by local authorities it is harder to find more detailed advice on application to small businesses or specialist situations. A lot of the material produced by local authorities appeared, quite understandably, very similar, raising the question of whether production of such guidance on a local level leads to a loss of economies of scale, with a considerable cumulative effort put into reinventing the

wheel and insufficient work put into developing more detailed or specialist guidance.

29. Much guidance is produced by trade associations for their members, in addition to which the professional bodies also play a role. In discussions with CIEH and TSI it became clear that the contributions they make to the body of general guidance differs. Whilst TSI appear to be responsible for developing products, such as guidance that may be replicated as leaflets sometimes published on local authority websites on, for example, weighing equipment and beef labelling, CIEH puts more emphasis on the professional development of its members. This appears to have contributed to an asymmetry in the style and quantity of written guidance, as between food hygiene on the one hand, and composition and labelling on the other. TSI appears to have identified this as a gap which it can help fill by exploring with CIEH the possibility of covering food hygiene matters in its subscription information and guidance service to LAs.
30. On the underlying legislative requirements, understandably few of the businesses we spoke to seemed sighted on the formal regulatory rules relying on local enforcement officers to guide them as to what they needed to do. Those few that we encountered that had consulted the underlying legislation seemed to feel that they had had to do so as a last resort when faced with inflexible and apparently illogical enforcement and a lack of clear guidance on specialist issues.
31. The abolition of LACORS (called Local Government Regulation at the point of abolition) has raised concerns about the provision of guidance written specifically for local authorities in advising food businesses. This is causing particular concerns over the new food information regulations. We spoke to a number of small businesses, who were vaguely aware that such regulations were in the pipeline, and were concerned about the costs of complying, but had insufficient understanding of the new requirements to be able to do so. While some trade associations are clearly able to help in interpreting the basic requirements and communicating this to their members, those in more niche business areas where no strong trade association exists, are clearly struggling to understand the law. The new arrangements for topic groups, comprising of local authority inspectors, CIEH, TSI, national regulators and businesses, are seeking to address this need for technical guidance. Topic groups for Food Hygiene (supported by LGA and CIEH) and Food Labelling (supported by BRDO) are now operational although it is clear that these groups will require active support to be successful.

Consistency of enforcement when businesses operated over more than one local authority boundary

32. In this review, generally speaking consistency between local authorities was not perceived to be a problem for small businesses in food hygiene regulation by the businesses we spoke to, probably because by definition they were largely operating small, single site production premises. Also, as Primary Authority

advice would apply to the sale of products as well as the production process (depending on the extent of the Primary Authority role) but, this was not raised as a significant issue. We did though hear from individual businesses who had experienced a vastly different quality of enforcement when moving location.

33. In one case, however, we learned of a food manufacturer who had been unable to dispose of whey – around 90% of milk and therefore a major by-product – by returning it to a dairy, because the latter would need a permit to dispose of it a slurry, given its classification as “industrial waste”. Instead the business had to pay to have it composted, at considerable expense. However, a different manufacturer we spoke to reported that he was permitted to dispose of his whey in the public sewer.
34. One example, which at the time appeared to the review team to be an example of over-zealous interpretation of the legislation, but which we have subsequently ascertained to reflect the statutory requirement, was of a TSO informing a manufacturer of products derived from dehydrated meats that the labelling should indicate that ingredients were “140% beef”. The small business in question was incredulous that they should be required to make such a claim on their labels, and felt unable to explain to their customers the rationale for providing such information. We gather that it would have been possible under the regulations to provide this information in terms that make more sense to the consumer, such as for every 100g of product 140g of beef was used.

Inspection frequency and quality

35. While few businesses we spoke to had a problem with the frequency or number of inspections they were subject to we identified two problems in inspection. The first is identifying the most at risk businesses before significant problems arise. A project run by the Leicestershire LEP is looking at whether greater joining up of regulatory services and information sharing between them could assist here. Results are not yet available. The second is delivering risk based regulation, including earned recognition (e.g. giving appropriate credit for membership of trade based assurance schemes). While the FSA fully accepts this in principle⁸, detailed work is needed with trade associations and those schemes (and e.g. UKAS) to ensure that they can provide adequate assurance on basic food hygiene. Recognising developing LA best practice through the Statutory Code is clearly also necessary and probably happens too slowly currently leading to unnecessary burdens in the system.

Lack of Appeals Mechanism

⁸ FSA Compliance and Enforcement Strategy

36. A common complaint raised by a number of businesses is that where a disagreement arises between the business and the enforcement officer, or where the business simply feels that the intervention of the EHO or TSO is disproportionate or goes beyond the requirements of the law, there is little satisfactory recourse to appeal. Whilst in theory the business could seek to make a complaint to the enforcement officer's senior management, in practice many businesses are, understandably enough, reluctant to do so, for fear of damaging what may otherwise be a constructive working relationship. The only alternative appears to be a slow and time-consuming appeal to the Local Government Ombudsman, which in many cases will hold no appeal for a small business (and a business would have had to have exhausted the LA internal procedures before the Ombudsman could get involved). The Regulators Compliance Code emphasises the importance of accountability, although it does not currently provide solutions. BRDO is currently conducting a review of the Code and this observation could be considered. In practice, in appeal directly to the FSA is also option. However, this is not clear to businesses and indeed may in any case still not deal with cultural issues surrounding a reluctance to challenge the local inspector in particular on issues where there is a strong information asymmetry.

Annex A - Scope

In Scope

- Regulatory activity by national regulators and local authorities that affects / is perceived to affect the day-to-day running of micro and small businesses (that employ fewer than 50 employees) involved in food and drink manufacturing;
- A representative mix of business drawn from both high and low-risk food / drink manufacturing, in order to compare respective models and practices of regulatory activity;
- Those businesses that manufacture food and drink for supply to the public through retail outlets including farm shops, markets and on-line

We would also be interested to learn about examples of effective, tailored and easy to understand guidance and advice for businesses, and good regulatory delivery that is risk-based, focused on achieving compliance and supporting business growth.

Out of Scope

- Primary food production (e.g. farming, aquaculture) although production of produce for sale in farm shops would be in scope;
- Meat processing where the product is not for immediate sale to the public;
- Catering / food preparation (such as restaurants or take-away outlets); and
- Regulatory activity that is not particular to the food / drink industry, such as employment law, company law etc.

Regulatory Activity

“Regulatory Activity” in this context includes action taken by national regulators or officers of local authorities, including:

- provision of advice on compliance with the law;
- inspections of locations or equipment in order to satisfy regulatory authorities of compliance with the law;
- requirements to make formal applications, or provide information, in order to obtain necessary permits to engage in food manufacturing business;
- requirements to attend courses / obtain particular qualifications; and
- enforcement proceedings taken against individuals or organisations in the event of failure to comply with regulations (we cannot consider comments on specific cases unless all proceedings have finished – but we can consider general evidence in relation to enforcement proceedings).

Annex B - Background on the principal food hygiene and labelling legislation

Food Hygiene

The three base EU hygiene regulations are as follows:

- Regulation (EC) 852/2004 (“on the hygiene of foodstuffs”) which lays down the basic requirements for all businesses;
- Regulation (EC) 853/2004 (“laying down specific hygiene rules for products of animal origin”) which lays down specific rules for business that handle or process products of animal origin (POAO) but which do not mainly supply consumers directly; and
- Regulation (EC) 854/2004 which lays down requirements for the official controls on POAO intended for human consumption”).
- National legislation (“The Food Hygiene (England) Regulations 2006” in England) gives effect to the EU Regulations through provision of (i) offences, penalties and powers of entry; (ii) enacting the national measures required or provided for in the EU regulations; (iii) revoking of the previous legislation; and (iv) making necessary consequential amendments.

In essence Regulation (EC) 852/2004 sets out general rules for food businesses on the hygiene of foodstuffs, including:

- Laying down requirements for premises and facilities through to the personal hygiene of staff;
- That food should be handled, prepared, cooked, stored and transported in a hygienic manner and at temperatures which will not give rise to a risk to health;
- Requiring, at Article 5, that food business operators to put in place, implement and maintain a permanent procedure, or procedures, based on the principles of hazard analysis and critical control point (HACCP).

In practice, the requirement on food businesses is as follows:

- That the business carries out an analysis of hazards and identify critical control points and put in place procedures to monitor and control hazards in their processes (HACCP). An example of a hazard might be the presence of bacteria in a food resulting in the need to heat the food to a certain temperature for a period of time to ensure destruction of any dangerous bacteria present;
- That the business documents this in such a way that the management of critical control points can be assured by the business itself and inspectors. Documentation should be appropriate to the size and nature of the business;

The EU regulation makes clear that HACCP requirements should provide sufficient flexibility to be applicable in all situations, including in small businesses. The Regulation provides an exemption from these requirements for businesses involved in very simple food manufacturing process (an example might be slicing but not producing sandwiches); and provision of assured guidance to particular sectors (e.g. baking, cheese making) on best practice in the application of HACCP to their type of business.

Labelling and Composition

There is a vast range of legislation which TSOs have a statutory duty to enforce. For the purposes of this review, the principal legislation appears to be as follows:

- Food Safety Act 1990 (provides the framework for much of the food safety legislation in Britain, including regulations enforced by trading standards)

Secondary Legislation:

- Organic Products Regulations 2006: govern the labelling and composition of products described as “organic”
- Food Labelling Regulations 1996: cover labelling of food packaged by retailers, wholesalers and manufacturers, for retail from sale other than place of packing, for example covering:
 - food name
 - list of ingredients, descending order by weight
 - percentage quantity indication for certain ingredients
 - use by / batch no
 - any special storage conditions
 - name and address of manufacturer
 - place of origin if omission could mislead
 - any necessary instructions as to use

Other regulations govern the labelling of specific types of product, including:

- allergenic ingredients
- jam – fruit and sugar content
- beef – specific origin
- baby food – minimum age
- alcohol – strength
- irradiated food info
- raw milk
- GMOs
- Added sweeteners

(There are exemptions from the full food labelling requirements if food is sold loose or pre-packed by the person trading from a stall under their own name).

- Meat Products Regulations 2003: define “meat” and “meat product”
- Beef and Veal Labelling Regulations 2010: the Beef Labelling Scheme is an EU system requiring specific information to be provided to consumers, such as: a reference number; the name of the EU member state or non-EU country of birth of the animal and where raised, slaughtered, and butchered; and details of the slaughterhouse.

The existing labelling regulations are supplemented by a voluntary Approved Beef Labelling Scheme, which is administered by the Rural Payments Agency and includes additional information such as breed, style of rearing and region of origin.

New Food Information Regulation

A new food labelling regulation has been published by the European Commission, following an EU-wide review of both general food and nutrition labelling legislation, which began in 2004. The regulation is intended to bring EU rules on general and nutrition labelling together into a single regulation which will simplify and consolidate existing labelling legislation. The Regulation will be directly applicable in all Member States and replace existing legislation in this area in the UK. The bulk of the requirements will not apply until 2014, with nutrition labelling becoming mandatory in 2016.

The key features of the new regulation will be:

(i) Country of origin – subject to further discussion, the introduction of mandatory origin information for most fresh and frozen meat. Detailed rule of the definition of origin have yet to be developed but, from initial reading of the legislation, it seems to be possible for 'Scotland', 'England', 'Wales' and 'Northern Ireland' to be used on food labels without mentioning 'UK' as a place of provenance. Also,

the origin of main ingredients will have to be given if different from where the final product is made.

(ii) Nutrition labelling will be required for most foods. Simplified information may be provided voluntarily on front of pack.

(iii) Labelling clarity – a minimum font size has been set for all mandatory information on most food labels.

(iv) Allergen information will have to be provided on all food (whether sold prepacked or loose). For pre-packed foods, the allergens will have to be highlighted on the ingredient list.

(v) Drinks with high caffeine content will have to be additionally labelled as not recommended for children, or pregnant and breastfeeding women, with the actual caffeine content quoted.

(vi) Meat and fish products that look like a cut, joint or slice and contain more than 5% added water will have to show this in the name of the food.

(vii) The types of vegetable oil used in food, such as palm oil, must be stated.

Enforcement of Regulation

European regulations set out the detail of what food regulation is to be enforced; official control regs specify how we enforce it in UK. At the highest national level there is to be a Central Competent Authority, which in the UK is the Food Standards Agency. The FSA is responsible for the application of the legislation, and for advice and guidance relating to it; it is also required to ensure that application of the legislation is proportionate, risk-based and outcome-focused. The FSA has published a set of principles underpinning implementation of the regulation, available on their website.⁹

Regulation of individual businesses under the legislation (including registration, provision of guidance locally, inspection, and enforcement action) is carried out by competent authorities which in the UK are the Environmental Health services of lower tier (i.e. district) councils or unitary councils where there is only one tier.

Under the Food Standards Act 1999 the Agency has a package of statutory powers to strengthen enforcement of food standards, and to ensure national objectives are delivered.

The FSA's interaction with enforcement officers is set out in the Framework Agreement on Local Authority Enforcement¹⁰. The requirements placed on local authority regulatory services carried out on behalf of the FSA are set out in a Statutory Code under the Food Safety Act 1990: the Food Law Code of

⁹ www.food.gov.uk/multimedia/pdfs/eufoodhygieneapp.pdf

¹⁰ <http://www.food.gov.uk/enforcement/enforcework/frameagree>

Practice¹¹. The FSA is currently carrying out a review of the Statutory Code (the Code sets out how local authorities must carry out their statutory duties; there is also practice guidance, a separate document, describing in more detail the way in which local authorities can carry out official controls). It is also examining the scope to provide more timely updates on best practice to LAs (the process of updating the Statutory Code can be lengthy and take up to 3 years).

Typically local EH services carry out their regulatory duties by:

- ensuring effective engagement with new businesses;
- carrying out routine inspections according to a risk assessment;
- communicating the requirements of the law and how to meet them in local guidance;
- pursuit of remedial actions where businesses are not in compliance

The FSA has begun a “Review of the Delivery of Official Controls”; this is essentially a review of whether the current structure of enforcement through LAs as described above is fit for purpose. It will consider options ranging from the status quo to the creation of a unified enforcement service at the other end of the spectrum as well as intermediate options such as the creation of a national inspectorate for specialised operations such as canning.

Frequency of Inspection – Intervention Rating Scores

The Statutory Food Law Code of Practice sets out a scoring system for determining the level of risk attached to each food manufacturing premises, and therefore the minimum level of frequency of inspection. For the lowest risk sites the possibility exists for the officer either to visit once every three years, or to put in place an alternative enforcement plan, such as sending the business questionnaires to complete and return. The scoring is based on criteria that combine facts in respect of the business type, with considerations based on professional judgment such as the business’ track-record in the view of the EHO, and the attitude of the management towards issues of food safety. The broad criteria are: -

- the potential hazard: i.e. type of food and method of handling (e.g. certain types of high-risk foods); method of processing (e.g. cooking from raw, etc) and data on potential consumers at risk (e.g. scale of distribution and number of customers);
- levels of (current) compliance; and
- confidence in management controls.

¹¹ www.food.gov.uk/multimedia/pdfs/codeofpracticeeng.pdf

The only other factors which influence this in terms of additional inspections are re-visits, usually following the service of notices or in response to food complaints which require investigation; or for the purposes of a food sampling campaign.

Primary Authority has been operational since 2009 and the introduction of this scheme supports a risk based approach to inspection activity. Through the agreement of national inspection plans between a business and its primary authority, inspection activity can be targeted to improve effectiveness, avoid repeated checks and improve the sharing of information.

The FSA audits the performance of local authorities against these pre-determined ratings scores (essentially checking that the frequency of inspections across the distribution of risk categories takes place as expected) published reports can be found on the FSA website

Annex C - Division of responsibility for official food controls - at a glance

Developing and implementing food law	FSA <ul style="list-style-type: none"> General - traceability, rapid alert system (RASFF), delivery of official controls Import controls - public health aspects, fish/fishery products and products of non-animal origin Labelling – food safety aspects Biological safety - e.g. food hygiene, TSEs. Chemical safety - e.g. additives, contaminants, food contact materials, Radiological safety – Irradiation of food Novel and GM foods 		Defra (and its agencies), the SG RD, RA and DARD <ul style="list-style-type: none"> Imports controls - animal health aspects for products of animal origin Labelling – general, beef labelling and protected food names Composition and standards - organic produce, bottled waters, fat spreads, chocolate, Biological safety - certain rules relating to TSEs Residues of pesticides Residues of veterinary products (VMD) 			DH <ul style="list-style-type: none"> Composition and standards - foods for particular nutritional use Labelling - nutritional, health claims 	
Ensuring that food satisfies the requirements of food law	<p>Farm Fork</p> <p style="text-align: center;">All stages of production, processing and distribution →</p> <p style="text-align: center;">Food Business Operators (Approximately 600,000 establishments, plus approximately 195,000 holdings at primary production level.)</p>						
Delivery of Official controls in respect of food law	Central level <p>FSA (on UK wide basis)</p> <ul style="list-style-type: none"> Inspection and approval of food irradiation facilities Approval of fresh meat premises Classification of shellfish harvesting areas Hygiene controls - fresh meat SRM controls <p>AHDH (on behalf of the FSA)</p> <ul style="list-style-type: none"> Hygiene controls - milk production holdings <p>AHEM/SGRPID (on behalf of the FSA)</p> <ul style="list-style-type: none"> Hygiene controls - egg production units 		<p>Defra (on UK-wide basis)</p> <ul style="list-style-type: none"> Organisation of protected food names scheme Overseeing system for certification of organic produce Policy on general labelling Recognition of natural mineral waters from non-EEA countries <p>VMD</p> <ul style="list-style-type: none"> Veterinary medicine drug residue surveillance <p>HSE (CRD)</p> <ul style="list-style-type: none"> Pesticide residue monitoring and enforcement <p>RPA</p> <ul style="list-style-type: none"> Beef labelling for England & Wales 	<p>DARD (on behalf of FSA)</p> <ul style="list-style-type: none"> Hygiene controls primary production fresh meat, milk production holdings/liquid milk premises, egg production units/packing stations <p>DARD</p> <ul style="list-style-type: none"> SRM controls Overseeing system for certification of organic produce Beef labelling 	<p>SG RD</p> <ul style="list-style-type: none"> Beef labelling 	<p>Local level</p> <p>Local authorities in England and Wales</p> <ul style="list-style-type: none"> Official controls and enforcement of the main body of food law, including imported food controls (all food law except that enforced by the central Departments and their Agencies) 	<p>Local authorities in Scotland</p> <ul style="list-style-type: none"> Official controls and enforcement of the main body of food law, including imported food controls (all food law except that enforced by the central Departments and their Agencies) AHDH/DARD role - hygiene controls at milk production holdings <p>District Councils in Northern Ireland</p> <ul style="list-style-type: none"> Official controls and enforcement of the main body of food law (all food law except that enforced by DARD)

Annex D – Stakeholders consulted during the review (external to central Government and National Regulators)

Businesses *(other than those who posted comments on the web)*

Bouverie Lodge (Bison Farm) - Leicestershire
Brucciani Bakery - Leicester
Capreolus Fine Foods - Dorset
The Holywell Water Company Ltd - Worcestershire
Kappacasein Dairy - London SE1
Island Delight Patties - Birmingham
Lashfords (Sausages) - Birmingham
Sangam Paneer - Leicester
The Friday Beer Company, Worcestershire
The Mousetrap Cheese Company - Herefordshire
Somerset Cider Brandy - Somerset

Trade Associations

British Frozen Food Federation
Dairy UK
FARMA (farmers markets association)
Food and Drink Federation
Proprietary Association of Great Britain (Health Foods)
Provisions Trade Association (including Specialist Cheese-Makers Association)

Professional Bodies

Chartered Institute of Environmental Health
Trading Standards Institute

Local Government

Local Government Association
Round-table with local authority environmental health and trading standards professionals

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