PREM 19/2991

MT.

PART 3

SECRET

CONFIDENTIAL FILING

Food Safety

FOOD

PT1: January 1989

PT3: June 1989

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~10.7.89~~							
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PART 3 ends:-

SS / Health to PM 30.4.90

PART 4 begins:-

SS/DTI to PM 1.5.90

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Ministry of Agriculture, Fisheries and Food
Report of the Working Party on Pesticide Residues 1985-88
The twenty-fifth report of the Steering Group on Food Surveillance
Food Surveillance Paper No. 25
Published by HMSO ISBN 0 11 242870 3

Signed _____ Date 24/11/2016

PREM Records Team

SD/5068p/2

PRIME MINISTER

MISC 138: GOVERNMENT RESPONSE TO THE SOCIAL SERVICES COMMITTEE'S FOLLOW-UP REPORT ON FOOD POISONING: LISTERIA AND LISTERIOSIS

1. I enclose a copy of the final version of our response to the follow-up report published on 13 December 1989. This has been agreed between my Department and the Ministry of Agriculture, Fisheries and Food.

2. Arrangements are in hand to publish the response (as a White Paper) on Wednesday 2 May with advance copies to the Social Services Committee on Tuesday 1 May.

3. Given the continuing interest in all food safety matters, I am writing to inform members of MISC 138 of our plans for next weeks.

KC

30 April 1990

RESPONSE OF THE GOVERNMENT TO THE FIRST REPORT (1989-90) FROM THE SOCIAL SERVICES COMMITTEE: FOLLOW-UP

Introduction

1. This memorandum sets out the Government's response to the Social Services Committee's Follow-up Report on Food Poisoning: Listeria and Listeriosis (Session 1989-90).

2. The Government notes that the Committee has been encouraged by Government action to date. The Committee's further views are being taken into account, first, in continuing efforts to ensure the most effective policies for the control of food poisoning including that arising from listeriosis and, second, in the provision of food safety information to the public and particularly those consumers most at risk.

3. For the Committee's information, the current statistics on human listerial infection are as follows:-

ENGLAND AND WALES 1987-1989

	1987	1988	1989
Abortions	18	11	8
Deaths	59	52	47
Total reported mortality	77	63	55
Total cases	259	291	250
Case fatality ratio	30%	22%	22%

(1989 figures are provisional)

The Committee will be pleased to note the decline in total cases in the provisional 1989 figures as compared to 1988.

4. Where appropriate, the Government's response to the Committee's detailed recommendations and conclusions is set out below.

Listeria and Listeriosis

Conclusion 3. We believe that GPs could have been enabled to play a more active part in the detection of listeriosis in their patients by

being made more aware of the clinical details of the disease and referring suspected cases for further microbiological tests. (para 4)

5. The Government remains of the view that in early 1988 members and fellows of the Royal College of Obstetricians and Gynaecologists were the most appropriate medical practitioners to be asked to investigate stillbirths and miscarriages for cases due to listeriosis. This diagnosis is most reliably made after the appropriate bacteriological cultures are carried out either on samples from the patient or on the products of the miscarriage; such cultures are most dependably collected from hospitalised patients. As knowledge of the causes of the disease improved the need to involve the general practitioner developed and, as the Committee knows, the Chief Medical Officer (CMO) wrote to general practitioners about listeriosis on 16 February 1989 and again on 16 November 1989.

Recommendation 4. We repeat our recommendation that in cases of stillbirth where the cause of death is not evident that Listeria monocytogenes should be routinely looked for as a possible cause of death. (para 5)

6. The Joint Working Party of the Royal College of Obstetricians and Gynaecologists and the Royal College of Pathologists published a report on fetal and perinatal pathology in November 1988 which recommended examination for Listeria monocytogenes in the event of fetal or perinatal death.

Recommendation 5. We note that in the consultation document on the review of infectious disease control issued by the Department of Health, listeriosis is not included under the list of notifiable diseases for "future law" and recommend that the Government give very careful consideration to designating listeriosis as a notifiable disease. (para 6)

7. The Department's consultation document "Review of the law on infectious disease control" invited comments on an extensive range of options and proposals for changes to the current law. Section three of the document identified the diseases which are currently notifiable and sought views on a number of questions including whether any additional diseases should be added to the list. More than 500

Responses to the consultation document have now been received many of which have suggested additional diseases, including listeriosis, that should be made notifiable. The Department of Health is currently considering all the responses and confirms that, along with a number of other diseases, the case for making listeriosis a notifiable disease is being given careful consideration.

Recommendation 6. We recommend that should the Ethical Committee of the Department of Health continue to have any doubts about the ethics of asking women who have had miscarriages or stillbirths about their food history and any infections during pregnancy, that they seek the opinion of a sample of such women as to whether these questions would be ethical: we believe that most would probably be happy to answer questions if it contributed to better understanding of listeriosis and the avoidance of unnecessary suffering for others in the future. (para 7)

8. The Department of Health does not have an Ethical Committee. The appropriate committee to approve a PHLS study is, in the first place, the PHLS Ethics Committee. The proposed Public Health Laboratory Service Case Control Study has now received approval from the PHLS Ethics Committee and local Ethics Committees are being consulted. The study nurse has been recruited and at present a pilot study is in progress. It is hoped that the full study will begin when the study nurse is in post on 1 June 1990 and when the necessary local Ethics Committee approvals have been obtained.

9. The Committee will be interested to learn that the Department of Health has awarded a research grant to Mr Iain McFadyen, Senior Lecturer, Department of Obstetrics and Gynaecology, Liverpool University to do a pilot study on the prevalence of listerial infection during pregnancy. The objects of the study include:-

- establishing the prevalence of carriage of Listeria monocytogenes and the prevalence of listeriosis infections in early pregnancy;

- determining the natural history of the infection during pregnancy; and

- investigating dietary and other factors which may be related to the development of listeriosis.

Recommendation 7. We recommend that the Department of Health make it explicit to pregnant women and women who are seeking to become pregnant and their advisers exactly what the risks are of contracting listeriosis from food. (para 17)

10. The CMO's advice to avoid consuming certain soft cheeses and pate and to reheat cooked-chilled meals until they are piping hot before consumption applies to pregnant women and those who are immunosuppressed. The CMO has not issued any advice concerning the risk of listeriosis to any other specific group. Of course any individual is free to decide to follow the CMO's advice even though it does not specifically apply to them. Furthermore, if an individual is uncertain whether they should follow the CMO's advice they should consult their medical practitioner, who will be familiar with their particular medical details and can give more specifically tailored advice to them.

Conclusion 8. General Practitioners and midwives could have played a much more significant role in advising pregnant women of the potential problem of listeriosis: at the very least they could have advised them not to eat certain types of soft cheese. In this way the advice could have been kept "low key" and would have avoided unnecessary worry in the rest of the population which the CMO was rightly concerned about. (para 19)

Recommendation 9. We recommend that advice to consumers (specifically those at risk) on the subject of food safety should be regularly updated so that the message is reinforced. (para 19)

11. The Department has been actively considering ways of keeping the public and the medical profession informed on food safety issues. Advice to avoid pate and certain soft cheeses and to reheat pre-packed chilled meals until they are piping hot is included in the Health Education Authority "Pregnancy Book" which is given to all women at the time of their first pregnancy. The Department is also preparing a leaflet to be made available to pregnant women when they attend ante-natal clinics. Members of the Department also remind members of the

profession of the Department's advice when they speak on food safety matters at conferences and scientific meetings. We are also considering more regular communications with the profession via the medical literature.

Temperature control of foods

Recommendation 12. We recommend that the Food Hygiene Regulations require high risk foods to be stored at or below 3°C. We believe that this standard which is recommended in the revised cook-chill\cook-freeze guidelines for catering, would be a safer standard than the 5°C which the draft regulations propose. (para 23)

12. It is recognised that listeria will grow slowly even at 3°C. The proposed amendments to the Food Hygiene Regulations seek to balance the public health needs with the practicalities of implementation. An upper limit of 3°C is unrealistic in terms of available refrigeration equipment and can cause deterioration in the organoleptic quality of some foods stored at low temperatures (eg pastry-based products). The Government believes that, together with the other measures being taken to ensure high standards of hygiene throughout the food chain, an upper limit of 5°C for "high risk" foods provides the necessary protection for the health of the public while being achievable in practice.

Conclusion 16. We believe that if the public are to be reassured that retailers are complying with the food hygiene regulations, that thermometers in refrigeration cabinets should be clearly visible. (para 27)

Recommendation 17. We recommend that the Department of Health reconsider the proposed amendments to the 1970 Food Hygiene regulations and make the fitting of thermometers on retail refrigeration cabinets which are visible to staff and consumers, a standard requirement. (para 27)

13. The Government considers that the proposed temperature controls will themselves provide an incentive for retailers to install temperature monitoring equipment. Indeed, many cabinets in the larger retail food stores are already so equipped although the thermometers

a[redacted] not always visible to the customer. It is also our intention, when the Food Hygiene (Amendment) Regulations are laid, to issue for consultation guidelines on their implementation and enforcement. These will place considerable emphasis on the need for temperature monitoring which will in turn lead retailers to demand temperature monitoring equipment in the cabinets the manufacturers supply.

14. However, equipment required by the retailer to monitor the satisfactory operation of their refrigeration cabinets may not be appropriate for reassuring the consumer. The amendments to the Food Hygiene Regulations propose the temperatures at which the foods concerned should be kept. Thermometers in cabinets will, on the other hand, measure the temperature of the air in the cabinet and not of the food. The relationship between the air temperature and the temperature of the food is complex and varies according to, for example, the type of food, the ambient temperature in the store, the number of people using the cabinet and walking past it and the defrost cycle of the equipment. The air temperature in any cabinet varies not only at different points within that cabinet but also over time. Therefore, a consumer looking at a thermometer in the cabinet at any one point in time will not get a particularly informative picture. It is therefore possible that a simple thermometer on a cabinet will confuse rather than reassure the consumer.

15. The Government considers that both the technical difficulties and the question of how best to inform consumers must be addressed. More deliberation is necessary on this than can be given in the context of the proposed Food Hygiene (Amendment) Regulations. Apart from the technical questions raised above there is the unavoidable obligation under Council Directive 83/189 to consult the EC on proposed technical standards and regulations. Three months must elapse to allow for comment from the Commission or other Member States on proposals for Regulations. The Government would not wish to delay the introduction of the proposed amendments to the Food Hygiene Regulations to allow for this compulsory period of consultation. Consideration will however be given to introducing an appropriate provision in any future amendments to the Food Hygiene Regulations.

Recommendation 18. We recommend that the Government take steps to ensure that the manufacturers of refrigeration equipment are aware of

importance of making integral thermometers a standard feature in domestic, industrial and retail appliances: this should not be simply a commercial decision. (para 28)

16. The Government continues to take steps to draw to the attention of the Association of Manufacturers of Domestic Electrical Appliances and the Refrigeration Industry Board the importance of exploring the incorporation of features which will offer real reassurance and protection to the consumer. As explained, this will not necessarily best be achieved by incorporation of a simple thermometer. It is encouraging to note that the industry is making efforts to develop new types of equipment, for example, domestic refrigerators with separate compartments for cook-chill foods; better user instructions and consumer information on domestic refrigerator use; and various devices in the retail sector to aid management and to inform and reassure consumers in new major stores. These include digital thermometers with "traffic light" displays (green light for normal, amber for defrost, red for non-critical alarm, flashing red light for a temperature warning) and equipment with digital read-outs which simulate the response of particular products to temperature.

Recommendation 19. In negotiating European standards which have implications for the health of the population, we recommend that the best practice standard should be adopted. (para 29)

17. The existing International Standard (ISO 7371) which deals with performance characteristics and test methods of household refrigeration appliances requires fresh food storage compartments to operate at a mean temperature equal to or colder than 5°C. Negotiations are currently underway on the possibility of incorporating this requirement in the European Safety Standard but it should be noted that there is some resistance by some participating countries to incorporating requirements relevant to health in a standard which they argue is about the safety of the equipment itself.

Definition of food poisoning

Conclusion 11. We welcome the proposal in the Government's consultation document reviewing the legislation on control of infectious diseases that a common definition of food poisoning should

adopted and that this definition should be used in the new Food Bill. (para 21)

18. The term "food poisoning" is generally used to describe a number of different types of illness, and may include diseases which have in fact been contracted in other ways as well as through eating contaminated food. The proper legislative context for defining "food poisoning" is therefore in legislation dealing with infectious diseases rather than in the Food Safety Bill. A definition is being considered as part of the review of infectious disease law.

Microwaves

Recommendation 13. We recommend that manufacturers of microwave ovens issue more details of the specific faults identified in the recent research commissioned by the Ministry of Agriculture, Fisheries and Food in order that public confidence can be restored. (para 24)

Recommendation 14. We believe that it is essential that the Ministry of Agriculture, Fisheries and Food continue to have at its disposal laboratories which can undertake technical work such as the research on microwaves. We hope that the closure of the Institute for Food Research laboratory at Bristol will not mean that the Ministry of Agriculture, Fisheries and Food is divesting itself of this capability. (para 25)

19. As the Ministry of Agriculture, Fisheries and Food has made clear in the many exchanges which have taken place since it published the report on its study on 4 December 1989, the significance of the study has been very widely misunderstood. It was not an aim of the study to test the safety of particular models of microwave ovens, nor can its results be read as having done so. The aim was rather to determine the extent to which microwave ovens vary in their performance. It was important in this context to achieve absolute standardisation of the test conditions applied to each of the identical food samples: consequently no attempt was made to adopt the particular procedures recommended by the various oven manufacturers, such as raising the food on a rack, stirring, changing its position, etc. The results of the study will be of considerable value in the continuing discussions in which the Government is working with food manufacturers and oven

manufacturers to achieve better standardisation of microwave oven specifications and more broadly applicable instructions on food packages.

20. It is quite wrong to infer that particular ovens in any way "passed" or "failed" a test. The test results did, however, enable some of the microwave oven manufacturers to improve their instructions to users so that they contained all the advice necessary to ensure safe and effective operation of the models concerned. A summary of the revisions made to the various instructions was published promptly by the Association of Manufacturers of Domestic Electrical Appliances on 6 December 1989. Where adequate heating of food is necessary to ensure that it is microbiologically safe before consumption the important advice to remember is that such food should be heated until it is 'piping hot' throughout. This advice applies whether microwave or conventional heating is being used.

21. The Government fully agrees that research must be carried out where this is necessary on food safety grounds. There has been no diminution of the capacity to do this. However it is not the case that recent research results from Vienna, to which the Committee refers, point to a need for research into the effect of microwaving on milk. MAFF food scientists contacted the researcher concerned, Professor Lubec, immediately his letter appeared in The Lancet, so as to assess the implications. As stated in reply to the hon. Member for Truro (Mr Taylor) on 13 December 1989 (Official Report, col 698), it emerged that the experiments in Vienna had been deliberately designed to create molecular changes in the milk and bore no resemblance to anything that might occur in a domestic situation. The sample in which changes were noted had been heated in artificial conditions until it was brown and obviously inedible. The changes in the structure of the milk were almost certainly due to the excessively high temperatures and not due to the use of microwave ovens as the heat source. Indeed, the researchers did microwave milk samples to a lesser degree and found no changes, but they neglected to mention this in their letter to The Lancet. Professor Lubec's findings therefore gave no cause for concern in relation to the safety of microwaving as a method for heating milk. The Government remains ready to commission any necessary food safety research, but this particular case is most certainly not one which warrants it.

** TOTAL PAGE.011 **

Chief Medical Officer's Annual Report

Recommendation 10. We recommend that in future, the CMO's annual report "On the State of the Public Health" should appear sooner after the end of the year to which it relates and that its contents should relate more precisely to the year in question. (para 20)

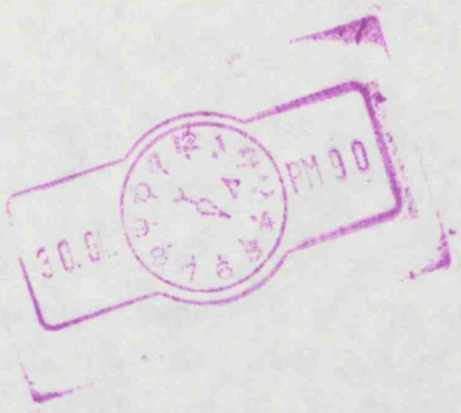
22. The CMO is aware of the need to publish the CMO's annual report as soon as possible after the end of the year in question. Time of publication is determined by the availability of reliable statistical data which is not usually before July. In 1990, it is intended that the CMO's Report should be published in September (two months earlier than last year).

23. It is intended that in future the text of the body of the report will relate solely to the year in question, while consideration of important events during the first half of the year of publication will be limited to the introduction.

Registration of food businesses

Conclusion 15 We hope that the arrangements for the registration of food premises proposed in the Food Safety Bill will apply to all premises and not just to new ones. We also hope that the definition of premises will include mobile food businesses which are not run from buildings such as ice-cream and hamburger stalls. (para 26)

24. The arrangements for the registration of food premises proposed in the Food Safety Bill will apply to all premises and not just to new ones. The definition of premises includes mobile food businesses which are not run from buildings such as ice-cream and hamburger stalls.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10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

30 April 1990

Dear Andy,

FOOD HYGIENE (AMENDMENT) REGULATIONS

The Prime Minister has seen the draft regulations attached to your Secretary of State's minute of 26 April and she was content that they should be tabled.

She has, however, commented that these regulations add to the duties of local authorities, albeit in a small way. She feels it is essential, over the next two years, to ensure that such additions are kept to the minimum possible.

I am copying this letter to the Private Secretaries to members of MISC 138 and to Sir Robin Butler.

Yours sincerely,
Andrew Turnbull

ANDREW TURNBULL

Andy McKeon, Esq.,
Department of Health.

CONFIDENTIAL

Prime Minister
Given the extended timetable for implementation, ie until Jan 1993 for the 5°C target, content for these regulations to be enacted? The costs will be found within the £30 million extra grant which Government has announced for 1991-92

MR TURNBULL

27 April 1990

AP 28/4

FOOD HYGIENE (AMENDMENT) REGULATIONS

- with AT

Kenneth Clarke has sent the Prime Minister amendments to the Food Hygiene regulations aimed at controlling the temperature at which food is stored. Although he does not say so, the amendments have been agreed with MAFF Ministers who will be jointly responsible for laying them.

You will remember that this issue came up last year in the context of MISC 138. The new amendments would impose:

- an upper limit of 8°C for all controlled food from 1 January 1991;
- an upper limit of 5°C for certain foods (eg paté) from 1 January 1993;
- an upper limit of 8°C on small delivery vehicles by 1 January 1992.

The two tier arrangement, with phased implementation, is designed to minimise the burden on businesses. The original proposal was to introduce the new rules within one year, but this has been modified following consultation.

The overall cost to industry of meeting these regulations is estimated at £100m over 2½/3 years. This is equivalent to 0.1% on the RPI (all items). Most small food retailers and delivery companies will have to replace their chill cabinets within the 3 year period: only 25% of existing cabinets could meet the 5°C requirement. A new cabinet might cost between £500-£3000, depending on size.

The amendments will undoubtedly add to the food industry's costs, but reasonable time is proposed for adjustment.

One point you will want to consider is the increased burden on Environmental Health Officers, who will need to check that the rules are being observed. It is not great - perhaps £5,000 per authority per annum. But it should presumably be considered in the general Cabinet Office exercise on new burdens on local authorities. I am not clear how this exercise will affect specific proposals with timetables such as this one.

Subject to that, I recommend agreeing to what is proposed.

CAROLYN SINCLAIR

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Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

Miss Gillian Kirton
Private Secretary to the Lord Privy Seal
and Leader of the House of Lords
Privy Council Office
Whitehall
London
SW1A 2AT

27 April 1990

Dear Gillian

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

My Minister thought that the Lord Privy Seal might like to see the enclosed record of discussion at his meeting with Lord Stanley and his supporters on 24 April. The meeting was amicable and the Minister has accordingly tabled a Report Stage amendment deleting Clause 14. He will be writing to colleagues again next week about the handling of this issue during the remaining stages of the Bill in the light of further discussion with the NFU.

I am copying this letter to the Private Secretaries to the Prime Minister and to other members of MISC 138 and to the Private Secretaries to the Lord Chancellor, Secretary of State for the Environment, Attorney-General, Lord Advocate General, Solicitor-General, Chief Whip, Captain of the Gentlemen at Arms and Sir Robin Butler.

Yours sincerely

Andy

A J Lebrecht
Principal Private Secretary

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

NOTE OF A MEETING HELD AT THE HOUSE OF COMMONS: 24 APRIL 1990

Present:

MAFF

Minister	Lord Stanley of Alderley
Minister of State	Lord Monk Bretton
Mr Jenkins	Lord Pender
Mr Murphy	Lord Swinton
Miss Neville-Rolfe	Lord Lucas of Chilworth
DoH	Mr Holbeche - NFU
Parliamentary Under Secretary of State	
Dr Parker	
Miss Fletcher-Cooke	

The Minister explained that he had originally supported the objectives underlying Lord Stanley's clause on compensation which had been inserted in the House of Lords. However, in exploring ways in which these aims could be satisfactorily achieved, he had come up against two insurmountable problems.

The first concerned legal policy. It was a fundamental point of UK law that the Government was not liable for compensation unless misfeasance could be demonstrated. If this were changed, the European Court of Justice would almost certainly require that any compensation or damages available to British citizens would equally be available, in the event of breaches of Community law, to all Community citizens. This would put the UK at a serious disadvantage vis-à-vis other Member States who did not provide for compensation and damages and the Government was therefore extremely anxious to retain the present arrangements. Although Lord Stanley's amendment was fairly narrow in scope, it would breach the principle and could have extremely wide consequences at Community level. An example of the problems which could be faced concerned possible restrictions on egg imports as a result of salmonella contamination. If circumstances developed so that the Government considered it necessary to place restrictions following adoption of legislation such as Lord Stanley had proposed, there was a strong possibility that any foreign egg supplier whose eggs were stopped and subsequently found not to be contaminated would have a claim on the British Government. However, our traders would not have an equivalent right in relation to other Member States. This disadvantage would be additional to that already resulting from the fact that several other Member States were able to legislate by administrative fiat without recourse to judicial review.

Mr Jenkins added that UK legislation could be put in breach of Community law by legal developments subsequent to its enactment. This made it all the more important to avoid rendering the Government liable to damages.

The second difficulty with Lord Stanley's amendment was that it would cause Ministers to be over-cautious in reacting to emergencies. This would be contrary to the interests of the farming industry as a whole, as it would inhibit the Government's ability to reassure the public that all measures had been taken to secure the safety of food supplies.

In conclusion, the Minister said that it did not appear possible to find a way of meeting Lord Stanley's concerns without coming against these two serious disadvantages. If Lord Stanley were able to produce suggestions which overcame these problems he would of course be very happy to consider them.

The Minister added that there was a distinction between Clause 9 which provided compensation where local authorities made mistakes and the Clause at issue which involved compensation by central Government. This did not represent discrimination against farmers vis-à-vis other food suppliers (as Lord Swinton later suggested). There were precedents for Clause 9 and such provisions did not affect the position in relation to Community law in the way Lord Stanley's clause would. Moreover, the powers needed for Government to act widely in an emergency were necessarily different from those granted to local authorities.

Lord Stanley thanked the Minister for his explanation and for the trouble to which he had gone in examining the question. He understood the case which had been made against his Clause. But he remained concerned for farmers who were adversely affected by emergency measures, such as those in the recent lead in feed case, but who were unlikely to receive compensation through the civil courts. There were several court cases pending from that emergency and it appeared quite likely that some of the farmers concerned would lose. If so, this would conflict with assurances given by the then Minister of State, MAFF in the House in the debates in 1984 on the Food and Environment Protection Bill. Lord Stanley wondered whether the Government would be prepared to make ex gratia payments to farmers who lost their cases?

The Minister said it was inevitable and defensible that, in circumstances where information was rarely complete, Ministers would take action in response to an emergency which subsequently could be shown to be wider than was strictly necessary. This would mean that some farmers would be affected who had not, for example, received contaminated material and did not therefore have a direct claim against their suppliers. In his view, there might be a case for extending the liability of the supplier to cover such cases. Mr Jenkins said that might already be the position in the lead in feed case. That emergency was

complicated by the fact that the original supplier of contaminated material was foreign. However, all suppliers owed a contractual duty to their customers and it might be that all the cases would go in favour of the farmers.

Mr Holbeche was concerned about timing. The court cases would not take place before Report Stage. The Minister suggested that NFU and MAFF lawyers should examine the supplier liability issue in the context of the impending cases to see if Lord Stanley's reasonable concerns on this specific point could be met in a way which was acceptable to the Government. If it was not possible to do this within the Food Safety Bill, efforts should nevertheless be made to try to come to an agreement as to whether changes could be made in a future Bill. Lord Stanley agreed to this way of proceeding.

Lord Lucas said that, like his colleagues, he accepted the Minister's argument, but he did feel that natural justice had been denied. Would it not be possible for the UK to promote Community legislation which would require compensation arrangements on a Community-wide basis? The Minister suggested that this whole issue might be something the relevant House of Lords Select Committee consider.



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DEPARTMENT OF HEALTH

The Rt Hon John Gummer MP
Secretary of State for
Agriculture, Fisheries and Food
Ministry of Agricultrue, Fisheries and Food
Whitehall Place
London
SW1A 2HH

Richmond House
79 Whitehall
London SW1A 2NS
Telephone 01 210 3000
From the Secretary of
State for Health

27 APR 1990

Dear John.

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

Thank you for copying your letter of 19 April to the Chief Secretary about Lord Stanley's amendment to me and for the paper attached to it.

I read these with interest and agree with all your conclusions. Should the meeting with Lord Stanley and his industry sponsors, which you refer to, be confirmed, I suggest Roger Freeman is invited.

Yours ever.
K.

KENNETH CLARKE

Copies to recipients of Mr Gummer's letter.


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cc PJ

Prime Minister

FOOD HYGIENE (AMENDMENT) REGULATIONS

1. I attach a paper which sets out the background to and implications of proposed Amendments to the Food Hygiene Regulations for your consideration. I should welcome confirmation that you are content for us to proceed to lay the Regulations on the basis proposed.

2. A phased implementation is proposed for the Regulations with the first requirements coming into effect from January 1991. However, to allow adequate time to alert business to the requirements of the Regulations and to consult on and agree guidelines for enforcement officers, I should like to proceed to lay the Regulations as soon as possible. Could I therefore ask for a response to the attached paper as soon as possible.

L.

26 April 1990

KC

Copies of this minute with its enclosures were circulated to all members of MISC 138 and Sir Robin Butler earlier today. Regretably the minute did not make the extent of its distribution clear.

FOOD: Food Safety
Pt 3



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CONFIDENTIAL

Prime Minister

FOOD HYGIENE (AMENDMENT) REGULATIONS

1. I attach a paper which sets out the background to and implications of proposed Amendments to the Food Hygiene Regulations for your consideration. I should welcome confirmation that you are content for us to proceed to lay the Regulations on the basis proposed.

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26 April 1990

KC

FOOD HYGIENE REGULATIONS

Background

1. In July 1989, the Department of Health consulted the food retailing trade, catering organisations, trade associations, refrigeration interests, microbiological experts, enforcement officers and consumer groups on draft Amendments to the Food Hygiene Regulations. The main aim is to control the temperature of certain foods for retail sale so as to reduce the opportunity for multiplication of pathogenic micro-organisms such as salmonella and listeria. Because listeria can multiply at relatively low temperatures, it is proposed that foods which carry a significant risk of contamination with listeria and which are likely to be eaten without further cooking (eg. soft cheeses and pate) should be required to be held below 5°C while other foods caught by the regulations are required to be held below 8°C. There are exemptions for foods prepared in ways which do not subsequently expose them to listeria, and for some foods made for consumption within certain periods from preparation, eg. sandwiches and pies. There is also a 2°C tolerance on the proposed temperatures to allow for the defrost cycle, movement of food, breakdown of equipment etc.

2. Draft Regulations are at Appendix 1. They would be made under Section 13 of the Food Act 1984 and are not dependent on the passage of the Food Safety Bill.

Discussion

3. There has been an unprecedented rise in food poisoning notifications in England and Wales in recent years from 14,253 known cases in 1982 to 39,713 in 1988. Salmonella accounts for some 85% of cases. Additionally we have become increasingly aware of foodborne transmission of listeriosis. There is considerable public concern about food safety issues.

Studies conducted by the PHLS showed that in approximately half of all food poisoning outbreaks between 1970 and 1982 poor temperature control was involved. The proposed Regulations have a part to play in reducing the

incidence of food poisoning and its costs to the health services and the economy generally by introducing temperature controls on foods for retail sale and delivery for the first time. (There are already temperature controls in operation for catering establishments and MAFF and DoH jointly issued a Food Safety leaflet in 1989 advising the public on temperature control in the home).

4. The responses to the consultation welcomed this intended strengthening of Food Hygiene law. Adverse comments concentrated on the complexity of a two-tier system of temperature control and its enforcement; the need for lower temperatures to control listeria than those advocated; and the difficulties and cost of refitting refrigeration units in the 1 year implementation period originally proposed.

Two-tier System

5. The attached draft of the Regulations proposes a two-tier system. We believe this is the only feasible option which balances public health interests and practical considerations. It is a proportionate response to the problem as only those foods at the greatest risk of contamination with listeria are to be held at the lower temperature. Enforcement officers would be provided with guidance on enforcement of the Regulations to steer them through the perceived complexities. This guidance would be available for all interested parties.

Lower Temperatures

6. The consumer lobby's call for still lower temperatures has already been endorsed by the House of Commons Social Services Committee* who have called for an upper limit of 3°C. This is unrealistic in terms of available refrigeration equipment and the deterioration in the organoleptic quality of some foods stored at low temperatures (eg. pastry based products, and foods with ready prepared sauces) and unnecessary in public health terms for the majority of foods.

* House of Commons; Social Services Committee, First Report Food Poisoning: Listeria and Listeriosis Report: Follow Up.

Cost and Timescale

7. The proposed phased implementation of the Regulations and the cost implications are set out in the Compliance Cost Assessment at Appendix 2. It is now proposed to implement the 8°C requirement for retail shops in January 1991 and the 5°C requirement from January 1993. Small delivery vehicles would be required to meet the 8°C requirement from January 1992. This extended implementation period is designed to take account of representations from the refrigeration industry and allow time needed to refit existing refrigeration equipment to meet the 5°C requirement and to enable small businesses in particular to spread the costs. Some 80% of cabinets should already be able to achieve 8°C, but only a small proportion (less than 1%) of small shops should need to refurbish existing equipment to meet the 8°C requirement plus the 2°C tolerance proposed for introduction from January 1991. The plausibility of Government action to protect food safety would be undermined if the Regulations are further delayed.

Bakers

8. Specific representations were received from small bakers keen to preserve their traditional industry. We believe that their main concerns have been met as the redrafted Regulations now contain significant exemptions for freshly produced pies, pasties and sandwiches.

The Refrigeration Industry

9. The original one year proposed for implementation has been extended to nearly 3 years for the 5°c requirement to meet the representations received from the refrigeration industry that 3-5 years was the minimum period necessary. We believe that an implementation date of January 1993 for this requirement is a reasonable compromise between safeguarding public health and the practicalities of reequipment.

10. We understand that the technology is available to meet both the retail and delivery vehicle requirements although the obligation to phase out CFCs has added an extra dimension to the challenge for the refrigeration industry. One alternative to CFCs, HFC 134a, is likely to be commercially available by the end of 1993. Although we can give no guarantees, concern that another alternative, HCFC22, is to be controlled under the Montreal Protocol is probably exaggerated. The UK position in the current renegotiation of the Protocol is against such controls, but even among those who favour them the earliest proposal is for an end to production in the year 2010. Machinery installed in order to comply with the current regulations would by then be at or near the end of its working life.

Enforcement

11. Enforcement of the Regulations will be for Environmental Health Officers who estimate that it might cost £5,000 per authority per annum when the two-temperature regime is in operation. We estimate that this is an upper estimate and that costs will fall once EHOs are familiar with temperature measurement procedures and the initial need to educate small retailers in the requirements of the Regulations reduces. The Government has already announced, that increased costs on local authorities for food safety enforcement arising from the Food Safety Bill - of the order of £30 million a year from 1991/2 onwards - will be taken into account in next year's revenue support grant settlement. This allows for an annual inspection of food businesses of which temperature measurement would form a part.

No additional money is being made available specifically for the enforcement of the proposed Amendment Regulations which will have to compete with the other priorities set by Environmental Health Departments.

Publicity

12. Because of the importance of the Regulations from the point of view of public confidence in food safety we would intend to provide guidance on its implementation in association with the Institution of Environmental Health Officers and trade advertisements nearer the implementation date to alert

small businesses and the public to the new provisions. We are also considering ways to explain the importance of the Regulations to the public and small shopkeepers who may not want or need the full guidelines and to provide advice on how they can operate refrigeration equipment more efficiently.

Further Steps

13. We intend to undertake a full review of the Food Hygiene Regulations in due course. This would accord with the recommendation of the Richmond Committee that the effect of the temperature provisions should be kept under review with a view to considering whether any further steps are necessary and could incorporate consideration of the need to require temperature monitoring equipment in refrigerator cabinets (as recommended by the Social Services Committee); the further recommendations of the Richmond Committee when it looks at retailing and catering; and the representations received over some years for a full scale review of the Regulations. This would however need to be viewed in the context of discussions on a forthcoming EC Food Hygiene Directive.

Scotland and Northern Ireland

14. Scotland and Northern Ireland would intend to introduce their own broadly parallel Regulations within a few weeks of the England and Wales Regulations being laid.

EC Dimension

15. The European Commission have been consulted on the draft Amendments to the Food Hygiene Regulations as required by Council Directive 83/189 (notification of technical standards and regulations) but have offered no comments. Indications are that existing temperature requirements in other Member States vary considerably in their detail and scope.

Conclusion

16. Colleagues are invited to:-

- approve the Regulations as the basis on which to proceed on temperature control at this stage;

- note the proposed publicity and guidance programme; and

- note the intention to undertake a full review of the Food Hygiene Regulations in due course.

APPENDIX 1

STATUTORY INSTRUMENTS

1990 No

FOOD HYGIENE
FOOD HYGIENE (AMENDMENT) REGULATIONS 1990

Made 1990

Laid Before Parliament

Coming into Operation 1st March 1991
in accordance with regulation 1(1)
All provisions (except
regulation 3(c) for certain purposes

Regulation 3(c) 1st March 1992
for certain purposes

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in exercise of the powers conferred by sections 13, 120(1) and 132(1) of the Food Act 1984(a) and now vested in them and all other powers enabling them in that behalf, after consultation in accordance with section 118(6) of that Act with such organisations as appeared to them to be representative of interests substantially affected by the Regulations, hereby make the following Regulations:-

(a) 1984 c.30; section 132(1) as amended by the Transfer of Functions (Health and Social Security) Order 1988 (SI 1988/1843) is cited for the definition of "the Ministers" relevant to the exercise of the statutory powers under which the Regulations are made.

tation, commencement and interpretation

1.-(1) These Regulations may be cited as the Food Hygien (Amendment) Regulations 1990 and shall come into operation on 1st March 1991, except regulation 3(c) to the extent that it inserts into the 1966 regulations regulation 12A(2), and to that extent shall come into operation on 1st March 1992.

(2) In these Regulations, unless the context otherwise requires:-

"the 1960 Regulations" means the Food Hygiene (Docks, Carriers etc) Regulations 1960 (a);

"the 1966 Regulations "means the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966 (b);

"the 1970 Regulations" means the Food Hygiene (General) Regulations 1970 (c).

(a) S.I 1960/1602, to which there are amendments not relevant to these Regulations.

(b) S.I 1966/791, to which there are amendments not relevant to these Regulations.

(b) S.I 1970/1172, to which there are amendments not relevant to these Regulations.

Amendment of the 1960 Regulations

2. The 1960 Regulations shall be amended as follows:-

(a) in regulation 18 (first-aid materials to be provided) after the word "bandages" there shall be inserted the word "and", and the words "and antiseptic" shall be omitted.

(b) in regulation 22(1) (cleanliness and repair, etc of food buildings) for sub-paragraph (b) there shall be substituted the following:-

"(b) prevent, so far as is reasonably practicable, the entry of birds and any risk of infestation by rats, mice, insects or other pests".

Amendment of the 1966 Regulations

3. The 1966 Regulations shall be amended as follows -

(a) in regulation 2(1) (interpretation) -

(i) after the definition of "Docks and Carriers Regulations" there shall be inserted the words ""egg" includes whole egg, yolk or albumen whether or not the egg, yolk or albumen is dried, frozen or otherwise preserved",

(ii) in the definition of "fish" there shall be inserted after the words "regulation 12" the words "and regulation 12A",

(iii) after the definition of "meat" there shall be inserted the words ""milk" includes separated or skimmed milk, dried milk, condensed milk and cream",

(iv) the definition of "permitted temperature ranges" shall be omitted;

(b) for regulation 12 (temperature at which certain foods are to be kept) there shall be substituted the Regulation set out in Schedule 1 to these Regulations;

(c) after regulation 12 there shall be inserted in Part III the following regulation -

Temperature at which certain foods are to be kept in delivery vehicles

12A. (1) Relevant food which is in a delivery vehicle other than a goods vehicle not exceeding 7.5 tonnes gross weight which is used for the purpose of making local deliveries shall be kept at or below the specified temperature or at or above 63°C

(2) Relevant food which is in a goods vehicle not exceeding 7.5 tonnes gross weight used for the purpose of making local deliveries shall be kept at or below the specified temperature or at or above 63°C, except that where the specified temperature is 5°C, the food may be kept in that vehicle for a period of not more than twelve hours at a higher temperature not exceeding 8°C.

(3) The specified temperature and the temperature of 8°C referred to in paragraph (2) of this regulation may be exceeded for a period of not more than two hours by up to 2°C where the variation in temperature is due to -

(a) a process of preparation;

(b) defrosting of equipment;

(c) temporary breakdown of equipment;

(d) movement of the food from one part of the vehicle to another; or

(e) some other unavoidable reason.

(d) in regulation 17 (first-aid and materials to be provided) after the word "bandages" there shall be inserted the word "and" and the words "and antiseptic" shall be omitted.

Amendment of the 1970 Regulations

4.(1) The 1970 Regulations shall be amended as follows -

(a) in regulation 2 (interpretation) -

(i) after the definition of "container" there shall be inserted the words ""egg" includes whole egg, yolk or albumen whether or not the egg, yolk or albumen is dried, frozen or otherwise preserved",

(ii) for the definition of "milk" there shall be substituted ""milk" includes separated or skimmed milk, dried milk, condensed milk and cream";

(b) in regulation 19 (first-aid materials to be provided) after the word "bandages" there shall be inserted the word "and" and the words "and antiseptic" shall be omitted;

(c) in regulation 25 (cleanliness and repair of food rooms) for paragraph (b) there shall be substituted the following -

"(b) prevent, so far as reasonably practicable, the entry of birds, and any risk of infestation by rats, mice, insects or other pests";

(d) for regulation 27 (temperature at which certain foods to be kept) there shall be substituted the regulation set out in Schedule 2 to these Regulations.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 1990.

(L. S)

Minister of Agriculture, Fisheries and Food

1990 Secretary of State for Health

1990 Secretary of State for Wales

SCHEDULE 1 Regulation 3(b)

NEW REGULATION 12 OF THE 1966 REGULATIONS

Temperatures at which certain foods are to be kept

12-(1) The food to which this regulation and regulation 12A below apply ("relevant food") is food intended for human consumption which is not excluded by paragraph (2) of this regulation but is of any of the following descriptions:-

(a) soft cheeses which have been ripened by the action of moulds (whether whole or cut);

(b) cooked products (whether prepared ready for consumption or intended to be subjected to reheating or further cooking prior to consumption) comprising or containing:-

(i) meat,
(ii) fish,
(iii) eggs,
(iv) substances used as a substitute for meat, fish, or eggs,
(v) dairy ingredients,
(vi) cereals,
(vii) pulses, or
(viii) vegetables;

whether or not the food also includes other raw or partially cooked ingredients;

(c) smoked or cured fish or smoked or cured sliced or cut meat;

(d) desserts which include dairy ingredients;

(e) prepared vegetable salads, including those containing fruit;

(f) cooked pies and pasties containing meat, fish and any substitute for meat or fish or vegetables encased in pastry, except (in each case) those into which nothing has been introduced after cooking and which are intended to be sold on the day of their production or the day after that day;

(g) cooked sausage rolls, other than those intended to be sold on the day of their production or the day after that day;

(h) uncooked or partly cooked pastry and dough poducts containing meat, fish or any substance used as a substitute for meat or fish;

(i) sandwiches, filled rolls and similar bread products containing -

(i) meat,

(ii) fish,

(iii) eggs,

(iv) substances used as a substitute for meat, fish or eggs, or

(v) a dairy ingredient as their principal ingredient,

(vi) vegetables, or

(j) cream cakes

(2) This regulation and regulation 12A do not apply to food of any of the following descriptions:-

(a) bread, biscuits, cakes or pastry which are of a description specified in paragraph (1) of this regulation by reason only of the use of egg or milk as an ingredient introduced into the products before thay are baked;

(a)

(b) ice-cream to which the Ice-Cream (Heat Treatment etc) Regulations 1959 (a) apply;

(c) food which has been subjected to dehydration or other process the purpose of which is to prevent the growth of pathogenic micro-organisms at ambient temperatures;

(d) food contained in hermetically sealed containers and which has been preserved by a process of heating, the purpose of which is to prevent the growth of pathogenic micro-organisms at ambient temperatures;

(e) uncooked bacon, uncooked ham, dry pasta, dry pudding mixes or dry mixes for the prepartion of beverages;

(f) food which is intended to be sold within six hours from the time of preparation;

(g) chocolate and sugar confectionery;

(h) milk or cream which is not combined with other ingredients.

(3) Subject to paragraph (4) of this regulation relevant food which is in any stall or market premises -

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(a) S.I 1959/734

(a) if it is not either at or below the specified temperature or at or above 63°C shall be cooled to a temperature not exceeding the specified temperature or heated to at least 63°C, as appropriate, without any avoidable delay after arrival or after any process of preparation has been completed and this requirement shall be treated as being satisfied, in relation to any stall or premises, if -

(i) there is no equipment whose primary purpose is to cool food to the specified temperature, but

(ii) the food is placed in equipment whose primary purpose is to maintain the temperature of food so that if the food were at the specified temperature, it would enable it to be kept at or below that temperature,

(b) thereafter shall be kept at or below the specified temperature or at or above 63°C until it is sold except where it is being heated without any avoidable delay from the specified temperature to 63°C or being cooled without any avoidable delay from 63C to the specified temperature.

(4) The specified temperature may be exceeded for a period of not more than two hours by up to 2°C where the variation is due to -

(a) a process of preparation;

(b) defrosting of equipment;

(c) temporary breakdown of equipment;

(d) movement of the food from one part of the premises or stall to another;

(e) some other unavoidable reason.

(5) In this regulation and in regulation 12A "the specified temperature" means -

(a) before 1st January 1993, 8°C for all relevant food;

(b) on or after 1st January 1993 -

(i) for the relevant food of a description specified in paragraph (6) of this regulation 5°C,

(ii) for all other relevant food 8°C.

(6) The relevant food referred to in paragraph (5)(b)(i) of this regulation is food of any of the following descriptions:-

(a) cheeses which have been cut or otherwise separated from the whole cheese from which they were removed;

(b) relevant food which is of the description specified in paragraph (1)(b) of this regulation and which has been prepared for consumption without the necessity for further cooking or reheating;

(c) smoked or cured fish or smoked or cured sliced or cut meat.

(d) sandwiches, filled rolls and similar bread products containing any of the foods mentioned in this paragraph, unless they are intended to be sold within twenty-four hours of their preparation.

(7) In this regulation "dairy ingredient" means any of the following when included in food as an ingredient:-

(a) milk;

(b) any constituent part of milk;

(c) anything used as a substitute for milk or for a constituent part of milk

SCHEDULE 2 Regulation 4(d)

NEW REGULATION 27 OF THE 1970 REGULATIONS

Temperature at which certain foods are to be kept

27-(1) The food to which this regulation applies ("relevant food") is food intended for human consumption which is not excluded by paragraph (2) of this regulation but is of any of the following descriptions:-

(a) soft cheeses which have been ripened by the action of moulds;

(b) cooked products (whether prepared ready for consumption or intended to be subjected to reheating or further cooking prior to consumption) containing:-

(i) meat,

(ii) fish,

(iii) eggs,

(iv) substances used as a substitute for meat, fish, or eggs,

(v) dairy ingredients,

(vi) cereals,

(vii) pulses, or

(viii) vegetables,

whether or not the food also includes other raw or partially cooked ingredients;

(c) smoked or cured fish or smoked or cured sliced or cut meat;

(d) desserts which include dairy ingredients;

(e) prepared vegetable salads, including those containing fruit;

(f) cooked pies and pasties containing meat, fish and any substitute for meat or fish or vegetables encased in pastry, except (in each case) those into which nothing has been introduced after cooking and which are intended to be sold on the day of their production or the day after that day;

(g) cooked sausage rolls, other than those intended to be sold on the day of their production or the day after that day;

(h) uncooked or partly cooked pastry and dough poducts containing meat, rish or any substance used as a substitute for meat or fish;

(i) sandwiches, filled rolls and similar bread products containing -

(i) meat,

(ii) fish,

(iii) eggs,

(iv) substances used as a substitute for meat, fish or eggs,

(v) products containing as their prinicpal ingredient a dairy ingredient,

(vi) vegetables;

(j) cream cakes

(2) This regulation does not apply to food of any of the following descriptions:-

(a) bread, biscuits, cakes or pastry which are of a description specified in paragraph (1) of this regulation by reason only of the use of egg or milk as an ingredient introduced into the products before thay are baked;

(b) ice-cream to which the Ice-Cream (Heat Treatment etc) Regulations 1959 (a) apply;

(a) S.I 1959/734

(c) food which has been subjected to dehydration or other process the purpose of which is to prevent the growth of pathogenic micro-organisms at ambient temperatures;

(d) food contained in hermetically sealed containers and which has been preserved by a process of heating, the purpose of which is to prevent the growth of pathogenic micro-organisms at ambient temperatures;

(e) uncooked bacon, uncooked ham, dry pasta, dry pudding mixes or dry mixes for the prepartion of beverages;

(f) food which is intended to be sold within six hours from the time of preparation;

(g) chocolate and sugar confectionery.

(h) milk or cream which is not combined with other ingredients;

(i) food which is displayed on catering premises for a period not exceeding six hours where such display is for the purpose of indicating to prospective purchasers the nature of food which is for consumption on those premises and provided that no more food is so displayed than is reasonably necessary for achieving that purpose.

(3) Subject to paragraph (4) of this regulation relevant food which is in any food room -

(a) if it is not either at or below the specified temperature or at or above 63°C shall be cooled to a temperature not exceeding the specified temperature or heated to at least 63°C, as appropriate, without any unavoidable delay after arrival or after any process of preparation has been completed and this requirement shall be treated as being satisfied, in relation to any food room, if

(i) there is no equipment whose primary purpose is to cool relevant food to the specified temperature (otherwise than by reason of its being surrounded by air at the specified temperature), but

(ii) the food is placed in equipment whose primary purpose is to maintain the temperature of food so that if the food were at the specified temperature it would enable it to be kept at or below that temperature;

(b) thereafter shall be kept at or below the specified temperature or at or above 63°C until it is sold, except where -

(i) it is being heated, without any avoidable delay from the specified temperature to 63°C or is being cooled without any avoidable delay from 63°C to the specified temperature, or

(ii) having previously been cooled to a temperature at or below the specified temperature, or heated to a temperature at or above 63°C, it is in the course of being served on catering premises.

(4) The specified temperature may be exceeded for a period of not more than two hours by up to 2°C where the variation is due to -

(a) a process of preparation;

(b) defrosting of equipment;

(c) temporary breakdown of equipment;

(d) movement of the food from one part of the premises to another; or

(e) some other unavoidable reason.

(5) In this regulation "the specified temperature" means -

(a) before 1st January 1993, 8°C for all relevant food;

(b) on or after 1st January 1993 -

(i) for the relevant food of the description specified in paragraph (6) of this regulation 5°C,

(ii) for all other relevant food 8°C.

(6) The relevant food referred to in paragraph (5)(b)(i) of this regulation is food of any of the following descriptions:-

(a) cheeses which have been cut or otherwise separated from the whole cheese from which they were removed;

(b) relevant food which is of the description specified in paragraph (1)(b) of this regulation and which has been prepared for consumption without the necessity for further cooking or reheating;

(c) smoked or cured fish or smoked or cured sliced or cut meat.

(d) sandwiches, filled rolls and similar bread products containing any of the foods mentioned in this paragraph, unless they are intended to be sold within twenty-four hours of their preparation.

(7) In this regulation "dairy ingredient" means any of the following when included in food as an ingredient:-

(a) milk;

(b) any constituent part of milk;

(c) anything used as a substitute for milk or for a constituent part of milk.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966 and the Food Hygiene (General) Regulation 1970 by substituting for the existing requirements as to the temperatures at which food is to be kept between preparation and sale new and wider requirements applying to all food businesses, and not, as at present, merely to catering establishments. Certain classes of food, notably fresh foods, are not covered by the Regulations, and some prepared foods are excluded (in the main dry goods and foods which have been subjected to processes intended to prevent the growth of pathogenic micro-organisms). For other foods two levels of temperature in refrigeration are introduced, 8°C and from 1st January 1993 5°C. Food to which the requirements apply are to be kept either at or below that temperature or at or above 63°C. These requirements are inserted as regulation 12 of the 1966 regulations and regulation 27 of the 1970 regulations.

A new regulation 12A is inserted into the 1966 regulations and applies a similar regime to that for markets, stalls and food premises to delivery vehicles, but provides that that regime is not to apply to local delivery vehicles until 1st January 1992, and that the lower temperature of 5°C shall not apply until 1st January 1993. The lower temperature will not apply to small local delivery vehicles provided they are not carrying any food for longer than twelve hours.

The Regulations amend the 1966 and 1970 regulations by providing definitions of certain basic terms. They modify the requirement in the 1970 regulations and the Food Hygiene (Docks, Carriers etc) Regulations 1960 by modifying the duty on those reponsible to prevent infestation by pests of premises where food is kept. They remove from the 1960 and 1970 regulations a requirement that antiseptic be kept among the first aid equipment in premises to which they apply.

COMPLIANCE COST ASSESSMENT: FOOD HYGIENE (AMENDMENT) REGULATIONS

Q1. What is the origin of the Regulations?

General proposals to extend temperature control to foods for retail sale were first issued for consultation in 1987 in response to concern that inadequate storage temperatures for chilled foods were a contributory factor in food poisoning. It was amended for further detailed consultation in 1989 to take account of developing awareness of foodborne transmission of Listeria monocytogenes.

Q2. What is the problem requiring regulation? How severe is it?

There has been a dramatic increase in food poisoning notifications since the early 1980s. Reports of salmonella infection has risen from 10,291 in 1981, to 13,330 in 1985 and 27,477 in 1988. Reports of listeriosis have risen from around 25 per year in the 1970s, to 100 a year in the 1980s with nearly 300 reports in 1989. The WHO have said that the primary means of transmission of listeria to humans is thought to be through contamination of foodstuffs at any point in the food chain. Although a rare disease, the importance of listeriosis lies in its severity, causing meningitis, septicaemia and even death in some 30% of cases; its association with stillbirths and neonatal infections with a high mortality rate and mental deficiency in a significant proportion of those neonates who survive; and the risk to people with underlying malignant disease or immunosuppression. Foodborne listeriosis should however be preventable.

Q3. What is the existing regulatory provision, if any?

The Food Hygiene (General) Regulations 1970 and the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966 require certain foods in catering businesses to be held below 10°C or above 62.7°C.

Q4. Are there alternatives to regulation eg. a code of conduct or voluntary agreement? Why have these been rejected?

Relevant sections of the food industry have been encouraged and assisted to prepare codes of practice in respect of the manufacture of soft and fresh cheese (Aug 1988 and Feb 1989). Similar industry guidelines for good hygienic practice in the manufacture, distribution and sale of foods to be eaten cold or after reheating, which will subsequently be stored at a chill temperature were issued by the Department of Health in June 1989. A number of other codes exist on the keeping and transportation of chilled foods. The only appropriate way to ensure uniformity of application in this important area is to introduce regulations.

Q5. What timetable is proposed for the introduction of the new regulation? Must all arrangements be introduced at once or can these be introduced over a period?

It is proposed that

- an upper limit of 8°C would be introduced for all controlled foods from 1 January 1991.

- an upper limit of 5°C would be introduced for relevant foods (eg. soft cheeses, pates, cold meats and cooked chicken) would be introduced from 1 January 1993. (Other controlled foods would continue to be subject to the 8°C limit).

- small delivery vehicles (below 7.5 tonnes gross) would be required to comply with the 8°C limit by 1 January 1992. (They would be exempt from the 5°C limit in the proposed Regulations. For the future the possibility of requiring them to comply would be kept under review). Larger vehicles would be bound by the timetable outlined above.

(In all cases there is a 2°C tolerance to the specified temperatures to allow for the defrost cycle, temporary breakdown of equipment, movement of food etc).

The requirements would therefore be phased in over the next 2½/3 years to allow for any potential difficulties for some businesses in more immediate compliance.

Q6. Can the period of operation of the new regulation be limited?

No, Temperature control of foods has an important and continuing part to play in the prevention of foodborne illness.

Q7. How will the regulations be enforced? By central government or local authorities?

Local and port health authorities - environmental health officers.

Q8. What specific provisions for small firms have been considered eg. exemptions?

No specific provisions would be possible for small retail shops as susceptible foods need to be temperature controlled in all outlets. The timetable for implementation does however take the needs of small businesses into account. Comments from specific small industries, such as traditional bakers have resulted in extended exemptions from temperature control for certain freshly prepared foods such as sandwiches and pies. Small delivery vehicles (under 7.5 tonnes gross) will be exempt from the 5°C requirement and will have until January 1992 to meet the 8°C requirement.

Q9. What consultations have there been with business? Are there any concerns raised by business which have not been met?

General consultations took place between July and October 1989 with interested parties including the food retailing trade, catering organisations and trade associations and the refrigeration industry. There have also been individual consultations with market traders, delicatessens, independent grocers, the Retail Consortium, bakers representatives and the refrigeration industry. One major concern was over the original proposed timetable for implementation of 1 year, this has been taken into account.

Concerns were also expressed about the complexity of the regulation requiring 2 different temperatures levels for different foods. However this is designed to provide the minimum restriction on storage temperatures required for public health purposes. Guidance on the provisions will be issued.

Specific representations were received from small bakers keen to preserve their traditional industry. Their main concerns have been meet as the redrafted Regulations contain sinificant exemptions for freshly produced pies, pasties and sandwiches.

IMPACT ON BUSINESS

Q10. Are certain sectors of industry or companies of a certain size likely to be particularly affected by the regulation?

Small food retailers and small delivery companies are likely to be most affected as the large retail chains and delivery companies are already gearing up to or meeting the proposed requirements. There will be a need to replace many existing chiller cabinets to meet the 5°C requirement. We understand only 25% of existing cabinets can do so. However because of the 2 temperature regime not all cabinets will need to work to the 5°C level. We understand that at least 80% of existing cabinets should be able to achieve the 8°C limit if operated correctly and over 99% can meet 8°C plus the 2°C tolerance.

The majority, if not all, the large delivery companies will already be achieving the 5°C limit. Small delivery vehicles have until 1992 to achieve 8°C.

Q11. What will business have to do to comply with the regulation? How will this compare with their current practice?

Food businesses will need to monitor the operation of their refrigeration equipment to be able to demonstrate that they are complying with the Regulations. This is already common practice for large businesses but will be new for many small outlets and distributors. Guidance will be issued on monitoring the operation of refrigeration equipment.

Q12. What will this cost (a) industry as a whole (b) a typical business?

The Retail Consortium estimated that the full replacement cost of retail chiller cabinets to meet the 5°C requirement (with 2°C tolerance) would be approximately £230 million in England and Wales. However, some 25% of cabinets already meet the requirement. Replacement of the remainder in 3 years instead of an assumed 10 year average life would give rise to additional expenditure of the order of £125 million over the 3 years. It is not possible to estimate the extra cost of equipment to meet the requirement, but premature replacement of a stock of capital over the next 3 years instead of 10 effectively results in a loss equal to about one-quarter of the replacement value of the whole stock, assuming straightline depreciation. This puts the cost at about £43m. By comparison food retailers made sales of £36 billion in 1988 and earned profits in the region of £1½ billion. (It should also be taken into account that not all cabinets will need to achieve the 5°C requirement as only certain foods will have to be stored at this temperature). In addition, delivery interests estimate a once and-for-all cost of about £50 million to upgrade small delivery vehicles to meet the 8°C requirement. The majority of large vehicles already comply. To put these changes in perspective the total additional cost of about £100 million corresponds to about a 0.3% increase in Food Price Index and a 0.1% increase in the Retail Price Index (all items).

The cost to an individual small business of a small refrigerator with a glass door might be from £500 upwards with larger units costing in the region of £1000-3000. Refurbishment of existing units would also be possible. The period for implementing the 5°C requirement has been extended to January 1993 to provide for the costs to be spread.

BENEFITS

Q13. What will be the benefits to the UK economy as a whole, to Government objectives, to consumers, employees, traders or enforcement authorities?

The action proposed will meet Government objectives to ensure the safety of the food supply and to protect public health. Criticism from consumer groups is likely to suggest that the measures do not go far enough.

There are benefits to the economy as a whole through potential reductions in food poisoning, including listeriosis, leading to reductions in GP consultations, laboratory analysis, hospital admissions and deaths and gains in production through reduced time off work. The benefits are however difficult to quantify.

The European Commission is considering a Food Hygiene Directive. It is therefore probable that temperature controls would be introduced at some future date. The head start for the refrigeration industry and delivery industry will result in financial benefits to these industries and the economy as a whole.

MONITORING AND EVALUATION

Q14. What steps are being taken to measure the effectiveness of the new regulations in meeting its objectives? When will the regulations be reviewed?

The Regulations would be enforced by local and port health authorities environmental health officers. In accordance with the recommendation of the Richmond Committee the effect of the provisions on levels of food poisoning would be kept under review with a view to taking further steps if necessary. It is also proposed to review the Food Hygiene Regulations in their entirety in due course. Progress in the EC on a Food Hygiene Directive will be relevant.



cst.ps/lets/14nl23.4

RESTRICTED



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John Gummer MP
Minister of Agriculture, Fisheries and Food
Whitehall Place
London
SW1A 2HH

25th April 1990

Dear John

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

Thank you for your letter of ~~19~~ 17th April.

2 I am happy to support your recommendation that we should seek a direct reversal of Lord Stanley's amendment to the Food Bill. As the paper attached to your letter points out, even the limited concessions which you have now rejected could have had significant financial implications.

3 The supporting arguments in paragraph 10 of the paper seem the right ones. I particularly welcome your encouragement to the industry to explore the possibilities of insurance. However, I hope that, in referring to existing remedies, you will not need to make too much of the possibility of special Government payment schemes such as the Chernobyl one, and that, if you need to refer to this possibility, will maintain the "very exceptional circumstances" qualification. It would defeat the object of the exercise to give the impression that we were ready to consider such schemes whenever emergency action was necessary. And such schemes would of course have to be agreed with the Treasury.

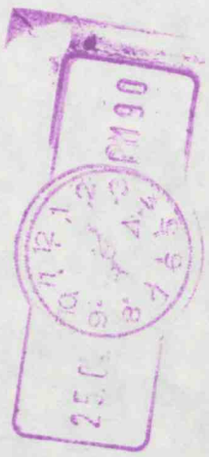
4 I am copying this letter to the Prime Minister, other members of MISC 138, James Mackay, John Belstead, Chris Patten, Patrick Mayhew, Peter Fraser, Nicholas Lyell, Timothy Renton Bertie Denham and to Sir Robin Butler.

Yours ever

NORMAN LAMONT

Food : Saketer PT3

25 OCT 90



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Tel. 01-270 3000 (Switchboard)
01-270 0538 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

24 April 1990

Dear John

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

Thank you for copying me your letter of 19 April to Norman Lamont together with the paper jointly prepared by your Department and by Department of Health.

I agree the effects of Lord Stanley's amendment are likely to be such that remedial action of some sort is unavoidable. Reluctantly I concur that in this particular case there is no feasible alternative but to seek the full deletion of the new clause.

I am fully content with the arrangements described for the tactical handling of this issue.

I am copying this letter to the Prime Minister, Members of Misc 138, James Mackay, John Belstead, Chris Patten, Patrick Mayhew, Lord Fraser, Nicholas Lyell, Timothy Renton, Bertie Denham and to Sir Robin Butler.

Yours ever

The Rt Hon John Gummer MP
Minister of Agriculture
Ministry of Agriculture Fisheries and Food
Whitehall Place
LONDON
SW1A 2HH

FOOD: Safety PT3

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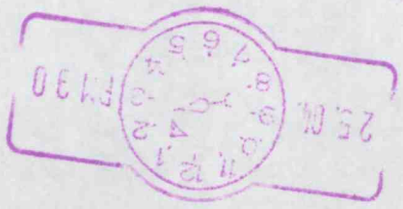
25 OCT 1990



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CC PM

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AQ

11 April 1990

Dear Chief Secretary

FOOD SAFETY BILL - EMERGENCY MEASURES AND COMPENSATION

I have seen a copy of John Gummer's letter of ~~19 April~~ 11 April about Clause 14 of the Food Safety Bill.

The Bill does not of course extend to Northern Ireland. However, the provisions of the Bill will be replicated here in due course under the Northern Ireland Order-in-Council procedure.

We have therefore a vested interest in the Bill and would be most concerned both from an Agriculture and Health standpoint if the compensation provisions in Clause 14 were allowed to stand. I would therefore strongly support the arguments put forward by John Gummer for the deletion of this Clause in the manner proposed.

I am copying this letter to the Prime Minister, John Gummer, other members of MISC 138, James Mackay, John Belstead, Chris Patten, Patrick Mayhew, Peter Fraser, Nicholas Lyell, Timothy Renton and Bertie Denham and to Sir Robin Butler.

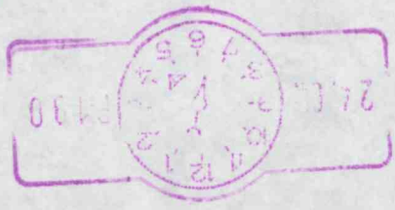
Yours sincerely

pp PB

[Approved by the Secretary of State and signed in his absence]

Food: Salem Pt3

24 OCT 1990



SOLICITOR GENERAL

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ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

23rd April 1990

The Rt. Hon. John Gummer MP
Minister of Agriculture, Fisheries & Food
Ministry of Agriculture, Fisheries & Food
Whitehall Place
LONDON
SW1A 2HH

Dear John.

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

Thank you for sending me a copy of your letter of 19th April 1990 to Norman Lamont and the enclosed paper. I am glad that you were able to take account of the comments that I had made on the approach to Lord Stanley's amendment that was originally proposed.

What is proposed by Lord Stanley is that where it is seen with hindsight that the Minister made an order that was wider than what was strictly necessary to contain the problem, the Minister should compensate those whose businesses suffer in consequence of the order. This both greatly extends normal rights to compensation and invites the courts to adjudicate matters on a basis, revaluation with benefit of hindsight, that is not normally justiciable.

The right to compensation would not even be confined to cases where the Minister's order had been shown to be ultra vires. If the law provides no remedy in damages for loss suffered in consequence of an order that is ultra vires, then a fortiori one would not expect to see damages awarded in respect of a loss suffered in consequence of an order that was intra vires but can be seen, with hindsight, to have exceeded what was strictly necessary to attain the object of the order.

Paragraph 10 of your Paper sets out a number of arguments of both law and policy that can be used to support a full reversal of Lord Stanley's amendment. The principal argument of legal policy, in paragraph 10(d), can, I think, be strengthened.

It is clear that in English law a finding that a Minister has acted ultra vires does not in itself give rise to a right to damages. It is only where a plaintiff can establish misfeasance that he can pursue a claim for damages. In effect that means that the plaintiff must show malice on the part of the Minister or that the Minister knew that his act would be ultra vires.

The rule that damages are not available for breach of the public law duty of a Minister is by no means peculiar to English law. The same rule applies in Scotland, and the European Court has developed a comparable doctrine said to be based on general principles common to the laws of the member states: Bayerische HNL v Council and Commission (1978) ECR 1209. The principle of public policy which underlies it is that a Minister or official would otherwise be significantly inhibited in discharging his duty if in consequence of any subsequently adjudicated mistake he becomes liable to action and consequent compensation. It is a principle that the Crown successfully defended in the Court of Appeal in the leading case of Bourgoin v MAFF (1986) QB716 and that is likely to have to be defended further in the foreseeable future both in the House of Lords and in the European Court of Justice. To overturn it in any general way would be likely to prove hugely costly to Government. Inroads into the principle should therefore be approached with great caution.

It seems to me that Lord Stanley's proposal is easily distinguishable from the cases where legislation already makes provision for compensation. In animal health legislation, for instance, where compensation is payable, the compensation is a direct result of the Minister's act

SOLICITOR GENERAL

and is paid to everyone affected by the act. It is not restricted to persons who can show that it was not necessary for them to be included in the act of the Minister.

I am sending a copy of this letter to the Prime Minister and the other members of MISC 138, James Mackay, John Belstead, Chris Patten, Norman Lamont, Peter Fraser, Tim Renton, Bertie Denham and Sir Robin Butler.

Yours ever

Nick.

Food: Safety Pt 3



NAM
AT 23/4

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the department for Enterprise

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

The Rt Hon John Gummer MP
Minister of Agriculture
Fisheries and Food
Whitehall Place
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Direct line 01 215 5622
Our ref PB5ADD
Your ref
Date 23 April 1990

Dear John

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

I agree that ~~Lord~~ dear Stanley's amendment should not stand and I am content with the tactics you propose in your letter of 19 April to Norman Lamont.

Copies of this letter go to recipients of yours.

Yours

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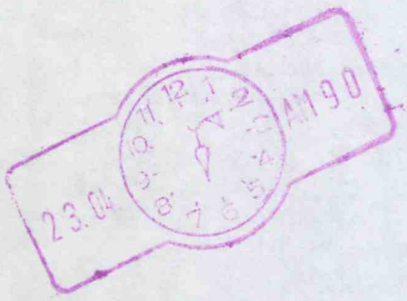
food: Salem PT3



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FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

20 April 1990

Dear John,

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

I have seen a copy of your letter to Norman Lamont and the attached paper considering options for reversing the amendment moved successfully by Lord Stanley of Alderley in the House of Lords. You ask for agreement to the proposals in the paper by close of play on Monday 23 April.

I am writing simply to make the point that the success of the course you propose in the paper will, in all probability, depend on the meeting you intend to hold with Lord Stanley and his industry sponsors. The amendment brought together both landowners and working farmers. If Lord Stanley wishes to move to insist on his amendment when the matter returns to the House of Lords, I believe there is a real risk that he would be successful.

I am, of course, available to discuss this at any time before MISC 138; it might, perhaps, be best to do this after you have seen Lord Stanley; and I shall, of course, canvass the business management difficulties in the Lords at the meeting of MISC 138 in any case.

I am copying this letter to the Prime Minister, other members of MISC 138, James Mackay, Chris Patten, Patrick Mayhew, Lord Fraser, Nicholas Lyell, Timothy Renton, Bertie Denham and to Sir Robin Butler.

Yours sincerely,

BELSTEAD

The Rt Hon John Gummer MP
Minister of Agriculture, Fisheries and Food



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the department for Enterprise

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

The Rt Hon Kenneth Clarke QC MP
Secretary of State for Health
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Department of
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Direct line 01 215 5621
Our ref JW4AJL
Your ref
Date 20 April 1990

Dear Kenneth

FOOD SAFETY BILL: REGISTRATION OF FOOD PREMISES

Thank you for your letter of 5 April. Hep

£3 per business to complete a registration form may not be a substantial sum but the overall cost to the industry is likely to be some £2 million. That is a substantial sum and one which must come out of profits or be passed on to the consumer in higher prices or poorer service - like all other compliance costs we may impose. It seems a high price for the questionable improvement mass registration may bring to the effectiveness of environmental health authorities.

I would be surprised if environmental health officers did not already know (eg from planning applications, local knowledge and even "Yellow Pages") where the bulk of high-risk activities are taking place. We seem then to be imposing registration on everyone to "catch" the last few businesses unknown to the EHOs but with no clear evidence that these are responsible for recent food safety problems. The resources which would be tied up in running registration might be better employed in the field. But, if you are still determined to go for registration, I have to say I remain unconvinced that public health would be significantly endangered by exempting businesses engaged in predominantly low-risk activities and that this could not be done without "opening the floodgates" to businesses posing a real risk.

As to where we draw the line in considering cumulative compliance costs of measures, I had in mind of course the package of measures which is <u>currently</u> being considered for

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the department for Enterprise

implementation when the Food Safety Bill becomes law. That package must be well defined by now and it is not too soon for colleagues to see a full assessment of the compliance costs the industry will eventually be asked to shoulder, so they may judge whether these are proportionate to the potential benefits. This is the same point you made in your letter of 21 April 1987 to Michael Jopling on the Review of Food Legislation (copy enclosed): ".... without such an assessment I find it difficult to make a judgement about whether we are indeed striking the right balance." Hopefully, Roger Freeman's proposed meeting with John Redwood and David McLean on systematic compliance cost assessment in this area will lead to early progress.

I am copying this letter to the Prime Minister, Members of MISC 138 and to Sir Robin Butler.

Yours ever

Norman

Recycled Paper

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
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The Rt Hon Michael Jopling MP
Minister for Agriculture,
Fisheries and Food
Ministry of Agriculture,
Fisheries and Food
Whitehall Place
LONDON SW1A 2HH

21 April 1987

Dear Minister

REVIEW OF FOOD LEGISLATION

Thank you for copying me your letter of 25 March to Willie Whitelaw. I have also seen a copy of Norman Tebbit's letter of 26 March.

I have two sets of concerns about your proposals. First, I agree with Norman Tebbit that we should take the opportunity provided by any new legislation to remove unnecessary burdens on business. Secondly, we should in my view look very carefully at the potential impact on business of what is proposed, particularly in relation to "prior approval".

In terms of removing unnecessary burdens, there may be scope for removing some elements of the legislation which have become redundant - and I understand that there are one or two such items that you do intend to repeal. But given our commitment to encouraging enterprise, we should also be grasping the opportunity to improve the legislation in terms of the compliance costs that it imposes on business. I am thinking particularly of the scope that exists for rationalising and simplifying the various separate registration and licensing requirement that currently apply to food retailers. As you know, a typical supermarket needs to cope with as many as seventeen different requirements, administered by separate parts of the District Council, the County Council and several central government agencies. Many of these need to be renewed - some annually, some less frequently. I should welcome your views on the potential that exists - and I recognise that other colleagues, particularly Norman Fowler, also have an interest.

My second concern is about the basis on which you conclude that food retailers should be faced with a new system of "prior approvals". You recognise in your letter that such a system would impose new burdens on business and your judgement

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is that the potential benefits in terms of public health protection do justify the action you propose. I am not in any way suggesting that we should not look for ways of improving the effectiveness of public health controls. We clearly should - and indeed, it was during my time as Minister for Health that the review was set in hand. But as you say, we need to strike a balance with the new burdens that might be imposed on business. As far as I am aware, no systematic assessment has been made of the compliance costs to business of what you propose. I recognise that the review predated our commitment to deregulation and that the consultative document did not itself therefore include an assessment of business costs. But without such an assessment, I find it difficult to make a judgement about whether we are indeed striking the right balance.

I am particularly concerned about assessing compliance costs in relation to prior approvals, since I have very real doubts about whether the benefits do justify the costs (as indeed did many of the business organisations which commented on the original proposals). It seems to me that imposing a system which requires a business to be approved - in effect licensed - before it can trade is a far more significant barrier to enterprise than one which simply requires a business to register with the local authority. The necessary inspection can then take place (and powers of closure be brought to bear where necessary) without delaying the start of trading. The ability of a business to begin trading quickly is often crucial to its survival.

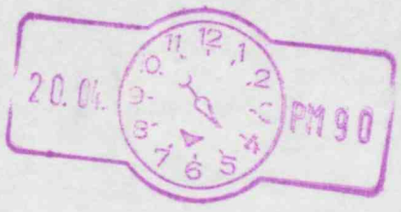
I should be grateful if you could share with me and with other colleagues an assessment of the compliance costs of your proposals.

I am copying this to Willie Whitelaw, other members of H Committee, David Young, Paul Channon and to Sir Robert Armstrong.

Yours sincerely

Robert Ledsome

pp KENNETH CLARKE
(Approved by the Minister and signed in his absence)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Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

RESTRICTED

The Rt Hon Norman Lamont MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AQ

19 April 1990

Dear Chief Secretary

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

At the Lords Report Stage of the Food Safety Bill the Government lost a Division on an amendment moved by Lord Stanley of Alderley. This provides for compensation to anyone who suffers as a result of an emergency Ministerial order if it is subsequently established that such an order was not necessary.

The attached paper (which has already been circulated at official level) discusses the problems this causes and recommends direct reversal of the amendment. Colleagues will see that, in view of the handling problems anticipated on the Bill's return to the Lords, we have looked at the possibility of a narrower and less costly provision. However, all such provisions appear to fall foul of the legal policy objections the Solicitor-General has raised. They would also seem to have significant financial implications of the kind that the House of Lords does not by convention write into legislation - particularly as the Government could come under irresistible pressure in future to make similar provision in other legislation.

In view of the Solicitor-General's observations the Government obviously cannot afford to lose on this issue. I am also therefore proposing that Department of Health colleagues

and I should see Lord Stanley and his industry sponsors before the Government amendment is tabled to try and prevent any further build up of steam. We can explain our thinking and warn of the dangers of taking the Government - and the Commons - on on this issue.

Time is short because I understand that the Business Managers may now want to schedule Report Stage for the week of 30 April. A Government amendment will need to go down next week. I should therefore be grateful for agreement to the proposals in the attached paper by close of play on Monday 23 April.

I am copying this letter to the Prime Minister, other members of MISC 138, James Mackay, John Belstead, Chris Patten, Patrick Mayhew, Lord Fraser, Nicholas Lyell, Timothy Renton, Bertie Denham and to Sir Robin Butler.

Yours sincerely

Richard Harrison

JOHN GUMMER
(approved by the Minister
and signed in his absence)

RESTRICTED

FOOD SAFETY BILL: EMERGENCY MEASURES AND COMPENSATION

JOINT PAPER BY THE MINISTRY OF AGRICULTURE, FISHERIES AND FOOD AND THE DEPARTMENT OF HEALTH

PURPOSE

1. This paper considers tactics for reversing the compensation provision (Clause 14) inserted into the Food Safety Bill at Report Stage in the House of Lords.

BACKGROUND

2. Clause 13 of the Food Safety Bill empowers Ministers to make an emergency control order "if it appears to the Minister that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health". This power will be used by both Health and Agriculture Ministers and could apply to food manufacturers, retailers, farms or other food businesses. A similar power in section 1 of the Food and Environment Protection Act 1985 empowers Ministers to make an emergency order if there is an escape of substance likely to create a hazard to human health through human consumption of food.

3. During the Report Stage of the Food Safety Bill the Government was defeated (62 votes to 54) on an amendment (Annex A) moved by Lord Stanley of Alderley. This was backed by the National Farmers Union, the Country Landowners Association and food industry interests and won all-party support. It takes the form of a new Clause providing for compensation to owners of food or food sources if a justice of the peace is satisfied that there

is no imminent risk of injury to health (in the case of a Clause 13 order under the Food Safety Bill) or that the food was not unsuitable for human consumption (in the case of a section 1 order under the Food and Environment Protection Act) at the time the order was made. The wording reflects Clause 9 of the Bill which gives local authorities powers to detain or seize food which appears likely to cause food poisoning or any disease communicable to human beings. Clause 9 requires an authority to compensate the owner if it withdraws a notice that suspect food should be detained or if a justice of the peace refuses to condemn food that the authority has seized.

4. The Opposition in the Commons have told the Parliamentary Secretary (Mr Maclean) that they would support the Government if they tried to improve the Clause in the Commons. Privately they accept that there is a case for removing it entirely and if the Government attempts this they would be prepared to abstain on a vote. The Business Managers have warned of the difficulties of carrying a straight reversal of the amendment in the House of Lords on the Bill's return from the Commons even if there is a substantial majority in the Commons when the Clause is removed.

THE PROBLEM

5. Clause 13 is intended to give a general power in an emergency to deal with a risk to health from food, food sources or contact materials covering an extensive area or a widely distributed food. Considerable uncertainty may still exist about important matters of fact. In contrast Clause 9 covers a risk relating to particular food which has generally been inspected even if not tested - usually in a particular locality or in a single premises. It may therefore happen that where a Clause 13 order is made -

a) a risk to health is not confirmed by subsequent testing;

b) the restrictions go beyond what is needed, either generally or in a particular case. For example, in many cases only a small proportion of a batch will prove to be contaminated; or

c) a business is needlessly included in the restrictions because of uncertainty, false information or a mistake by a department (which may or may not amount to negligence).

In short, the precautionary restrictions may initially extend more widely than with hindsight proves to be necessary. Moreover, where controls cover lots of small businesses, such as farms and individual testing is needed, lack of resources may delay removal of the restrictions in a widespread emergency.

6. In these circumstances the industry have sought with their new Clause 14 to provide for compensation to anyone who suffers loss as a result of an emergency order if it is subsequently established that such an order was not necessary. For some businesses the consequential losses may be serious. It is argued that where Government action in the public interest leads to a loss on the part of an individual who is blameless, Government should make good the losses. The full co-operation of businesses, especially small businesses, is more likely if compensation is available where the Government goes too far. The industry also argue that such losses are not insurable, contrary to the indications given by the Government during the passage of the Food and Environment Protection Act and that any remedy which might be obtained in judicial review is insufficient, if it can be obtained at all. The NFU, who originally sponsored Clause 14 now accept that it is technically defective, but have urged the Government to amend rather than delete it. They would be happy to see procedural changes (to use county courts rather than JPs) and to delay the liability to compensate by seven days from the making of the emergency order, but are anxious to retain the principle of compensation for innocent parties.

7. The problem for the Government is that the Clause has unacceptable legal and financial implications which go well beyond the food legislation. We have considered whether to provide for compensation when the Government is itself at fault, even though this would go only a limited way towards meeting the industry's concern. However, the Solicitor-General has advised that even a narrow provision based on a successful application for judicial review or on proven unreasonableness or negligence by Ministers would create an unacceptable precedent. It could cause real difficulties for the UK in cases before the European Court where it is our practice to argue that Ministerial action which leads to European Court cases should not create an entitlement to compensation where a similar action in the UK Courts does not. Moreover, once a right of the kind under discussion appeared in one Bill, even if made dependent upon subsequent regulations, there would inevitably be pressure to repeat the provision in other legislation. This could have considerable financial consequences.

8. The only acceptable option, therefore, is to remove Clause 14 altogether. The remainder of this paper discusses existing remedies available to injured parties, the arguments that can be deployed against Clause 14 and tactical handling of its removal.

EXISTING REMEDIES

9. A business incurring losses as a result of an emergency control order could seek redress in five ways:

a) by requiring its supplier or anyone else responsible to pay damages on the "polluter-pays" principle. This depends on a legal relationship permitting proceedings to be brought and would not provide a remedy if there was nothing wrong with all or part of the food supplied or where the supplier was insolvent;

b) by insuring against such losses; those supporting the amendment have however claimed that insurance cannot be obtained in such cases. DTI are, however, pursuing this further with the Association of British Insurers to see if there are any ways round the problem;

c) by applying for judicial review of the order; if Ministers had gone beyond their legal powers or acted unreasonably or unfairly, the order might be quashed. But to obtain damages the applicant would also have to prove negligence, breach of statutory duty or malfeasance in a public office and in most of the situations outlined above it is unlikely that a claim would succeed;

d) by recourse to the Parliamentary Commissioner for Administration (PCA), but only where maladministration is established (which might well include negligence);

e) by seeking or a one-off compensation scheme under the authority of the Estimates and the Appropriations Act, as happened after Chernobyl; the Government is however likely to agree to this only when the losses are heavy, uninsurable and stem from causes outside anyone's control;

f) by seeking ex-gratia payments from the Government; there are no standard rules for special payments of this kind, but if, for example, administrative failing should lead to severe hardship some payment might be considered.

ARGUMENTS TO BE DEPLOYED

10. In explaining the decision to seek deletion of the Clause Ministers can emphasise the following points:

a) the industry should carry prime responsibility for food safety and for the associated costs of securing it. In some circumstances the burden on individual businesses may be heavy, but the whole industry benefits from prompt action which reassures the public;

b) at present many firms act promptly and of their own accord in withdrawing suspect food. In order to protect their good name, they may act when food contains a contaminant even if there is only a negligible health risk (eg Perrier). If, however, compensation were payable, they might delay, take less firm action and insist on statutory controls. Voluntary co-operation with Government would thus be put in jeopardy;

c) Clause 9, which has been quoted as a precedent, deals with single seizures of food by a local authority employee who will almost invariably have inspected the food in question. It is not therefore a fair parallel. The Consumer Protection Act 1987 make a similar distinction between local authority action, where compensation may be payable in limited circumstances (Section 14) and action by the Secretary of State, (Section 13) where it is not. Moreover, the Health and Safety at Work etc Act 1974 makes no provision for payment of compensation in any circumstances;

d) the amendment would greatly extend the range of circumstances in which Government compensation would be payable and is an unacceptable precedent for other areas. In other emergency situations the authorities are free to introduce immediate precautions, such as cordoning off a commercial area because of a suspected bomb, without concern for possible financial penalties. Once a

compensation formula, however limited, appeared in food legislation it would be difficult to argue against similar provisions elsewhere. Even a more restricted formula than that currently proposed in Clause 14 could have substantial financial implications - indeed implications of the kind the House of Lords does not by convention write into legislation. Animal health legislation does not cover consequential losses as a result of movement restrictions, even if it turns out that the herd is free from disease and medicines legislation does not provide compensation if a medicine is withdrawn and then reinstated;

e) there are existing remedies. In many cases it will be possible to require the person responsible to pay damages. If the Government is at fault the established remedies in recourse to judicial review or the Parliamentary or Commissioner for Administration. In very exceptional circumstances the Government might also consider a scheme for special payments, as happened after Chernobyl. These remedies will not cover all cases, but to the extent that they may be inadequate the industry should itself be considering what else can be done. For example, they could further explore the possibilities with the insurance industry. After all some three quarters of a million businesses are potentially involved and the risk is relatively small; insurance may well be a commercial proposition;

f) finally, the Government must be able to act quickly and effectively in dealing with emergencies in circumstances of considerable uncertainty. To pay compensation where food was found, with the benefit of hindsight, not to be contaminated could in practice lead to an over cautious approach and is not in the interest of the consumer. The

Bill's prime objective is the protection of the consumer. As the Opposition argued in Committee, Clause 14 upsets the balance between the needs of the consumer and the concerns of the food and farming industry.

TACTICAL HANDLING

11. It seems fairly clear that the Opposition will not oppose deletion of the Clause in the Commons and that Government will have a reasonable majority. However, to avoid problems in the House of Lords, Agriculture and Health Ministers should offer to see the peers primarily concerned and the NFU and CLA before the Government amendment is tabled. They should explain the case against compensation in detail. It may also be prudent for the Minister of State to go over the arguments in advance with the Leader of the Opposition in the Lords since they share an interest in the consumer protection case for reversal of the Clause and may be prepared to abstain.

FINANCIAL IMPLICATIONS

12. To leave Clause 14 as it is would have very significant financial consequences since Ministers would be liable to pay compensation where, for example, a large batch of food was taken off the shelves and only a small quantity proved to be defective. Even a narrower provision could add to Government legal costs and set an awkward precedent in other areas, with considerable financial consequences.

CONCLUSIONS

13. Ministers are invited to agree that -

a) the provision for compensation in Clause 14 of the Food Safety Bill should be deleted entirely by the Government at Report Stage of the Commons in early May;

b) the arguments set out in para 10 should be deployed; and

c) Agriculture and Health Ministers should see the initiators of the Clause before the Government amendment deleting the Clause is tabled.

DEPARTMENT OF HEALTH MINISTRY OF AGRICULTURE, FISHERIES & FOOD
19 April 1990

ANNEX A

Emergency control orders.

13.—(1) If it appears to the Minister that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health, he may, by an order (in this Act referred to as an "emergency control order"), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) Any person who knowingly contravenes an emergency control order shall be guilty of an offence.

(3) The Minister may consent, either unconditionally or subject to any condition that he considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order.

(4) It shall be a defence for a person charged with an offence under subsection (2) above to show—

(a) that consent had been given under subsection (3) above to the contravention of the emergency control order; and

(b) that any condition subject to which that consent was given was complied with.

(5) The Minister—

(a) may give such directions as appear to him to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food sources or contact materials which he believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and

(b) may do anything which appears to him to be necessary or expedient for that purpose.

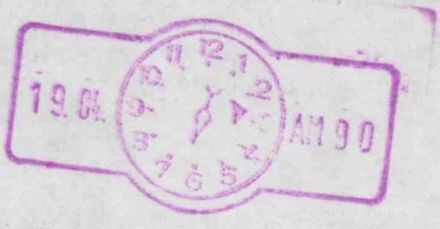
(6) Any person who fails to comply with a direction under this section shall be guilty of an offence.

(7) If the Minister does anything by virtue of this section in consequence of any person failing to comply with an emergency control order or a direction under this section, the Minister may recover from that person any expenses reasonably incurred by him under this section.

Complaints about emergency control order.
1985 c. 48.

14.—(1) This section applies where any person makes a complaint to a justice of the peace on the ground that he is aggrieved by an emergency control order made under section 13 above, or by an emergency order made under section 1 of the Food and Environment Protection Act 1985.

(2) If a justice of the peace is satisfied, on the basis of such evidence as he considers appropriate in the circumstances, that there was no imminent risk of injury to health from the carrying out of commercial operations with respect to food or food sources at the time when an order under section 13 above was made, or that food was not unsuitable for human consumption at the time when an emergency order under section 1 of the Food and Environment Protection Act 1985 was made, the Minister shall compensate the owner of the food or food sources for any depreciation in the value of the food or food sources.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ME/4470p

NDPM at this stage
AT 5/4

DEPARTMENT OF HEALTH

The Rt Hon Nicholas Ridley MP
Secretary of State for Trade and Industry
1-9 Victoria Street
LONDON SW1H OET

Richmond House
79 Whitehall
London SW1A 2NS
Telephone 01 210 3000
From the Secretary of State for Health

05 APR 1990

Dear Nick,

FOOD SAFETY BILL: REGULATIONS ON REGISTRATION OF FOOD PREMISES

I am writing to respond to the points you made in your minute of 3 April 1990 to the Prime Minister, copied to Members of MISC 138 and Sir Robin Butler.

You expressed disappointment that I had not substantiated my statement - that the costs of my proposals on registration for businesses would be minimal - with any figures. As you pointed out, officials in the Departments affected have seen the basis of my calculations. They have also seen a full compliance cost assessment for these proposals. I did not, however, consider that costs, which amount to no more than £3 per food business affected, were sufficiently substantial to be of concern to members of MISC 138. The omission of any figures from my minute does not of course mean that I am making any attempt to conceal them and I certainly stand by the calculations which were made and circulated to your officials.

Secondly, you suggest that we should have some idea of the cumulative effect of all the measures flowing from the Food Safety Bill. I would not, of course, dispute your assertion that we need to keep the cumulative effect of these costs in mind. However, for practical purposes we need to draw the line somewhere. Taken to extremes, it would be possible to comment that we should look at the impact on any particular type of business of all new burdens imposed by Government together, whether in health, taxation, or other fields. Regulations will be made under the provisions of the Food Safety Bill for as long as that Bill - when an Act - remains in force. We cannot possibly at this stage predict how long a life this piece of legislation will have. It seems unrealistic therefore to try and assess the potential cumulative effect of all possible regulations. For this reason I hope we can agree that we need to look at each proposal as it arises, but clearly, as you state, with an eye to the burdens we as a Government already have placed on that type of business.

Finally, you query the need for virtually universal registration. It is true, as you say, that environmental health officers already know which activities pose the highest risk to consumers. However, they do not necessarily know where those activities are taking place within their area. The arguments against exemptions for the types of low-risk premises you mention are:-

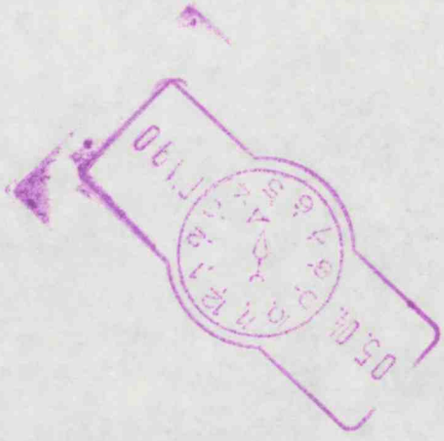
- there is a trend to diversification in the food industry - very few food business now sell only low-risk products;

- if the saving to businesses from exemption is very small indeed, and the gain to environmental health departments in terms of having a complete list of all businesses in their area is substantial, then the argument seems to me to fall in favour of no or very few exemptions;

- there are a number of reasons why certain types of business could claim exemption (not just limited to risk in public health terms). To grant exemptions for one of those reasons would certainly lead to considerable pressure to grant others.

In view of what I have said, I hope you will now agree that I can make an announcement of these proposals. I am copying this letter, as you did yours, to the Prime Minister, Members of MISC 138 and to Sir Robin Butler.

KENNETH CLARKE



FOOD
Food safety
P13

dti

the department for Enterprise

PRIME MINISTER

FOOD SAFETY BILL: REGULATIONS ON REGISTRATION OF FOOD PREMISES

Kenneth Clarke sent me a copy of his minute of 22 March outlining his proposals for registration.

I was pleased that Ken's minute recognises the importance of minimising the costs to business of complying with his proposals. All the more disappointing, then, that he does not substantiate his estimate of "minimal" with figures. I understand officials have seen some figures but this is not, I think, what MISC 138 on 9 November last had in mind when it re-affirmed the need to ensure that our decisions on proposals likely to affect food business are informed by compliance cost assessments.

Similarly, we should not be too ready to dismiss the compliance costs of this proposal, small though they may be. It is possible to justify almost any number of proposals against the turnover and profits of an industry by taking them individually. However, other measures will flow from the Food Safety Bill and each will bring its own compliance costs. If we are to be sure that our response to the problem of food safety remains proportionate, we need to have some idea of their cumulative effect.

I also have some difficulty with the argument that (virtually) universal registration is needed to enable enforcement authorities to target resources effectively. Surely, environmental health officers already know which activities pose the highest risk to consumers and some means can be found of exempting those at the other end of the spectrum. For example, I cannot see the point of asking greengrocers, newsagents or those running confectionery kiosks on railway stations to fill in these forms.

Recycled Paper

dti

the department for Enterprise

I am copying this to members of MISC 138 and to Sir Robin Butler.

N R

3 April 1990

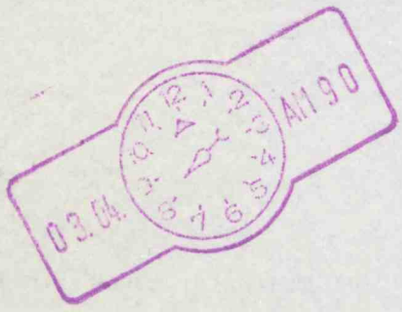
DEPARTMENT OF TRADE AND INDUSTRY

CONSERVATION

JW1ALL

Recycled Paper

FOOD : Food Safety Pt3.



FILE PM

bc P.U.

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

26 March 1990

Dear Andy

FOOD SAFETY BILL: REGULATIONS ON REGISTRATION OF FOOD PREMISES

The Prime Minister has seen your Secretary of State's minute of 22 March and the draft registration form attached to it. She was content with these proposals.

I am copying this letter to the Private Secretaries to members of MISC 138 and to Sir Robin Butler.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

Andy McKeon, Esq.,
Department of Health.

KK

KH/3914p

Prime Minister
Content that this registration form keeps bureaucracy to a minimum?
Yes AT 2313

PRIME MINISTER

FOOD SAFETY BILL: REGULATIONS ON REGISTRATION OF FOOD PREMISES

1. During discussions in November 1989 on the resources and mechanisms for enforcement of the Food Safety Bill, it was agreed that MISC 138 should be consulted in good time on regulations made under the Bill and that those should be framed in a way which goes as far as possible to minimise the burden on small businesses. I am now writing to let you know my proposals for the scope of the regulations on registration of premises used for the purpose of a food business. This letter is written with the agreement of John Gummer and Malcolm Rifkind, with whom I have joint responsibility for the Food Safety Bill.

2. The purpose of these regulations is to ensure that enforcement authorities know exactly what food businesses are operating in their area. This will allow them to direct their resources towards those businesses which present the highest risk to public health. Our aim, with these regulations, is therefore to ensure that the register of food businesses is as complete as possible whilst at the same time minimising the burden on business.

3. We have therefore decided that the registration form businesses should be required to complete should contain only seven questions, some of which will be completed by means of a "tick box" system. A copy of the draft form, which will be prescribed from the centre, is attached for your information. Its completion will be straightforward and the work and cost for food businesses will be minimal. Registration will be as of right and not subject to annual renewal or to a charge.

4. There will be considerable benefits to enforcement authorities from these provisions resulting from their knowing of the names, types and locations of food businesses operating in their area. Since the requirements for supplying information for the register will be so minimal, we feel that-to maximise the effectiveness of the register to enforcement authorities - the number of exemptions from registration should be very small. We do not, however, intend to cover the kind of social and fund-raising activities we normally associate with churches, the Women's Institutes or local branches of political or other voluntary organisations - and the regulations will have to be carefully drafted to achieve this. We also propose to exempt businesses which are already required to supply information for other food-related registration or licensing schemes - this would cover, for example, slaughterhouses, dairies, and street traders: in these cases information will be passed between central and local authorities to ensure that the local registers are complete. This does not, of course, mean that these premises would be exempt from food legislation generally.

5. I should emphasise that this register will be ineffective if it does not cover all commercial and permanent premises. I have therefore decided that, given the very small cost of registration, small businesses should not be exempt from the provisions per se.

Some of the businesses with a very low turnover, do in fact represent a high risk in terms of public health. I have in mind such businesses as mobile hot-dog stalls (vehicles will be covered by the provisions) and takeaway premises with a high turnover of food which might be kept warm for long periods. I have also decided to provide for temporary registration for events such as catering at exhibitions or sports tournaments which last for five days or more - in this way we will exclude village fetes and other small scale occasions.

6. Publication is a major aspect of our policy on registration. We intend to require that certain parts of the register should be available for public inspection: at least a list of the names and addresses of the food businesses operating a particular local authority area, the nature of those businesses and the name of the owner. Publication will permit the register to be consulted by private individuals who might be concerned that food businesses in their neighbourhood are escaping inspection by the enforcement authorities and are operating below the required hygiene standards. Colleagues will be aware that, during the passage of the Food Safety Bill, we have in fact come under pressure to publish more than we are proposing here but I do not intend to require all of the details which will be supplied by businesses on the registration form to be published. The remaining information, together with that collected during inspections, will be used to assist with the prime purpose of these provisions - ie assisting enforcement authorities with their task.

7. The enforcement costs of these provisions have been estimated at £6 million in the first year (when all existing businesses will be registered) and £1.5 million in subsequent years (to take account of changes to the register). These costs have been included in the figure of £30 million for enforcement of the provisions of the Food Safety Bill which was agreed before the Bill as a whole was published.

8. In conclusion, perhaps I could say that I believe that the burden on business from these proposals will be minimal and that the benefit in terms of higher standards of food safety could be considerable. I hope colleagues will agree that an announcement on the scope and coverage of the regulations on registration may be made shortly, as I am anxious to reassure businesses who fear that these provisions may be burdensome to them. It would obviously be very helpful if an announcement could be made during the debates on the Committee Stage of the Food Safety Bill and I should therefore be most grateful for a reply as soon as possible.

Copies of this letter go to all members of MISC 138 and to Sir Robin Butler.

22 March 1990

KC
Secretary of State for Health

** TOTAL PAGE.004 **

Registration of premises where food is prepared, handled, stored or sold

1 **Address of premises**

* **Telephone number:**

2 **Name of business:**

3 **Name of owner(s):**

Address of Head Office or Registered Office:
if different from address of premises

4 **Name of manager**
if different from owner

5 **Number of people engaged in food operations**
Count part-timers as one-half

0-10 ☐ 10-50 ☐ Over 50 ☐

6 **If this is a new business**
Date you intend to open

7 **Type of premises**
Please tick all the boxes that apply

- Restaurant/Cafe/Snack Bar ☐
- Hotel/Guest House ☐
- Public House/Club ☐
- Kitchen in an institution eg hospital, school ☐
- Staff Restaurant/Canteen ☐
- Takeaway food business ☐
- Supermarket/Grocer's ☐
- Bakery/Baker's shop ☐
- Delicatessen/Dairy produce shop ☐
- Butcher's ☐
- Fishmonger ☐
- Confectioner/Tobacconist/ Newsagent ☐
- Greengrocer's ☐
- Mobile business used for transporting or selling food ☐
  How many vehicles or mobile premises? ☐
- Other (please specify) ☐

Food manufacturer producing:

- Dairy produce ☐
- Canned ☐
- Frozen ☐
- Chilled ☐
- Aseptically-packed ☐
- Packed in a modified atmosphere ☐
- Vacuum-packed ☐
- Other ☐
- Farm ☐
- Farm with shop ☐
- Wholesale/Warehouse ☐
- Private house used for a food business ☐
- Village hall/Church hall/ Community centre ☐

8 **Signed** _____ **Name in Block capitals** _____

Position in Company/business _____ **Date** _____

MR TURNBULL

RICHMOND REPORT

My meeting of Heads of Information in MIO last night did not reassure me that Departments are geared up to present this report. There seemed a marked reluctance on the part of Health and MAFF to take responsibility.

This may have been because Press Officers were not yet properly engaged. However I think it important at the Prime Minister's meeting on this report to ensure that there is agreement on who is in the lead - I got Health to accept they were - and that MAFF would weigh in strongly in support.

We need to learn lessons from the past.

BERNARD INGHAM
February 13, 1990

PRIME MINISTER

9 February 1990

MISC 138 - PART I OF RICHMOND COMMITTEE REPORT ON MICROBIOLOGICAL SAFETY OF FOOD

The first part of the Richmond Committee's report is reasonably good from the Government's point of view:

- it commends the specific steps taken to combat Salmonella in eggs ("as far as we are aware, as comprehensive an approach to the Salmonella problem as has been adopted anywhere else").

- it supports many of the provisions in the Food Safety Bill;

- it finds little evidence that the Government has been slow to respond where there have been outbreaks of food borne diseases;

- it broadly endorses the present structure of responsibilities for food safety;

The Committee's main conclusion is that we need to conduct more research in a number of areas. This will cost money. It is unlikely that the Government will be able to give every proposed project the same degree of priority as the Committee. But the reaction on many of the research proposals sounds reasonably positive.

POINTS OF DIFFICULTY

There is one specific recommendation which the Government cannot accept, and two other areas of potential difficulty in the report.

The specific recommendation which is unacceptable is the compulsory licensing of all catering establishments, butchers and meat processors. We are proposing a system of registration of all food premises in the Food Safety Bill, but that would not amount to licensing. MISC 138 have already agreed that we should resist pressure for licensing. This is stated quite firmly in the proposed response to recommendation 9.1.

The two areas where the report may create some embarrassment are:

(a) the alleged shortage of properly qualified (local authority) Environmental Health Offices (EHOs).

(b) the shortcomings of small food processors.

On (a) the report says:

"We have been told that a significant number of EHO posts are currently vacant because of limited financial resources within local authorities, coupled with a shortfall in qualified personnel. We feel that this is a highly unsatisfactory situation."

Criticism on this point is not new. The Richmond Committee are (rightly) just as concerned with the lack of relevant training on the part of EHOs as with the lack of numbers. They suggest a new cadre of food technologists.

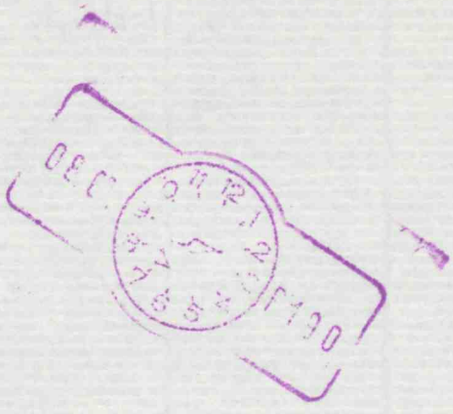
The first need is for some hard facts about EHOs - how many are really needed, and what qualifications should they have. The Audit Commission report due in the summer should provide a firm base for thinking about this.

On (b), the Committee found that half of the 18 small food processors whom they visited were "unaware of microbiological aspects of the manufacturing process they used" and had not sought advice. This will be seized upon (there are specific, unfavourable, references to packing of smoked foods and sausage making). Pressure to tighten the control of small food processors will need to be balanced against MISC 138's general desire not to strangle small businessmen. The Department of Health are still consulting on the proposed training requirements for food handlers. These have considerable implications for small businesses.

CONCLUSION AND RECOMMENDATION

The Government can welcome the Richmond Committee report in the terms Kenneth Clarke and John Gummer propose. There is no reason to disagree with the responses to the various recommendations.

CAROLYN SINCLAIR



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CONCLUSION AND RECOMMENDATION

The Government can welcome the Richmond Committee report in the terms Kenneth Clarke and John Gummer propose. There is no reason to disagree with the responses to the various recommendations.

CAROLYN SINCLAIR

CONFIDENTIAL

Prime Ministers background
You need to read only
(i) the Ministers' Paper
(ii) the summary of recommendations
(iii) Chapter 2
(iv) Chapter 9
(v) Paras 4.24 & 4.26
plus optional Chapter 6 on Poultry which is interesting

PRIME MINISTER

P 03629

AT 9/2

FIRST REPORT FROM THE RICHMOND COMMITTEE
Memorandum by the Secretary of State for Health and the Minister for Agriculture, Fisheries and Food
(MISC 138(90) 1)

DECISIONS

1. Mr Clarke and Mr Gummer jointly propose that the report of the Richmond Committee and the Government's response to it should be published simultaneously next Thursday 15 February while the Food Safety Bill is still in the House of Lords. This meeting gives you an opportunity to check that you are content with the Government response and the arrangements for publication.

2. You may wish to work through the issues in the order in which they appear in the paper:

i. licensing of food premises (paragraphs 5-7). The paper says that the Government cannot be wholly rigid on licensing requirements but that it must make its position known in the debates on the Bill and stick to it. The proposed response is that "licensing would be used where a category of food businesses needs to be subject to especially tight control to ensure that they are operated safely". You will wish to be sure that you are satisfied with the proposed response to recommendation 9.1.

ii. registration of food premises (paragraphs 5 and 8). The paper proposes that there should be a very simple form of registration for all commercial and permanent food premises. The intention to open a new business would have to be lodged with the local authority at least four weeks before the business opened. Prior inspection and approval would not however be a condition of opening. Here again, you will wish to be satisfied with the proposed response.

iii. training (paragraphs 8 and 9). The report recommends that any licensing procedure should include a requirement to employ trained personnel. The paper proposes that this should be left for consultation but that the Government should endorse the principle that food manufacturers should ensure that they have the necessary expertise available and that professional staff in environmental health departments should receive appropriate training. You may wish to emphasise the need to keep the burden on businesses to a minimum consistent with food safety.

iv. microbiological surveillance and assessment (paragraphs 10 and 11). Departments are still considering the detailed arrangements for setting up a Steering Group to co-ordinate micro-biological food safety and an Advisory Committee to provide an independent expert view. You may wish to ask about the timetable for setting up these new arrangements and whether the Treasury are content to leave the bid for extra money to be dealt with in PES;

v. compliance costs (paragraph 13). The paper says there has been no opportunity to consider in detail the likely cost to industry. You may wish to ask Mr Ridley for comments.

3. Finally, there are the arrangements for publication. You may wish in particular to ask what plans Mr Clarke and Mr Gummer have to highlight the positive action taken by the Government in response to recent worries about food safety.

eg paras 6.14, 6.17 and 4.25

BACKGROUND

4. The Richmond Committee was set up in February 1989 under the chairmanship of Sir Mark Richmond to advise on matters to do with the microbiological safety of food. The Committee were expected to produce a final report by the end of last year but have been

unable to do so. This first report concentrates on the incidence and causes of food poisoning, the arrangements for dealing with incidents and the prevention of further hazards to health, all issues of relevance to the Food Safety Bill which is to have its Third Reading in the Lords on 19 November.

ISSUES

Licensing

5. The Richmond Committee see considerable advantage in prior inspection and approval before a food business is opened or a process started, as part of either a registration or a licensing procedure. They believe that a system of formal licensing involving prior inspection should in due course be extended to a wide range of food operations. Given the time that such a formal licensing system may take to implement, they suggest that in the first instance regulations on licensing should require notification of intent to open or operate a business four to six weeks before operations begin.

6. The paper proposes that licensing should apply only where a category of food business poses a particular risk to health which means that tighter powers are necessary. Mr Clarke and Mr Gummer recommend that the Government should make its position known, along the lines of the reply to recommendation 9.1, in debates on the Bill and stick to it. You may wish to discuss the proposed reply to recommendation 9.1. For instance:

i. the draft response says that licensing would be used where a category of food businesses needs to be subject to especially tight control to ensure that they are operated safely. This omits the qualification proposed in the main paper that licensing would only be used where the food business "posed a particular risk to health". Might it be better to include this qualification to tighten the policy?

ii. the main paper says that the Government "cannot be

wholly rigid on licensing requirements" (paragraph 7). You may wish to ask what particular flexibility or possible further extension of licensing the Departments have in mind.

Registration

7. The paper envisages a simple system of registration which would apply to all commercial and permanent food premises, but would not involve additional costs to business. New businesses would have to register at least 4 weeks before opening but registration would be as of right, and prior inspection or approval would not be a condition of opening. You may wish to check that this proposal will not be interpreted by local authorities as encouragement to make life difficult for those setting up in business in the crucial weeks before opening up.

Training

8. The Committee emphasise the need for staff training in manufacturing and retail businesses and in enforcement authorities. In particular, they recommend that any licensing procedure adopted should include a requirement for the business to employ adequately trained personnel (recommendation 9.2). The draft reply states that the Government will take this into account in its consultations on licensing procedures. This is a reference to the consultation document "Food Safety Bill: Hygiene Training for Food Handlers" which the Department of Health have issued. You may wish to make the point that regulation of training should be kept as light as possible, consistent with the Government's objectives on food safety.

Microbiological surveillance and assessment

9. The Committee recommend a national microbiological surveillance and assessment system with two new committees: a Steering Group to co-ordinate microbiological food safety, and an Advisory Committee to provide an independent expert view on the public health implications of food safety matters. This is broadly in line with the Cabinet Office report on Departments'

responsibilities in this field which you have accepted. You may however wish to ask about:

i. timetable. The paper says that Departments need to consider the precise arrangements in more detail. You may want to ask how long this will take and when the Government will able to say that the new arrangements are in place.

ii. cost. The paper says that the cost of work in support of the Steering Group and Advisory Committee could be of the order of £5-7 million for the Department of Health, all of it new money, and another £5 million for MAFF of which £0.75 million would be new money. The paper proposes that these bids should be left to be dealt with in the PES, with the implication presumably that it will be some time before these new bodies start work. You may wish to ask what the new money will buy and whether the Treasury is content.

Local authorities

10. The paper says that the Richmond Committee recommendations will not add to the extra cost which local authorities will anyway need to incur as a result of the Bill. You may wish to check that Mr Trippier agrees.

Compliance costs

11. A full assessment of the costs of implementing the Committee's recommendations for changes in industrial practice has not yet been made. There are to be consultations with industry. You will recall that at their last meeting the Group were concerned that the cost to business of implementing the Bill should be properly assessed. You may wish to ask Mr Gummer about this exercise which his Department are conducting with the Department of Trade and Industry. Mr Ridley may have views.

Publication of report and response

12. The proposal is that the Richmond report and the

Government's response should be published together next Thursday, while the Bill is still in the Lords. You may wish to discuss the arrangements for publication, bearing in mind:

i. likely media interest. The paper makes the point that the report will be "a rich source for journalists looking for scare stories" (see, for example, graphs A1.1, 1.2 and 1.3 showing the growth in cases of salmonella, and paragraphs 6.38 onwards on the slaughter of poultry).

ii. Government achievements. The report gives the Government credit for the action which it has taken in a number of areas. It finds little evidence for instance that criticism of central Government for slowness in responding to outbreaks of foodborne illness was justified (paragraph 4.25 of the report). You may want to ask what plans Mr Gummer and Mr Clarke have for ensuring that the Government gets credit for the action which it has taken.

+ para 6.14 and 6.17

Handling

13. You will wish to invite the Secretary of State for Health and the Minister of Agriculture to introduce the paper. The Secretary of State for Trade and Industry may have views on the impact on business of the regulatory requirements. The Chief Secretary may wish to comment on any cost implications. The Secretary of State for Wales might wish to confirm that he is content with the proposals. The Minister of State, Department of the Environment (Mr Trippier) may wish to comment on the implications for local authorities.

RTJW

R T J WILSON
9 February 1990

NDPM
PT 5/2

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon Norman Lamont MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1P 3AG

31 January 1990

R3

PPS

Dr Norman,

FOOD SAFETY BILL

Thank you for your letter of 15 January.

As I said in my earlier letter, if we cannot reach agreement with the local authorities on additional costs which may follow from the Food Bill, we must at least have very clear reasons why we believe our costings in preference to theirs.

I am fully prepared to castigate local authorities for overspending. But in the past when authorities have argued that their spending has increased because of new Government burdens which have been inadequately recognised in our costings, all too often we have been unable to offer any convincing rebuttal.

Where we impose new burdens we must be confident that our estimate of their costs is achievable. It does our case no good merely to assert that a new policy can be delivered for a particular cost if the local authorities (who after all will be asked to implement it) have put forward a different estimate and we cannot say why our estimate is reasonable.

I recognise the importance that you attach to remaining within the figure of £30 million, given that you have not been able to secure an offsetting saving from other departmental programmes. I hope therefore that John Gummer will be able to ensure that the detailed regimes which will be defined in regulations once the legislation is enacted can reasonably be delivered for this price.

I am copying this letter to members of MISC 138, David Waddington and Sir Robin Butler.

Yours ever,

CHRIS PATTEN

100% RECYCLED PAPER

Food : safety A3

cst.ps/9nl12.1/drft

UNCLASSIFIED

NBPM
LP, RCG
2. GF

CCPS

CHIEF SECRETARY TO THE TREASURY



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Christopher Patten MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

15 January 1990

Dear Chris

Feal

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

Thank you for your letter of 22 December.

2 I cannot accept that we should endeavour to reach agreement with the local authorities on the additional cost of the new enforcement duties associated with the Food Bill. Any such negotiations would be bound to lead to upward pressure on the £30m figure. The £30m estimate was made after discussions were taken as far as was possible with enforcement bodies. There is no reason to think it is not a reasonable figure. Moreover, our decision to take account of it in the Revenue Support Grant was a generous one, as was my agreement that the relevant departments need not make offsetting savings from within their own departmental programmes. These decisions were based on the £30m cost estimate, and to reopen this figure by entering into negotiations with the local authorities would be totally unjustified.

3 As I said in my letter of 16 November, it was regrettable that the costs of the measures in the Food Bill were not clarified before the publication of the Food Safety White Paper. To give any hint now that we can be negotiated upwards from the cost figure underlying all our subsequent decisions and announcements would be most unsatisfactory, and we should resist all pressure to this end.

4 We will need to decide how to take account of the £30 million cost when we discuss the Revenue Support Grant settlement for 1991-92 in the Survey.

5 I am copying this letter to members of MISC 138, David Waddington and Sir Robin Butler.

Yours ever
Norman

NORMAN LAMONT

Food: Safety Part 3.

File bc: PU

EYAM

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

29 December 1989

Dear Andy.

FOOD SAFETY: COMPLIANCE COSTS

The Prime Minister has seen your Minister's minute of 20 December which responds to the minute of 21 November by the Secretary of State for Trade and Industry. She endorses your Minister's wish to keep regulation as light as possible, consistent with the Government's objectives for better food safety. She strongly agrees that the pressures from the Richmond Committee for licensing and prior approval for food premises should be resisted. She has commented that as MISC 138 discovered when dealing with the question of cracked eggs, it is essential to keep a sense of proportion when dealing with small-scale food production and sale.

I am copying this letter to the Private Secretaries to members of MISC 138 and 'L' Committee, Roger Bright (Department of the Environment), Colin Walters (Home Office) and Sir Robin Butler (Cabinet Office).

Yours ever

Andrew Turnbull

ANDREW TURNBULL

Andy Lebrecht Esq
Ministry of Agriculture, Fisheries
and Food

PRIME MINISTER

FOOD SAFETY: COMPLIANCE COSTS

Mr. Ridley minuted you - Flag A - urging MAFF to make a greater effort to quantify the compliance costs of the various food safety measures. Mr. Gummer has now responded at Flag B. He fully accepts the need the keep compliance costs as low as possible and undertakes to resist pressure for greater regulation, e.g. from the Richmond Committee. The latter is pressing for licensing of food premises rather than simply registration as proposed in the Bill. Mr. Gummer does not, however, offer any figures at this stage as he argues that details of the various regulations have yet to be settled.

Agree that I minute out stating:

(i) that you endorse Mr. Gummer's wish to keep regulation as light as possible consistent with the Government's objective for better food safety;

Yes

(ii) that you wish him to resist pressure from the Richmond Committee;

Yes

(iii) that as with the cracked eggs affair a sense of proportion has to be kept when looking at small scale production.

Yes mf AT

ANDREW TURNBULL
22 December 1989
c:\pps\foodsaf (kk)

John was very much aware of all these matters at the VFM seminar. mf

NDPM

29/12

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon Norman Lamont MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1P 3AG

22 December 1989

Dear Norman.

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

Thank you for sending me a copy of your letter of 14 November to John Gummer.

I am concerned about the burden which the new Bill and the regulatory regime to be established under it may place on local authorities. I note your agreement that £30 million can be added to the local authority expenditure figure when we come to discuss grant for 1991/92, but you say that there can be no question of revising this figure upward as a result of local authority pressure.

As I understand it, discussions between John's officials and the local authority associations about the likely costs of the new duties and responsibilities are still at the early stage. I could only accept that we recognise £30 million as the maximum if John can undertake that the new burdens can in fact be delivered within that sum. Local authorities have frequently criticized us in the past for not recognising adequately the cost of implementing the burdens we place on them. I think it is therefore important that we should endeavour to reach agreement with the local authorities about what the new regime will cost or at least have very clear reasons why we believe our costings in preference to theirs. We must also ensure that new responsibilities, such as this, are fully recognised in the total of external finance.

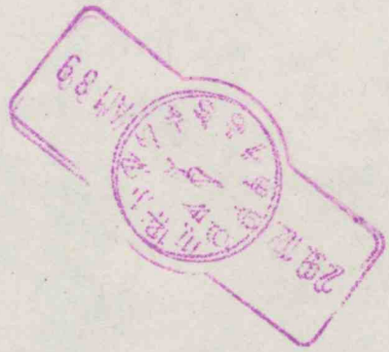
I am copying this letter to members of MISC 138, David Waddington and Sir Robin Butler.

Yours.

CHRIS PATTEN

RECYCLED PAPER

Food - Safety Pv 3



CC(90)

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

RESTRICTED

From the Minister

PRIME MINISTER

I have seen Nicholas Ridley's minute to you of 21 November commenting on mine of 13 November about the compliance costs of the Food Safety Bill.

Kenneth Clarke and I are, of course, doing all we can to avoid placing undue burdens on business. Jean Trumpington emphasised this at Second Reading in the House of Lords. We are also particularly mindful of the special needs of small businesses. Nicholas refers to the changes we are making to the statutory defences available under the Act and to our estimate that this will cost industry about £10 million a year. I am entirely at one with Nicholas in wanting to ensure that no unnecessary burden of costs is placed on businessmen. Indeed, Kenneth Clarke and I have sought throughout to strike a balance between cost and interference on the one hand and the requirements of safety on the other. It is by getting the right balance that we shall reassure the public and get their confidence.

The pressures on the Food Safety Bill will come overwhelmingly from those who want greater regulation and heavier costs and interference. Already, the Richmond Committee on the Microbiological Safety of Food is set on recommending a wider use of our proposed licensing power and calling for prior approval before certain food businesses are allowed to operate. Kenneth Clarke and I have, of course, informed Sir Mark Richmond of our objections to this. The Committee's interim report is likely to be published in the New Year. This is just one of the many regulatory directions in which we shall be urged to go.

I also fully take Nicholas' point that we need to press ahead with cost compliance assessments of the requirements that are to be introduced in regulations as fast as we can. However, as Nicholas himself recognises, there is a limit to the information we can provide while so much of the detail remains to be decided. For example, we are still working on the details of a regime for goat milk. If it mirrored the cows milk regime there might be a charge for inspection of £80 per herd every two years. The total

cost to the industry will depend upon whether this is paid only by the 1,500 or so commercial herds (which would give a figure of £60,000 per annum) or by every single herd (which would give a much higher figure). In addition there would be a capital cost in some cases for producers with unhygienic facilities who needed to bring them up to standard, but we have no information on this at all. There are similar problems in relation to training. The Department of Health have now issued their consultation paper (as amended) and will not be able to work up definitive proposals until they have seen the responses to this. At that stage a proper compliance cost assessment will be put to MISC 138 with their proposals.

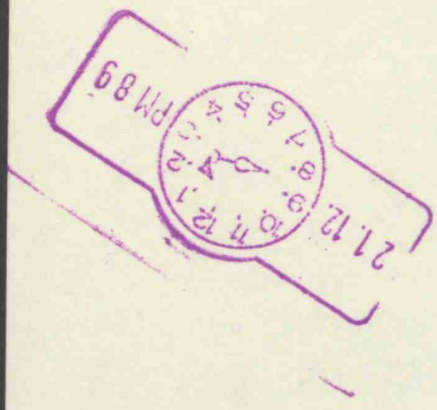
At the same time we have to face the fact that food safety is an area where a proper framework of regulation is essential. It is also right that the food industry should bear the costs of compliance and that ultimately the costs should be passed to consumers. They are not only the beneficiaries, but are positively demanding that further steps be taken to ensure the safety of food. This point of view enjoys wide support. The press reaction to the publication of the Bill was generally favourable and virtually all interested parties have welcomed it. Even the Retail Consortium have said: "We believe that the industry is prepared in principle to accept the extra burden in the interests of consumer confidence in the food industry."

I am copying this to members of MISC 138 and L Committee, Chris Patten, David Waddington and Sir Robin Butler.

J G
Ministry of Agriculture,
Fisheries and Food

20 December 1989

Food: Safety
Pt 3



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Oddi wrth yr Is-Ysgrifennydd Seneddol

IAN GRIST MP

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
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01-270 (Direct Line)

From The Parliamentary Under-Secretary

12 December 1989

Dear Roger,

I have seen a copy of the advice provided recently by your officials on the draft Food Hygiene (Amendment) Regulations.

Like yourself, I have been receiving quite forceful representations from bakers who are concerned about the impact these proposals might have on their businesses. I have some sympathy with the views which have been expressed, particularly in relation to the period it is intended should be allowed between the preparation and sale of fresh foods at ambient temperatures.

I believe we can make some concession in this area without compromising food safety. As such, I would prefer to see a 6-hour period allowed for products such as sandwiches and other foods which are intended to be consumed shortly after purchase.

Copies of this letter are going direct to MISC 138 members.

Yours ever,

Ian

Roger Freeman Esq MP
Department of Health
Richmond House
79 Whitehall
LONDON



PRIME MINISTER 2

21 November 1989

QUALITY-TESTED EGG SCHEME

One of the four biggest egg producers in the UK has realised that it can charge for enforcing hygiene standards above those laid down in regulations. This is a sensible market response to the salmonella problem.

Food from Britain has organised a scheme designed to restore consumer confidence in British eggs (see Annex A). As a result of Government action earlier this year, British eggs are less likely to be infected with salmonella than many imports (eg from Spain). But this has not been the public perception. So an initiative of this kind is very welcome and in tune with Government thinking - higher standards paid for by the consumers who demand them.

Carolyn Sinclair

CAROLYN SINCLAIR

dustry's marketing advisory organisation.

Exploit

Food from Britain was set up in 1983 to help farmers and food manufacturers exploit markets in the UK and abroad. But from the outset, FFB had to contend with restrictions on the way it earned its ministry of agriculture funding. The same restrictions meant that cash from the food industry had to pay for FFB's business and administration costs as well as for food marketing promotions.

Now, the restrictions have been removed and Food from Britain can control its own budget more effectively. FFB receives £3.5 million from the government to cover basic running costs, £2 million of this to be used boosting exports. Staffing has been cut, productivity increased and more FFB people are deployed in 'international activities', increasing sales of British farm produce abroad.

Additional funding from the food industry goes directly into marketing and sales promotions.

Outlining FFB's main objectives, executive director Sucreation of more effective marketing groups: 'vital frameworks if farmers are to make the transition from being production-driven to being market-led', says Food from Britain's UK marketing director, Mary Curnock Cook.

FFB's two-year strategy aims to boost the number and effectiveness of farmer marketing groups. One group already achieving success is Plantsman Ardleigh Storage, a partnership of Essex fruit-growers. Full story, pages 2/3

New government funding arrangements have allowed FFB to take a fresh look at its objectives and the way it can best help British farmers. The result is an aggressive business plan designed to boost sales of UK-produced food at home and abroad.

Prime tasks outlined in the two-year plan include:

- **promoting the range and quality of British food and drink overseas,**
- **providing practical advice for farmers whose produce is exported,**
- **encouraging the formation of effective marketing structures for agricultural produce and,**
- **acting as catalyst for food industry change.**

Launching the plan, FFB executive chairman Walter Goldsmith said the new funding arrangements had allowed FFB to combine all its activities into one cohesive strategy.

Rewards

'Our goal is to help more farmers share the rewards of adding value to their produce. To achieve this, we need to look critically at business and financial structures in co-operatives and encourage a more dynamic, even courageous approach,' she added.

The UK marketing director called on farmers to join forces: 'The only way farmers can se-

Continued on page 2, plus the press reaction

Action on eggs

by Fiona Gately

FOOD from Britain has launched a new quality-tested egg scheme which aims to restore consumer confidence and boost profits for producers.

Producers who implement a rigorous quality management programme, monitored by independent inspections, can put the FFB Foodmark on their packs and demand premium pricing in return.

Consumers will pay an extra 40p per dozen for the Foodmark eggs. The producers' share of the premium will cover the cost of registration and the 8 annual flock inspections, as well as contributing towards a promotional package.

'This is a true quality assurance scheme where consumer requirements for a quality-assured fresh egg will dominate,' said FFB executive chairman Walter Goldsmith.

'It will challenge egg producers to lift themselves out of the unstable egg commodity market and produce a quality product with a higher return. Under the scheme, quality control starts with the day old chick and works right through to the point of sale,' he added.

Already Stonegate Farmers, one of the UK's 'big four' egg producers and packers has joined the scheme and is using the 'Extra Fresh' datestamp for its quality mark eggs. This stamp assures that stocks are packed and sold within 7 days. ASDA is the first to sell the premium eggs, and it is expected that other major supermarkets will soon follow.

Andrew Parker, Stonegate Farmers' marketing director, welcomed the FFB initiative: 'It is vital for the industry that we win back public confidence. The FFB scheme offers a challenge to the industry to raise standards to the highest levels, and the assurance to consumers of a fresh, hygienic and top quality product.'

Details of the new FFB egg scheme from Chris Absolon at Food from Britain, 301-344 Market Towers, New Covent Garden Market, London SW8 5NQ, tel 01 720 2144.

SHEEPS' milk products have potential for major growth. But the industry as a whole needs greater commitment from sheep dairy farmers and sizeable investment before the profits will flow.

Investment is the key to the future growth of sheep dairying claims one Kent farmer, Louella Wood. Louella is expecting her first child, so she's given up the daily milking and management of her 20 strong pedigree British Friesland flock at Mill Farm, Stowting, near Ashford and sold the ewes to a local farm.

Never a main income but always a healthy diversification with potential for development, Louella's ewes' milk business started three years ago when she bought five Friesslands.

As her flock grew and output

by Alexander Harvey

rose to around 1.5 litres per ew per day throughout the lactatio season, she invested in milkin machinery. But that's not all tha is needed.

'Microbiological-testing b ADAS, staff and refrigeratio equipment all cost money an sheep dairying needs that sort c investment if you're going t produce in big enough quantitie to make it pay,' she says.

Someone with capital backin and marketing support coul build up a thriving business, Louella added.

Louella Wood had a market fo her ewes' milk when she set u the operation. Filtered, quick chilled and then bulk frozen, sh sold and shipped the milk – in he

Continued on page 2

inside enterprise

PIG BREEDER PROFITS GO WILD
With falling profits a Hampshire pig farmer turned to crossbred Wild Blues, p2

FLEXIBLE APPROACH TO GROUP MARKETING
Selling soft fruit to the multiples is a competitive and high-risk sector but an Essex group is looking for long-term gains, p2/3

THE SCENT OF ST. TROPEZ
While on holiday on the French Riveria, a Co Armagh farmer recognised the smell of successful fruit products, p2

GREEN GROUP THERAPY
The organic movement is more than just a passing fad for a mid Wales co-op, p4

dti

the department for Enterprise

To await MAFF response cc PK

RESTRICTED

PRIME MINISTER

FOOD SAFETY BILL: COMPLIANCE COST ASSESSMENTS (CCAs)

You asked for my comments on that part of John Gummer's minute of 13 November dealing with compliance costs.

As you will recall, at MISC 138 on 9 November I shared your concern about the burdens these proposals would place on the food industry, particularly small businesses. That is why I suggested we needed to see CCAs on the full package of measures to be introduced under the enabling powers of the Bill.

My Department's Enterprise and Deregulation Unit (EDU) agreed with MAFF and DHSS early in 1988 that many aspects of their proposals had significant cost implications for business and would need CCAs under the arrangements agreed by colleagues. A number of priority areas were identified. While I recognise that there is still work to be done on the detail of the subordinate legislation, and that it is this rather than the enabling powers which will impose the actual burdens on business, I do think we need to press on with such CCAs as we can. Those that have been produced have been noticeably lacking in quantified analysis of the cost implications for business, which is what CCAs must have both to help us judge whether the expected benefits of any regulatory proposal are worth the candle and to inform the consultation process on the proposals (one of our intentions in introducing CCAs). The White Paper on "Food Safety - Protecting the Consumer", published in July, contained no indication of the likely cost to business of the proposals or that these must eventually be passed on to the consumer.

Recycled Paper

dti

the department for Enterprise

The "full summary schedule" on the effects of the Bill circulated by John's Private Office on 14 November is of little help here. It contains only one quantified estimate relating to only one issue, ie £10 millions for the additional measures food traders must take to ensure they can plead as a defence that they have exercised "due diligence" in respect of food safety. Even this figure (which in itself should perhaps give us pause for thought about the overall cost to business of the proposals) is described as "tentative" and not for disclosure.

John points out in L(89)28 that "the Bill will enact wide new enabling powers without the full content of the subsequent regulation being known" and foresees difficulties. I believe we shall be particularly vulnerable to criticism from business. They will bear the brunt of the regulations. Yet, we (and they) still have no clear idea of how secondary legislation will affect them and the costs they will incur.

We need to know this quickly. We can then begin to see whether the burdens we shall be imposing on business are proportionate to what we are trying to achieve with the Bill.

I am copying this to members of MISC 138 and L Committee, Chris Patten, David Waddington and Sir Robin Butler.

N.R.

N R

21 November 1989

(Approved by the Secretary of State and signed in his absence.)

DEPARTMENT OF TRADE AND INDUSTRY PB1AFK

Recycled Paper

Food

Safety

Pt 3

CABINET OFFICE

R.T.J. Wilson

Paul Gray

You may wish to note that this is being taken in an ad hoc group, not a Sub-Committee.

RJW.
21/11

To see.

21/11

1/

cc. Mr Wilson
Mr Whitmore
BJ 21/11

To: Mr Mawer
Ae 21/11

CABINET OFFICE
K 6002
21 NOV 1989
FILING INSTRUCTIONS
FILE No .....

From: Diana Goldsworthy
Date: 21 November 1989

cc Mr Teasdale
Mrs Bailey

Mr Munger

FOOD SAFETY BILL : CROWN IMMUNITY

The Lord President has asked that officials should now prepare the paper mentioned in Mr Ridley's letter of 17 November, but he suggests that, since the subject extends more widely than competition policy, it should be considered at a meeting held under his chairmanship, rather than be remitted to E(CP).

CMG

dti

the department for Enterprise

CONFIDENTIAL

20 NOV 1989

19

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

Department of
Trade and Industry

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Fax 01-222 2629

Direct line 215 5422
Our ref PE4AFQ
Your ref
Date 17 November 1989

Dear Geoffrey

FOOD SAFETY BILL: CROWN IMMUNITY

I have been following with interest the correspondence that followed John Gummer's letter of 19 October to Malcolm Rifkind, in which he set out his proposals for handling the issue of Crown Immunity in the context of the Food Safety Bill.

I have no wish to re-open discussion on that specific question. But I believe it would be helpful to have a meeting to discuss the question of Crown Immunity generally - and not just in the context of next session's Bills.

In my view, there is a contradiction between the Government's promotion of fair and open markets and the competitive advantage which the Crown may enjoy through the continued existence of Crown Immunity, especially in areas where the Crown is a provider of goods and services in which there is a market. Crown Immunity can provide the beneficiary with an unfair advantage, not only when bidding for in-house and outside contracts, since he is not subject to the same disciplines of prosecution as his private sector competitors but also where the beneficiary is in direct competition with the private sector (e.g. CISCO canteens versus the local cafes).

I regard the recent decision to remove Crown Immunity from health authorities and not to grant it to self-governing hospitals as very much a move in the right direction. I should like to explore whether there are other areas in which it would be appropriate to remove Crown Immunity and whether it would be possible to devise a mechanism for achieving its removal. As a focus for discussion, it would be helpful if a

dti

the Department for Enterprise

paper could be prepared which looks at the application of Crown immunity in all Government activities. If appropriate, it could be remitted to E(CP) for consideration.

I am copying this letter to member of MISC 138, Tom King, David Waddington, Chris Patten, Patrick Mayhew, Nicholas Lyell, Richard Luce and to Sir Robin Butler and First Parliamentary Counsel.

NDPM
AT 17/11

CCPS

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

CONFIDENTIAL

The Rt Hon Geoffrey Howe MP
Lord President of the Council
Privy Council Office
Whitehall
London SW1A 2AT

16th November 1989

Dear Lord President,

FOOD SAFETY BILL: CROWN IMMUNITY

Thank you for sending me a copy of your letter of 7 November to John Gummer.

I am grateful to you for drawing the attention of Ministers to the need to consult the Law Officers on all proposals for policy changes in connection with Crown immunity. Nick Lyell has been closely involved with the proposals relating to Crown immunity in the Food Safety Bill and I advised on the issue during the Summer in relation to the NHS proposals. I have now also seen Chris Patten's letter to you of 13 November setting out, amongst other things, his proposals on Crown immunity in relation to his proposed litter legislation.

Clearly, because of our involvement with all proposals, Nick and I are in a position to ensure the consistency of approach that you quite rightly wish to see. However, I fully accept the value of a more formal check on consistency, and Nick or I would be very happy to attend the meeting suggested in your penultimate paragraph, if colleagues thought that such a meeting would be beneficial.

I see at least two advantages in convening such a meeting. First, it would enable Ministers whose Bills are at an early stage of preparation to know what colleagues are doing in this field and to take that into account in formulating

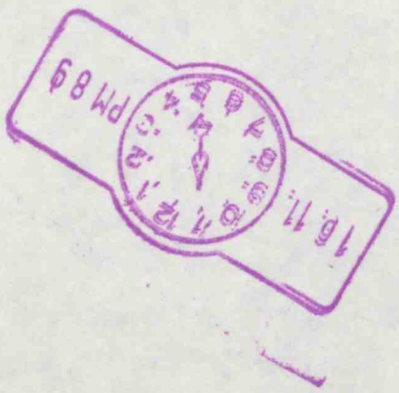
their own proposals. Secondly, whilst we here can ensure consistency from a legal standpoint, the policy in relation to Crown immunity may vary from case to case, and it might be helpful for colleagues to consider together all areas where Crown immunity is in issue so that policy can be co-ordinated and policy differences can be justified.

I am sending copies of this letter to members of MISC 138, Tom King, David Waddington, Chris Patten, Richard Luce and to Sir Robin Butler and First Parliamentary Counsel.

Timothy Kirkhope
p.p. Attorney General

(Agreed by the Attorney General
and signed in his absence)

Food - Safety Pt 3.



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RESTRIICTED

NDPM

AT 17/11

CC PLA

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street SW1P 3AG

The Rt Hon John Gummer MP
Minister of Agriculture, Fisheries and Food
Whitehall Place
London
SW1A 2HH

16 November 1989

Dear John

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

Thank you for copying to me your letter to the Prime Minister of 14 November.

2. On financing, I agree that in the light of the MISC 138 decision, £30 million (covering England, Wales and Scotland) can be added to total relevant expenditure for the purposes of next year's negotiations on the 1991-92 aggregate external finance for local authorities. I am also content that you should say in the financial memorandum to the bill that the £30 million additional cost to local authorities will be taken into account in the Revenue Support Grant settlement, and this is the line you should take when the Food Bill is published. I do not think that we should go further than saying that the £30 million will be taken into account in settling the Revenue Support Grant for 1991-92; therefore you should not, as the financing paragraph of your letter states, "announce the allocation of the additional £30 million to the Revenue Support Grant". There will, of course, be no question of revising the £30 million figure upwards as a result of local authority pressure. I would be grateful if the relevant parts of any statements or press briefing could be cleared with my officials.

3. You say that you can go ahead only if it is agreed that you and Kenneth Clarke do not have to offset the £30 million additional cost by reductions in your departmental budgets. As my predecessor indicated to yours in June, it is regrettable that the cost implication of the proposals in the Food Safety White Paper and the Food Bill were not clarified and their financing determined <u>before</u> the White Paper was published in July. In these circumstances it was reasonable to ask that the costs, including those to local authorities, should be met from within departmental provisions. However, in the light of your proposal on charging having been rejected, and given that you will need to say when the Bill is published how the resources will be made available ie that

RESTRICTED

the full £30 million additional cost to local authorities will be taken into account in the Revenue Support Grant settlement for 1991-92, I am prepared to agree, exceptionally, that you need not make offsetting savings in your departmental programmes. I will of course have to bear this concession in mind in our public expenditure Survey discussions next year.

4. This is on the understanding that:

(a) the central government costs of the proposals, put at £¼-½ milllion a year in your MISC 138 paper, plus any other as yet unidentified central government costs, will be absorbed within existing departmental public expenditure and running costs provisions;

(b) any central government costs arising from the Crown Immunity provisions of the Bill are also met from within existing provisions;

(c) that the proposal in paragraph 6 of your MISC 138 paper, that local authorities should finance by charging measures such as provision of food handling training and licensing schemes, is implemented.

5. I am copying this letter to members of MISC 138, Chris Patten, David Waddington and Sir Robin Butler.

NORMAN LAMONT

FOOD – Safety PV 3.



RESTRICTED

file DAS

10 DOWNING STREET

From the Principal Private Secretary

15 November 1989

Dear Andy,

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

The Prime Minister has seen the Minister of Agriculture's minute of 13 November responding to the discussion in last week's MISC 138.

She has noted and endorsed his suggestions for building appeal mechanisms into the Bill, and his intention to drop the proposals for written food hygiene policy statements and for refresher training. She accepts that it is not possible to exempt small business from inspection as this would be a retreat from the position under existing legislation. She agress that there should be a registration requirement and that pressure for licensing should be resisted. In agreeing these proposals, the Prime Minister stressed that when regulations come to be made they should be framed in a way which goes as far as possible to minimise the burden of small businesses. She has also asked that MISC 138 should be consulted in good time before decisions, particularly on training, are taken and before any commitment is made in Parliament about the use to which the powers will be put.

The Prime Minister has noted that a compliance cost analysis has been sent to the Secretary of State for Trade and Industry and she would be interested to learn of any views he has on it.

BF 11

On financing, she has agreed that there will be an addition of the order of £30 million to the 1991-92 Revenue Support Grant settlement. She has asked that the terms in which this is announced should be agreed with the Chief Secretary.

I am copying this letter to the Private Secretaries to members of MISC 138, to Roger Bright (Department of the Environment), Colin Walters (Home Office) and to Sir Robin Butler.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

Andrew Lebrecht, Esq.
Ministry of Agriculture, Fisheries and Food

RESTRICTED

PRIME MINISTER

14 November 1989

FOOD SAFETY BILL: RESOURCES MECHANISMS FOR ENFORCEMENT

John Gummer has reported back to you following discussion in MISC 138.

2. Some of his proposals are clearly right:

- there must be regular inspection of all food premises. This breaks no new ground. The problem has been patchy implementation between local authorities. John Gummer wants a more consistent pattern of inspections, and more consistent standards. The latter will help to avoid the kitchen tile problem you mentioned - and the proposed appeals procedure will give businesses some redress if inspectors behave unreasonably.

- We must have a system of registration of all premises if we are going to make standards more consistent. At present local authorities do not know how many food premises there are in their area. It would be quite wrong if some premises escaped a more regular system of inspection altogether because nobody knew they were there. Registration is seen as the minimum needed to fend off pressure from the Richmond Committee for licensing of all food premises (which would be more onerous).

3. On training, the position is better but needs watching:

- The idea of written statements of food policy has been dropped, as has the reference to refresher training. This is good.

- But training is still proposed for all employees in this major industry (around 2.8 million). Few appear to have been trained already. Both the impact on small businesses and the sheer practicality of providing training for large numbers of people, needs to be explored. Videos and home teaching packs have been mentioned.

Conclusion

- The approach now proposesd by John Gummer on inspection and registration looks largely right. There will be no charging.

- The training proposals still look vague. Kenneth Clarke should be asked to let you have a further note spelling out what would be involved in training the staff of small businesses.

CAROLYN SINCLAIR

MR TURNBULL P 03577

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

1. You asked for comments on Mr Gummer's minute of 13 November in the light of what was said in MISC 138.

Impact on small businesses

2. The impact on small businesses was at the heart of last week's discussion. On this Mr Gummer, with Mr Clarke's agreement, offers the following:

i. appeals. The Food Safety Bill will include a range of appeal provisions, set out in the annex to his minute. These will for instance allow a business to appeal to a Magistrate's Court against an improvement notice issued by an enforcement officer.

ii. written food hygiene policy statements. Mr Clarke will be removing references to such statements from his consultation document.

iii. refresher training. Mr Clarke will also be dropping references to refresher training from his consultation document.

3. I imagine that the Prime Minister will be content with these proposals. She might want to make the point that it will still be important to keep regulation to a minimum, so as to avoid loading up the Courts with extra work through the appeals procedure.

Compliance cost assessment

4. Mr Gummer reports that most of the compliance cost assessments were completed some time ago and that he is sending a full summary schedule on the effects of the Bill to the colleagues concerned. The Prime Minister may wish simply to note this, subject to any points which Mr Ridley may raise when he has

studied the summary.

Financing

5. Mr Gummer accepts that the additional costs of enforcement should be financed through the Revenue Support Grant, not by charging, as MISC 138 agreed. He and Mr Clarke want an understanding however that they will not be required to find the money from offsetting savings. They want to be able to tell the House that additional resources have been allocated for the purpose. The Prime Minister may wish to leave them to sort out with the Chief Secretary what they can say about financing. In practice it is likely to be a matter to be taken into account when the Revenue Support Grant is settled in next year's Survey, as the draft financial memeorandum for the Bill, attached to Mr Gummer's letter, makes clear.

Matters not yet resolved

6. More generally, Mr Gummer makes the point that much of the burden on small businesses reflects the position under existing legislation, not something new in the Bill, and that it would be impossible now to exclude places like transport cafes, Indian restaurants and Greek takeaways.

7. On the new provisions in the Bill, he says that they are enabling and the Government does not yet have to decide finally the scope of the regulations made under them. He hints nonetheless that he thinks the Government will be under pressure to include small businesses:

i. registration. He argues that the requirement for registration will have a minimal impact on business. Completing the form will take only 10 minutes.

ii. licensing. He anticipates difficulty with the Richmond Committee who are likely to recommend considerable extension of the use of licensing provisions in the Bill.

iii. external training. He and Mr Clarke propose to consider

the extent of any requirements so as to ensure that their impact on small businesses is limited to "what is essential for the safety of the public". They think it should be possible to make training material available at minimal cost, for instance through public libraries.

The Prime Minister may wish to note that decisions on the use to be made of new enabling powers do not have to be taken yet. She may nonetheless wish to stress again that when regulations come to be made they should be framed in a way which where possible minimises the burden on small businesses and ask that MISC 138 be consulted in good time before decisions - particularly on training - are taken and before any commitment is made in Parliament about the use to which the powers will be put.

RTJ.

R T J WILSON
Cabinet Office
14 November 1989

PRIME MINISTER

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

Mr. Gummer and Mr. Clarke were asked to re-examine their proposals to introduce a number of safeguards and to look again at the impact on small businesses of Mr. Gummer's response as at Flag A.

Both Richard Wilson (Flag B) and Carolyn Sinclair (Flag C) believe the revised proposals are a considerable improvement and recommend that you agree to them. For example, appeals have been introduced against over zealous improvement notices; the statement on food hygiene policy has been dropped; as has the refresher training idea. A compliance cost assessment has been sent to DTI.

Mr. Gummer does not feel that there can be a blanket exemption from inspection for small businesses - they are already covered by existing legislation. He is maintaining his proposal for registration, as the minimum he can get away with in the face of pressure from the Richmond Committee for Licensing

Agree these proposals subject to

(i) stressing that when regulations come to be made they should be framed in a way which minimises the burden on small businesses,

and

(ii) MISC 138 be consulted in good time before decisions, particularly on training, are taken and before any commitment is made in Parliament about the use to which the powers will be put?

On financing, the meeting was caught out when the proposal for charging was rejected. Neither MAFF/DoH nor Treasury had

formulated positions in the absence of charging. At the meeting the Treasury reserved its right to seek offsetting savings. I understand that it is now coming to the conclusion that once an addition is made to grant in the next settlement it will prove impossible to enforce offsetting savings in the subsequent PES round.

Agree the Departments be left to sort out a form of words on financing with the Chief Secretary?

ANDREW TURNBULL
14 November 1989

C:\pps\Foodbill.kk

cc Mr Sinclair

A

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

RESTRICTED

PRIME MINISTER

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

Following discussion in MISC 138 on 9 November, Kenneth Clarke and I have looked again at various aspects of the Food Safety Bill and this minute sets out our conclusions. Minutes attached

There is already a good deal of regulation in this area. The Bill seeks to make that regulation more uniform and more effective. Recent food scares have made clear the need for Government to be seen to be protecting the health of the nation and the White Paper we issued in July was agreed in order to achieve this. However, in drawing up that White Paper and in drafting the Bill itself we have tried to minimise the adverse impact on small businesses and to provide safeguards against over zealous enforcement authorities. The Bill provides for a greater degree of central control than hitherto, notably the new power for Ministers to issue central guidelines to local authorities.

APPEALS PROCEDURES

We have also built in various appeal procedures and I have looked at these again following MISC 138's conclusion that businesses should be able to appeal to an independent third party against the imposition of an unreasonable requirement by an Environmental Health Officer. We shall need a range of appeal provisions and these are set out in Annex A. In general the appeal would be to the Magistrates' Courts. These command a high level of public respect and confidence and their procedures are well understood. This approach also builds on existing practice and seems

preferable to setting up a completely new system of appeals. In normal circumstances, for example with improvement notices, businesses will continue to trade pending the result of an appeal. Only in the limited cases where there is an imminent risk of injury to health (or where the court has made the order in the first place) would closure or partial closure of the premises be required. Moreover, if the court did not uphold the EHO's opinion, compensation would be payable by the enforcement authority in respect of any loss suffered from compliance with the EHO's notice.

IMPACT ON SMALL BUSINESSES

Kenneth Clarke and I have also considered again the impact of our proposals on small businesses. Most of the main provisions in the Food Safety Bill, which allow those who sell or manufacture unsafe food to be prosecuted, are already in the Food Act 1984 and will be continued. We believe that we need these powers to take action against businesses - whether large or small - which cause food poisoning.

There are three new provisions in the Food Safety Bill which could have a significant impact on small businesses: those concerned with the registration of food premises, with licensing, and with the training of people who handle food. All of these are enabling powers and we do not yet have to decide finally on the scope of these provisions.

REGISTRATION

The requirement for registration will have a minimal impact on the industry. It will be as of right, will not be subject to a charge, and will require only a few items of information to be supplied to the enforcement authorities. We envisage using a standard form for the purposes of registration and completion should take no more than ten minutes. None of the other powers in the Bill, such as the power of closure, depends on the business being registered - registration is simply a tool to assist the enforcement authorities in their task. Exemption from registration for small businesses would, we believe, be complex to administer and would cause confusion in the minds of the public and among the business community, as any cut-off point (such as the number of employees) would be arbitrary. We therefore believe that registration should encompass all commercial and permanent food premises. It is not, of course, intended that any of this would cover the kind of activity we normally associate with the Womens' Institute or local branches of political or other voluntary organisations.

LICENSING AND THE RICHMOND COMMITTEE

On licensing, I should perhaps mention that the Richmond Committee on the Microbiological Safety of Food is likely to recommend considerable extension of the use of the licensing powers in the Food Safety Bill. The Government specifically asked the Committee to comment on the legislative requirements they believed to be appropriate in time for the publication of the Bill. They have written to us with an indication of their proposals and both Kenneth Clarke and I believe that it may now be necessary jointly to go back to them to explain the implications of their recommendations. We shall be circulating a draft letter to Sir Mark Richmond as soon as possible as there would be a substantial impact on small businesses were these recommendations to be accepted. Nevertheless the Richmond Committee's attitude does underline the very considerable pressures on the Government to go further than the White Paper.

TRAINING

Kenneth Clarke will be amending the draft consultation paper on hygiene training for food handlers in the light of comments from colleagues and in particular he will be removing references to the written food hygiene policy statement (as favoured by the Richmond Committee) and to refresher training. We have always intended to exempt from the regulations on the subject those groups of food handlers for whom training is clearly not necessary - such as those working in confectioners' shops. We will need to give full consideration to the exemptions later in the light of the comments we receive. In addition, Kenneth Clarke is developing proposals designed to minimise the cost of the training requirements to small businesses - such as sandwich bars whose employees should receive training. We believe that it would be possible to make training material available to these groups of staff at minimal cost to the business, by using facilities such as public libraries.

Although it would obviously be attractive to exempt small businesses from the provisions of the Bill, it would be impossible to exclude places like transport cafes, Indian restaurants or Greek takeaways. They are not excluded under the present regulations and the proposals we have do not in general impose additional burdens. Indeed, there will be a greater standardisation, and the rights of appeal against local EHO decisions should help to reassure them. On training, we will carefully consider the extent of any requirements we may make in Regulations so as to ensure that their impact on small businesses is limited to what is essential for the safety of the public.

COMPLIANCE COSTS

Nicholas Ridley expressed concern at the absence of a full compliance cost assessment on the Bill. Kenneth Clarke and I have checked the position and have established that most of the necessary assessments were completed some time ago. I am now sending a full summary schedule on the effects of the Bill to the colleagues concerned. Of course, some of the new provisions will be in regulations to be made after the Bill receives Royal Assent and compliance cost assessments on the detailed arrangements will be provided in the usual way.

FINANCING

This brings us to the difficult question of the financing of the additional costs the Bill will impose on local authorities. Kenneth Clarke and I have proposed that the money should be found by charging. However, colleagues have concluded that this should instead be financed by the Revenue Support Grant. Our estimate of the sum required is £30m (including Scotland) for 1991/92 onwards. This might be said to be a very small amount in relation to the total Revenue Support Grant but I must make it clear that we can only go ahead on the basis of colleagues' agreement that there would not have to be any offset on departmental budgets. We are bound to be pressed on this very strongly in the House and unless we can say clearly that additional resources have been allocated for the purpose we shall lose all the credit to be gained from bringing forward this major piece of legislation. I attach a copy of the draft financial memorandum (Annex B) which will be published with the Bill. It will be necessary to announce the allocation of the additional £30m to the Revenue Support Grant to coincide with publication.

TIMING

I hope we can agree quickly to proceed on this basis. The Bill has been promised and is based squarely on the White Paper which has been published. Any delay will make it more difficult to uphold the balanced position we have reached. The overwhelming pressure is from those who claim we have not gone far enough. If we do not reach a decision within the next two or three days so that we can introduce the Bill on time, it will provide ammunition for those who want to claim that the Government does not take food safety seriously. The business managers are anxious for us to introduce the Food Bill into the House of Lords at the start of the new Session and Legislation Committee will be discussing it on 20 November.

I am copying this to members of MISC 138, Chris Patten, David Waddington and Sir Robin Butler.

JOHN GUMMER

13 November 1989
Ministry of Agriculture, Fisheries and Food

ANNEX A

FOOD SAFETY BILL: APPEALS PROCEDURES

The following appeals are available against actions of enforcement authorities under the Food Safety Bill. These are in Clause 37 of the latest (fifth) draft unless otherwise stated. Similar arrangements, appropriate to Scottish law, will apply in Scotland.

	Clause in 5th draft of Bill	Relevant appeal provision
1. Issue of Improvement Notices by enforcement officer	10	Right of appeal against notice in Magistrates Court
2. Issue of Emergency Prohibition Notice by enforcement officer	12(1)	Notice must be followed by application for emergency prohibition order within 3 days
3. Emergency Prohibition Order imposed by Magistrates Court	12(2)	Right of appeal against order from Magistrates Court to Crown Court
4. Prohibition Order imposed by Magistrates Court	11(1)	Appeal against conviction from Magistrates Court to Crown Court
5. Lifting of Prohibition Order	11(5)	Right of appeal against enforcement authority's refusal to lift an order. First in Magistrates Court and, on further appeal, to Crown Court.

6. Lifting of Emergency Prohibition Order	12(8)	Right of appeal against enforcement authority's refusal to lift the order. First in Magistrates Court and, on further appeal, to Crown Court.
7. Registration	19	Not applicable - Registration is as of right
8. Licensing	19	Rights of appeal against refusal to issue a licence or cancellation will be contained in Regulations.

ANNEX B

FINANCIAL EFFECTS OF THE BILL

1. Food law is enforced largely by local authorities and there are no centrally held figures on their expenditure on this area of work. The Bill, regulations to be made under it and the EC Official Control of Foodstuffs Directive which it will implement, will create new tasks for local authorities, in particular the need to carry out more inspections and to maintain a register of food premises. It will also create new and stronger enforcement powers (such as the power to seize suspect food and to seize batches of food that do not comply with food safety requirements). The costs of exercising these powers will depend on the extent to which they are used and some may make the enforcement task easier, giving small savings. There is provision for local authorities to make charges, for example in return for running training courses on food hygiene.

2. The additional cost for local authorities is likely to be of the order of £30 million a year from 1991/92 onwards. This will be taken into account in next year's Revenue Support Grant settlement.

3. The impact on central government expenditure will depend upon the use made of the Ministerial powers in the Bill. These include the power to make emergency control orders and to issue codes of recommended practice to local authorities, the amended default powers and the more flexible power to allocate tasks to the various enforcement agencies. The additional expenditure is not expected to be significant.

Effect of the Bill on Public Sector Manpower

4. The additional tasks for local authorities are likely to require an increase in the number of local authority officers engaged on food law enforcement. Additional clerical staff will be needed to establish and maintain the register of food premises.

5. The Bill will also absorb some civil service manpower, but will not make any overall increase necessary.

NB1y
#5 13/4

Ministry of Agriculture, Fisheries and Food
Whitehall Place, (West Block), London SW1A 2HH
Tel: 01-270-3000 Direct line: 01-270- GTN: 270
Telex: 889351 Fax: 01-270-8125

Mr Andrew Turnbull
10 Downing Street
London
SW1

13th November 1989

Dear Andy,

CONTAMINATED ANIMAL FEED

My Minister will be replying to a PNQ by Dr David Clark MP on contaminated animal feed at 3.30pm this aftenoon. A copy of the draft reply is enclosed.

I am copying this letter to Andrew McKeon (Department of Health), Murdo Maclean (Chief Whips Office), Douglas Slater (Lords Whips Office), Dominic Morris (No.10), Steve Catling (Lord President's Office), Trevor Wooley (Cabinet Office).

Yours sincerely
Ray Alderton

R L Alderton
Parliamentary Clerk

MINISTRY OF AGRICULTURE 1889 100 years FISHERIES AND FOOD 1989

PRIVATE NOTICE QUESTION

FOR REPLY 13 NOVEMBER 1989

Q. To ask the Minister of Agriculture, Fisheries and Food if he will make a statement on lead in milk and meat following the discovery of lead in cattle feed.

A. As soon as my Department learned that contaminated animal feed had been distributed to farms in this country they took urgent steps to trace all supplies and I introduced immediately, orders under Part I of the Food and Environment Protection Act to ban the movement of any animals or foodstuffs which might be affected from all these farms. I have also contacted the European Commission to request urgent investigation of the possibility that this incident was the result of criminal activities in other Member States. At the same time I am making enquiries to ascertain whether criminal charges need to be brought against any parties in the United Kingdom.

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

SECRET

10 November 1989

Dear John

FOOD SAFETY ETC BILL: CROWN IMMUNITY

I wrote to you on 7 November expressing my concern about the removal of Crown Immunity from the premises of the security and intelligence services.

I understand that our officials have now resolved these difficulties and that satisfactory provision for the interests of the security and intelligence services has now been made in the draft Bill.

I am therefore content that the Bill should be brought forward as you propose.

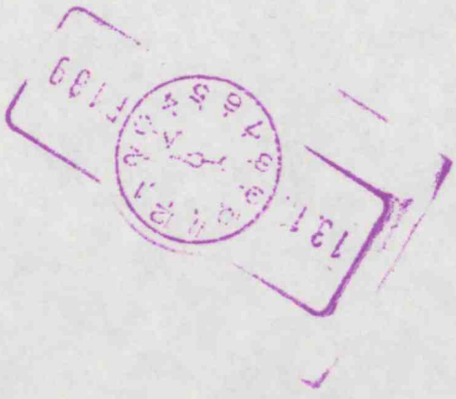
I am copying this letter to member of MISC 138, Douglas Hurd, Tom King, Patrick Mayhew, Nicholas Lyell and Sir Robin Butler.

Yours ever

The Rt Hon John Gummer, MP.
Minister of Agriculture, Fisheries & Food
Whitehall Place
LONDON, S.W.1.

SECRET

FOOD. Safety pr 3



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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

10 November 1989

Dear Helen,

FOOD SAFETY BILL: SHIPS, AIRCRAFT AND OFFSHORE INSTALLATIONS

The Prime Minister has seen your Secretary of State's minute of 7 November and was content with the proposal to extend the food safety controls in the Bill to ships, aircraft and offshore installations.

I am copying this letter to Private Secretaries to members of MISC 138, to Private Secretaries to the Secretaries of State for Foreign and Commonwealth Affairs, Energy, Transport, Defence, Mr. MacLean's Office (Ministry of Agriculture, Fisheries and Food) and to Trevor Woolley (Cabinet Office).

Yours sincerely,

Andrew Turnbull

ANDREW TURNBULL

Mrs. Helen Shirley-Quirk,
Department of Health

19

NBPM
AT 10/11

CCPU

THE RT HON JOHN WAKEHAM MP

SECRETARY OF STATE FOR ENERGY





Department of Energy
1 Palace Street
London SW1E 5HE
01 238 3290

The Rt Hon Kenneth Clarke MP
Secretary of State for Health
Richmond House
79 Whitehall
LONDON
SW1A 2NS

10 November 1989

Dear Ken

FOOD SAFETY BILL: SHIPS, AIRCRAFT AND OFFSHORE INSTALLATIONS — into AT?

Thank you for sending me a copy of your letter of 7 November to the Prime Minister about extending food safety controls to food supplied to crews on offshore installations.

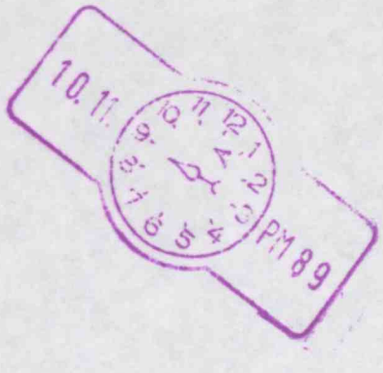
Powers exist under the Mineral Workings (Offshore Installations) Act 1971 for me to make regulations concerning the health of persons working on offshore installations. However I know that one of the intentions of the proposed Food Safety Bill is to consolidate and streamline legislation on food safety. I welcome any steps taken to improve the health of people working offshore and have no objection to the enabling powers that you intend to take in the Bill with regard to offshore installations.

There will obviously need to be very close liaison between your Department and mine on the detail of the enabling powers and any subsequent regulations, and on the question of enforcement offshore.

I am copying this letter to the Prime Minister and recipients of yours.

Yours ever
John

JOHN WAKEHAM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PRIME MINISTER

8 November 1989

MISC 138 - FOOD SAFETY BILL: HYGIENE TRAINING FOR FOOD HANDLERS

Kenneth Clarke proposes to issue a consultation document on the training of food handlers. It suggests:

(i) that the majority of food handlers (in food manufacturing, retailing and catering) should have an understanding of the causes of food poisoning;

(ii) that all food businesses should be required to produce a written statement of their food hygiene policy.

2. There are 2.8 million people working in food manufacturing, retailing and catering. Of these, 300,000 have already been trained in basic food hygiene. The consultation document suggests that there is a real need to train most of the remaining 2.5 million. This is a tall order.

3. The impact of this on businesses - especially at the smaller end - is not recognised. It should be. Written statements of food hygiene policy should not be required of businesses employing less than 5 people (the cut off point for written statements of policy on health and safety).

Conclusion

4. The consultation document should explicitly recognise the need to balance demand for higher standards (potentially limitless) against the need to minimize burdens on business. -

para 5 of the document tends towards pursuing the very last person. Eric would read a certificate!

Carolyn Sinclair

CAROLYN SINCLAIR

Temporarily Retained 26/11/2016

THIS IS A COPY. THE ORIGINAL IS RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT

PRIME MINISTER P 03573

MINISTERIAL GROUP ON FOOD SAFETY
Meeting on Thursday 9 November
STEERING BRIEF

1. This meeting is an opportunity to check that the main problems on the Food Safety Bill have been sorted out and that it will be in a satisfactory state for introduction.

Resources and mechanisms for food law enforcement

2. The main item is Mr Gummer's paper on food law enforcement. A brief is attached. You may want to concentrate on the question of charging, particularly its impact on small businesses.

3. An allied issue, not touched on in the paper, is the division of responsibilities between Departments for food safety matters including their relations with enforcement authorities. This is a machinery of Government issue on which Sir Robin Butler will minute you shortly. If the subject is raised you may wish to avoid discussion but perhaps say that it will be important for Ministers on the Bill to be equipped with a clear and agreed rationale for the different Departmental responsibilities.

Hygiene training for food handlers

4. Mr Clarke has circulated a draft consultation document which he wishes to publish to coincide with the Second Reading of the Bill, proposing that the Government should lay down by regulation minimum standards for the training of food handlers in food hygiene. All businesses would be required to produce a written statement of their food hygiene policy. Local authorities would be able to charge for training. The regulations would be enforced by Environmental Health Officers.

5. You may wish to ask whether this would apply to very small establishments (eg. sandwich bars), whether the burden on them

would be reasonable and whether there should be a cut-off point below which the requirements might not apply. The cut-off point might be defined by reference to, say, turnover or number of staff employed. Mr Clarke may point out that this is only a consultation document. Even so, the response to this sort of representation may need to be thought through.

Crown immunity

6. There has been Ministerial correspondence about the need to take a consistent approach on Crown immunity in the various Bills in this coming session, particularly in the Health Bill, the Environment Protection Bill and the Food Safety Bill. You may wish to check that this has been sorted out.

An issue here is Home Office's concern that allowing inspectors into prisons does not compromise security. AT

RTJW.

R T J WILSON
Cabinet Office
8 November 1989

RESTRICTED

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 21/1S

8th November 1989

Dear John

FOOD SAFETY BILL: CROWN IMMUNITY

You sent me a copy of your letter of 19th October to Malcolm Rifkind outlining your new proposals covering Crown Immunity in the forthcoming Food Safety etc. Bill.

I understand that my officials have now discussed in some detail with yours and Kenneth Clarke's the implications of the proposal for the Services and the form that the safeguards for national security to which you referred might take. I believe that the particular concerns of my Department can be satisfactorily met, and I am content on that basis for the inspection provision of the Bill to apply to Crown premises as you propose.

I am sending copies of this letter to members of MISC 138, David Waddington, Richard Luce, Patrick Mayhew, Nicholas Lyell and to Sir Robin Butler.

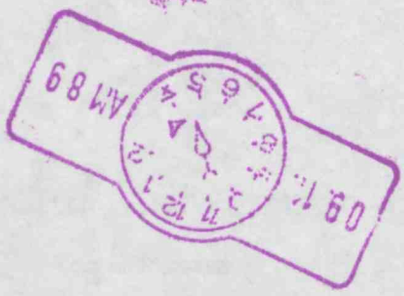
Yours ever

Tom King

The Rt Hon John Gummer MP
Minister of Agriculture, Fisheries and Food

RESTRICTED

FOOD: Safety pr3



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Prime Minister
Content to extend Food Safety Bill to ships and aircraft?
AT 7/11

07 NOV 1989

Prime Minister

FOOD SAFETY BILL: SHIPS, AIRCRAFT AND OFFSHORE INSTALLATIONS

As you know, the Food Safety Bill is due to be introduced to Parliament in the next session. I am writing to let you know that we propose to take the opportunity offered by the Bill to extend our food safety controls to food supplied to passengers on ships and aircraft and food supplied to crews on offshore installations within UK territory. I would like to announce our intention to do so by written Parliamentary answer, on 13 November.

The purpose of the Food Safety Bill is to modernise food legislation and to put it into a form which will see us through 1992 and into the next century. Much of the existing legislation dates back to the 1950's, or even earlier, when the safety of food on ships and aircraft was not seen as a major issue. However, recent years have seen a great increase in the numbers of people travelling abroad, the development of offshore drilling rigs and an increased awareness of the dangers associated with food. In addition, there have, as you know, been outbreaks of food poisoning in all three of the areas we propose to cover. I therefore believe that a truly comprehensive review of food legislation should provide us with powers to address any problems arising from poor food hygiene in these areas should it prove necessary.

The Bill itself will not impose any specific requirements on ships, aircraft or offshore installations. It will, however, contain an enabling power which will leave it open to us to make regulations setting out detailed requirements in the future. The regulations would, of course, be subject to consultation within Government and externally with interested parties when and if we decide to make them.

I hope you will agree that we should not miss this opportunity to equip ourselves to deal with food hygiene problems in these three areas in the future.

I am copying this letter to members of Misc 138. Copies also go to the Secretaries of State for Foreign and Commonwealth Affairs, Energy, Transport and Defence and to David MacLean.

K C



PRIME MINISTER P 03573

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR FOOD LAW ENFORCEMENT

Minute from the Minister of Agriculture, Fisheries and Food of 6 November 1989

DECISIONS

1. Mr Gummer, with the support of Mr Clarke, proposes:

i. a "package of mechanisms" for improving the quality and uniformity of food law enforcement. These include new powers in the Food Safety Bill for Ministers to issue central guidelines, drawn up with the help of an "Implementation Advisory Committee", and to take direct action if local authorities fail in their enforcement duties. You will wish to check that the Group is content.

ii. charging. Mr Gummer anticipates fierce criticism over the resources needed to finance the new burdens to be placed on local authorities by the Bill. He proposes that the money should be found by requiring local authorities to impose charges on commercial food premises, rather than by providing additional central funding through the Revenue Support Grant. He warns that this will be highly contentious and that the Government will need to look carefully at the impact on small businesses. You will wish to decide whether to endorse the proposal for charging.

2. On handling, Mr Gummer proposes that on the day the Bill is published he should make a joint statement with the Secretaries of State for Health, Wales and Scotland by way of a Written Answer to an inspired Question tabled two days beforehand, to be answered at 10.30 am on the day. This procedure has caused problems for the business managers in the past. You will want to

ask him to clear his arrangements well in advance with the business managers.

MAIN ISSUES

Need for action

3. Mr Gummer says that the most damaging criticisms of the White Paper issued in July were first, that the new powers to be taken would be useless unless the financial and manpower resources of local authorities were increased; and second, that the quality of enforcement between local authorities is uneven because of the different amounts of effort which different authorities put into it.

4. The Richmond Committee on Microbiological Safety of Food are expected to propose central guidance on enforcement in their interim report at the end of the year. An Audit Commission report on food safety enforcement, expected next Summer, is likely to criticise coordination between central and local government.

Better enforcement measures

5. Mr Gummer proposes four measures to improve the quality of enforcement:

a. a power for Ministers to issue central guidelines to local authorities on the exercise of their statutory functions. Local authorities would be required to take these guidelines into account, and there would be a reserve power to direct them to comply. The guidelines would be drawn up with the help of an Implementation Advisory Committee of Government Departments and local authorities.

b. stronger default powers. Ministers would be able to take direct action where local authorities failed in their duties.

c. flexibility in the division of responsibilities

between different types of enforcement officer and between central and local government. Mr Gummer argues that this will enable Ministers to reorganise enforcement to meet new needs or to focus on Government priorities. The proposal would enable the Government to assume greater control of food safety enforcement and could be contentious.

d. measures to increase the technical expertise available to enforcement authorities through improved training provision or the use of outside food technology experts.

6. Mr Gummer's paper concedes that this package to some extent cuts across the Government's policy of deregulation and that it might be criticised by local authorities as tending towards excessive centralisation. On the other hand he needs to be able to demonstrate convincing arrangements on enforcement if the Bill is to carry conviction. You will wish to check that the Group are satisfied with his proposals.

Resources

7. Officials estimate that there are about 6000 Environmental Health Officers (EHOs) who spend about 25-30% of their time on food safety. The Institution of EHOs suggest that they may be up to 500 under strength. The Food Bill will add significantly to their functions, at an estimated cost of £34m in a full year in 1991/92 and £26.5m in subsequent years (or £28m per year if the measures are introduced gradually): see para 7 of the paper.

Charging

8. Mr Gummer proposes that the new administrative burdens imposed should be financed through charging. In favour of this it can be argued that:

i. charging for enforcement is not entirely novel. MAFF have introduced similar charges to recover the cost of their milk and dairy inspection work, for example.

ii. The sums are small in proportion to the total turnover of the industry. With some £30m to be raised annually among 600,000 premises the unit annual cost would be of the order of £40-50.

iii. Mr Gummer expects business interests to support his proposals to achieve more effective and uniform enforcement of food safety law. He thinks that providing an extra source of funds will make it more difficult for enforcement and consumer interests to argue that the new controls are useless without the funds to enforce them.

Arguments against charging

9. On the other hand, it can be argued that:

i. It is not usual for local authorities to charge for mandatory services, and food law enforcement has traditionally been done at public expense.

ii. There is likely to be an impact on small businesses. An annual charge of up to £50 following closely, for many small businesses, on significant rises in the business rate, would be highly contentious.

iii. There may also be public concern if the local shop which now sells a range of products stopped selling food because the additional charging burden made it uneconomic.

iv. The paper also indicates a need for special arrangements to be considered for charities and voluntary organisations catering as a by-product of their social and money-raising activities.

The alternative: revenue support grant

10. The main alternative to requiring local authorities to

finance their new duties through charging would be for the taxpayer to meet the additional cost through increased revenue support grant. Mr Gummer says that this could only be justified if it were felt that the proposals in the Bill were of such importance to the general welfare of the public that taxation was the fairest way of spreading the costs. There could be no guarantee that any additional revenue support grant would be spent on food safety enforcement rather than on other local authority functions.

Need for decision

11. You will wish to decide whether you are content with the proposal for local authorities to charge for the new food safety enforcement arrangements, and in particular whether there should be special arrangements for small businesses. This might for instance take the form of lower rates of charge or exemptions, or a general link between the level of charge and the turnover of the business to be inspected. If you decide that there should be special arrangements you may want to ask Mr Gummer to make sure that they are worked out before his announcement is made.

HANDLING

12. You will wish to invite the Minister of Agriculture to introduce his paper. The Secretary of State for Health may also wish to comment. The Chief Secretary may wish to comment on the proposal to require local authorities to charge for enforcement services. The Trade and Industry Secretary, Environment Secretary and the territorial Secretaries of State may wish to comment generally, both on the specific proposals and on their likely reception.

RTJW.

R T J WILSON
Cabinbet Office
7 November 1989

CONFIDENTIAL

NBPM
AT 2/11

cc: P.U.

QUEEN ANNE'S GATE LONDON SW1H 9AT

7 November 1989

Dear Secretary of State

FOOD BILL: CROWN IMMUNITY

Thank you for your further letter of 2 November which followed our discussion of this problem. Your proposal of a forward date for application to the Crown of 1 April 1992 is clearly most helpful to us in providing some time to address and remedy the problems of prison kitchens and I am content to proceed on this basis as far as prisons are concerned. We will of course absorb any extra costs arising from improvement work within our baseline next year but once we are subject to a statutory regime there will be a continuing financial commitment.

However, your letter does not address the national security difficulties which I raised in my letter to you of 31 October. It is essential that the Bill does not make the premises of the security and intelligence agencies vulnerable to inspection by local authority employees who cannot be required to have security clearance. It is equally important that the mechanism for implementing any exemption on national security grounds that the Bill may contain should be practical to operate, should not serve to draw public attention to the premises which are exempt and should not identify the occupants of the exempt buildings. I understand that our officials are urgently discussing these difficulties. I do not consider that the Bill should be brought forward for introduction until these difficulties have been resolved: Government amendments on this point during the passage of the Bill would only serve to attract unwelcome attention.

I am copying this letter to members of MISC 138, Tom King, Patrick Mayhew, Nicholas Lyell and Sir Robin Butler.

Sara Dent
(Approved by the Home Secretary and signed in his absence)

The Rt Hon John Gummer, MP
Minister of Agriculture, Fisheries
and Food
Whitehall Place
LONDON, SW1A 2HH

CONFIDENTIAL

Food: Sapley Pt 3

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

7 November 1989

FOOD SAFETY BILL: CROWN IMMUNITY

Thank you for copying to me your letter of 19 October to Malcolm Rifkind setting out proposals for dealing with Crown Immunity in the Food Safety Bill.

I was pleased to learn that you have now been able to develop proposals which do not undermine the constitutional principle of the invisibility of the Crown, and that the Solicitor General is content with your new approach. My own concern, as chairman of L Committee, is to ensure that the various proposals to remove Crown Immunity in Bills to be brought forward next Session are consistent and defensible.

As Richard Luce has pointed out in his letter of 31 October, the wider issue of Crown Immunity is likely to arise during the passage of the Food Safety Bill and the NHS Reform Bill. I know that Crown Immunity issues will also be addressed in the Environmental Protection Bill. As Richard says, we can expect a good deal of pressure on this issue on various fronts and it may be necessary for colleagues to take a view on the substance of specific cases at very short notice. In these circumstances it is important that colleagues in charge of the relevant Bills keep each other in close touch with developments. We need to ensure consistency of approach in order to avoid attempts to pick colleagues off on particular proposals. In view of the constitutional implications of removing Crown Immunity, it is also imperative that the Law Officers are consulted on any specific proposals for policy changes in this area. And we must be ready to mount a robust defence of our position if challenged. I know that colleagues will have these points in mind as they develop particular proposals.

Contd 2/ . . .

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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

On Crown Immunity and the Food Safety Bill, I note that you are still in correspondence with David Waddington, and that it is possible that this issue will be raised at the MISC 138 meeting on Thursday. If you or other colleagues at any time saw advantage in my convening a wider meeting about Crown Immunity in the context of all next Session's Bills, I should be happy to do so.

I am copying this letter to members of MISC 138, Tom King, David Waddington, Chris Patten, Patrick Mayhew, Nicholas Lyell, Richard Luce and to Sir Robin Butler and First Parliamentary Counsel.

GEOFFREY HOWE

The Rt Hon John Gummer MP

PRIME MINISTER 6 November 1989

MISC 138 - FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR FOOD LAW ENFORCEMENT

John Gummer and Kenneth Clarke proposed to announce, when the Food Safety Bill is published, that the extra resources needed to give effect to the measures in it should be met through a system of charging. The charges will be laid on commercial food premises in the first instance. Ultimately they will be borne by consumers through higher prices. The sum at issue is £34m in the first year, falling to £26.5m a year thereafter.

The advantage of an early announcement is that it will nip in the bud renewed Opposition arguments that the Government's policy on food safety is a sham unless it provides additional means to give effect to the measures in the Bill.

The disadvantage is that charging will be unpopular with some, and will need very careful presentation.

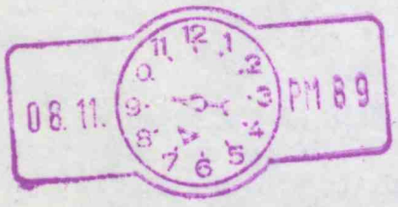
Arguments against charging

- It will be seen as a new burden on business, contrary to the thrust of the Government's general policies (it would come into effect in April 1991).

- "The industry" affected includes everything from the corner shop/Joe's Cafe to United Biscuit food factories, Le Gavroche and Sainsbury's stores.

- "De minimis" limits to exempt the smallest businesses will be complicated to operate unless a simple

FOOD: Safety pr 3



PRIME MINISTER 6 November 1989

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- "The industry" affected includes everything from the corner shop/Joe's Cafe to United Biscuit food factories, Le Gavroche and Sainsbury's stores.

- "De minimis" limits to exempt the smallest businesses will be complicated to operate unless a simple

test, such as liability to VAT, is chosen. But the VAT threshold is pretty low.

- Simplicity points to a flat rate charge per visit by an Environmental Health Officer/Trading Standards Officer. But other considerations point to a scale of charges in each Local Authority related to the size of the business.

- Businesses in those areas where food safety enforcement is currently good (eg Westminster) will perceive relatively little change as a result of the Food Safety Bill. They will feel that they are being asked to pay for something that was previously free - annual visits by EHOs and TSOs.

- Only the additional costs of the new measures are to be recouped through charging. The other costs of food safety work will continue to be met via the Rate Support Grant. Local Authorities - and businesses - may see this as the thin end of the wedge as Treasury pressure on the RSG leads to more costs being met through charges.

Comment

The way to deal with the above arguments is to stress the new steps that are being taken to improve food safety standards in line with consumer wishes. Charging is consistent with the Government's policies in other areas. For example, the Green Bill will introduced a system of consents for the release of genetically modified organisms into the environment. Firms will have to pay to obtain an initial consent, as well as paying an annual charge thereafter.

The principle is clear, as with water: if consumers want

higher standards, they have to pay for them. The recent announcement of a Consumer Panel on Food Safety should be helpful as a way of underlining the new approach being adopted by the Ministry of Agriculture Food and Fisheries to these matters.

There is, however, an inescapable dilemma. Charging for the policing of higher standards helps to keep down public expenditure. But it does nothing to help with the Government's other aim of deregulation. There are increasing pressures for higher standards and greater regulation in a number of fields - water quality, waste disposal, planning etc. Each turn of the regulatory screw makes it harder for new businesses to start up, and for fledgling businesses to keep going - even though costs can be passed on the consumer.

Conclusion

There is no way of avoiding this dilemma. In each case a reasonable balance needs to be struck. The smallness of some of the businesses involved in food is a problem. But the effect of charging must be kept in perspective. A small shop might be expected to pay £40 - £50 a year for annual inspection.

The big expense - which might drive a restaurant or shop out of the food business altogther - arises if the inspector recommends new cold cabinets and/or new kitchens. It is this aspect of higher standards, rather than the charges per se, which will be the real burden on business.

On balance the charging proposals look worth pursuing as a means of defusing the "resources" argument at the start of the Food Safety Bill's progress. But charging will be contentious.

CAROLYN SINCLAIR

CCPM

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

RESTRICTED

PRIME MINISTER

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR FOOD LAW ENFORCEMENT

Work on the Food Safety Bill is progressing well and we hope to have it ready for introduction early in the new session. You will, however, recall the concern of MISC 138 about the criticism we are bound to face over the quality of food law enforcement and the level of resources devoted to it. We recognised that the Bill would impose new burdens on local Government and that the financing of them was a particularly difficult issue.

Kenneth Clarke and I have been considering how to tackle these problems. We are particularly concerned not to regulate unless absolutely necessary. We have a clear duty to protect the health of the population through ensuring the safety of food. Nevertheless we must do so in the least bureaucratic manner which is consistent with achieving that end. Our conclusions on the appropriate mechanisms and resources are set out in the attached paper by officials. In brief

(i) we recommend a package of mechanisms designed to improve the quality and uniformity of food law enforcement. Some are new, such as the power of Ministers to issue guidelines to enforcement authorities; others build on existing provisions, such as the enhanced default powers;

(ii) we propose that the additional resources needed should be found by means of charges on commercial food premises. Subject to further discussions with local authorities we propose to require them to charge for carrying out routine annual inspections. Local

authorities would be free to set their own scales of charges, subject to any safeguards that we might feel it necessary to lay down in regulations to ensure that charges were reasonable. This seems preferable to trying to lay down charges centrally with all the difficult and arbitrary judgements this would entail; and

iii) we propose to make a joint statement of our broad intentions when the Bill is published. A draft statement is attached at Annex C to the paper.

We are bound to encounter fierce criticism on the resources issue and this seems the best way of seizing the initiative from the Opposition. Charging will be highly contentious, but it is very much in keeping with our philosophy generally. We will have to look particularly carefully at the impact on small businesses and if necessary provide appropriate safeguards. However, the sums to be raised will be insignificant in proportion to the total turnover of the industry and I think we can expect business interests to support our proposals to achieve more effective and uniform enforcement of food safety law. Providing for an extra source of funds from charging will also make it much more difficult for enforcement and consumer interests to sustain the argument that our enhanced controls are useless without the cash to enforce them.

I am copying this letter to members of MISC 138, David Waddington, Nicholas Ridley, Tom King, Chris Patten and Sir Robin Butler.

JOHN GUMMER

Ministry of Agriculture, Fisheries and Food
6 November 1989

RESTRICTED

PAPER BY THE MINISTRY OF AGRICULTURE, FISHERIES AND FOOD AND THE DEPARTMENT OF HEALTH

FOOD SAFETY BILL: RESOURCES AND MECHANISMS FOR ENFORCEMENT

PURPOSE

1. This paper considers the problem of providing resources and mechanisms to enforce the measures in the Food Safety Bill. It recommends a package which might be announced when the Bill is published.

THE PROBLEM

2. As Ministers recognised when MISC 138 looked at the Food Bill on 2 May, the Government seems likely to encounter considerable Parliamentary criticism of the level of resources devoted to the enforcement of the law on food safety and consumer protection. The most damaging criticism of the White Paper (Food Safety - Protecting the Consumer) issued in July was that the new powers to be taken would be useless unless financial and manpower resources of local authorities were increased. This criticism was aired not only by the Opposition, the enforcement bodies and consumers, but also by retailers and manufacturers. Allied to this is criticism of the quality of enforcement. Retailers and manufacturers have complained of uneven standards because of variations in the level of activity between enforcement authorities. The Richmond Committee on

microbiological safety of food has already expressed concern on this score and recommended that some central guidance is needed. This is likely to feature in the Committee's interim report due towards the end of the year. Another problem is that not all EHOs and TSOs have the training or expertise to cope with the increasingly complex enforcement problems associated with modern food technology, although this is only a small proportion of their work.

3. Enforcement authorities already claim to be substantially under resourced and to suffer from manpower shortages and the Bill seems bound to make the position worse. So far officials have had difficulties in obtaining the information from local authorities that would enable them to establish how far this is true. The proposed Audit Commission Study (see para 5) may produce some useful data. Meanwhile officials estimate that there are about 6000 Environmental Health Officers engaged on the full range of duties (about 25-30% of which are food related) although their Institution has suggested that they may be up to 500 under strength. The equivalent figures for Trading Standards Officers are about 1500 and 150. For the purposes of this paper it is assumed that the extra manpower needed can be found, either by recruiting new staff or by subcontracting enforcement work to other suitably qualified officials or to private sector bodies.

MECHANISMS

4. The problems over the quality of enforcement - differences in the level of activity, the need for coordination and for expertise to keep pace with technology - can be tackled in a number of ways. The Bill will provide new powers, such as registration of premises and tougher closure powers to make enforcement more effective. There is

also scope for new mechanisms to improve the quality of enforcement. A possible package is set out at Annex A comprising:

(i) a power for Ministers to issue central guidelines (coupled with a requirement on local authorities to take the guidelines in to account and a fall back power for Ministers to require compliance if necessary). These could be used to ensure more consistency in interpretation and application of the law and to encourage more coordination of effort following the introduction of new legislation. The guidelines would be drawn up with the help of an "implementation advisory committee" comprising the relevant Government Departments and the various local authority enforcement interests. There would also be full public consultation on the guidelines before they were finally issued;

(ii) stronger default powers allowing Ministers to take direct action if local authorities fail in their duties;

(iii) more flexibility in the allocation of enforcement duties;

(iv) measures to increase the technical expertise available to enforcement authorities.

This package could go a long way towards raising standards and silencing criticism of the enforcement system. The cost of items (i) - (iii), split between central and local government, would probably be between £¼m and £3/4m per year. The costs of item (iv) could be recovered by charges on industry (see paragraphs 10-12), although there could also be pressure for a specific grant, following the precedent in some recent consumer protection legislation.

Audit Commission Study

5. The Government should also declare support for the Audit Commission decision to carry out a study of food law enforcement. The study will look at local authority staffing, management systems, the pattern of enforcement responsibilities and co-ordinating machinery. The report is likely to make some useful recommendations and is expected to be available about the time the Bill receives Royal Assent next July - in time to be reflected as necessary in the implementing arrangements. The study is likely to criticise existing coordination between central and local government and the above package would be a sensible way of anticipating that criticism. The fact that the study is under way will also help to justify the flexible powers proposed at 4(iii) above without forcing the Government to "take sides" on the delicate issue of whether there should be any change in the division of responsibilities for enforcement between district councils and county councils.

RESOURCES

6. The Food Safety Bill will create a number of new tasks for enforcement authorities. The Government has already made clear that local authorities will be expected to finance many of these by charging; for example, the approval of food irradiation premises; other licensing schemes; and any training courses they choose to run in food hygiene and handling. Since these arrangements are intended to be self financing, they are not considered further in this paper. The Bill will enable the Government to require that where charges are made they should be high enough to cover all the costs involved, including enforcement costs.

7. Other new tasks, however, will impose new burdens on local authorities and there is likely to be a lively debate in Parliament and elsewhere about how these should be financed. Discussions with enforcement bodies have not yielded satisfactory figures on the likely cost, but some broad estimates of the additional resources involved annually from 1991/92 onwards are given in brackets. The tasks include:

i) the establishment and maintenance of a register of all commercial food premises (£9m in the first year and £1.5m year to maintain in subsequent years - although it might be possible to phase the register in gradually by setting a series of final cut off dates for registering different types of premises);

ii) a requirement of the EC Official Control of Foodstuffs Directive, which the Bill will implement, that all food premises be regularly inspected. "Regularly" has yet to be defined, but both TSOs and EHOs are likely to have to carry out more frequent inspections of some types of business than at present and TSOs will, for the first time, have to make in-factory inspections. There will also be a need to inspect exports in future (£8.5m for TSOs and public analysts and £13.5m for EHOs);

iii) an extension of EHOs' inspection duties as a result of the lifting of crown immunity and application of the law to ships and aircraft (£0.5m);

iv) miscellaneous new duties, such as the need to check that all food handlers have been properly trained; and associated administration costs, including the costs of obtaining appropriate technical expertise see 4(iv) (£2.5m).

The total cost would be approximately £34m in 1991/92 and £26.5m in subsequent years (or approximately £28m a year if the register is brought in gradually). These figures are for England and Wales only.

8. There are two main ways in which these new duties could be financed:

A) by charging so that the additional costs of enforcement identified above fall on industry;

B) by transferring additional resources to local authorities via the Revenue Support Grant so that the costs fall on the taxpayer.

(A) Charging (paragraphs 9-12 set out the considerations)

9. Charging is consistent with Government policy. It would be justified on the grounds that the additional costs of ensuring food safety should in principle be borne by the industry. It would be possible to emphasise the new measures in the Bill and argue that business and ultimately the consumer should pay for the higher standards these would bring. Charging for hygiene enforcement is well precedented. MAFF has introduced charges to recover the cost of its milk and dairies inspection work and charging will be mandatory under EC law for meat inspection from 1991. On the other hand, charging would be highly contentious and would run the risk of opposition on both sides of the House. Food law enforcement has traditionally been done at public expense. Charging could be viewed as imposing a "poll tax on food businesses" and the possible effects on small businesses would have to be looked at particularly carefully. Enforcement authorities would fear that such a radical change in their relationship with businesses might damage the quality of their work. They

might also have the support of business interests who would argue that it was unfair to make "clean" businesses subsidise the costs of enforcement on "dirty" businesses.

10. The sums to be raised would be small in proportion to the total turnover of the industry. With some £30m to be raised annually among 600,000 premises the unit annual cost would be of the order of £40-£50. Lower rates or exemptions for small businesses might be necessary - with consequently higher rates for those not exempted - although it is often the smallest businesses which cause most work for enforcement authorities. Special arrangements would need to be considered for charities and voluntary organisations catering as a by-product of their social and money raising activities.

11. There are numerous possible mechanisms for charging. These are discussed in Annex B. On balance the best approach seems to be to require local authorities to charge for making one routine inspection visit per year to each commercial food premises, during which enforcement officers would also give advice designed to raise food safety standards. In England and Wales this would mean an Environmental Health Officer, employed by the District Councils and, where relevant, one visit by a Trading Standards Officer, employed by the County Councils. In Scotland all food safety law enforcement work is carried out by Environmental Health Officers employed by the District and Islands Councils so only one visit would be necessary. Local authorities would be free to set their own scales of charges to reflect the costs of enforcement in their areas, but Ministers would be able to make regulations to stipulate that the charges should be reasonable and to provide any other safeguards that might be necessary, for example in relation to small businesses. There would be many points of detail to be worked out in consultation with interested parties after any announcement had been made.

12. Financial Implications. Local authorities would be required to set charges at a level high enough to recover the additional enforcement costs arising from the Bill, so the new measures would be self financing. The majority of food safety law enforcement work would continue to be financed via the Revenue Support Grant. There would also be manpower costs both for the Civil Service (to carry out the necessary consultations with local authorities on the precise arrangements for introducing charges) and for local authorities (to draw up scales of charges and administer their collection). The industry would inevitably pass on the costs of any charges to consumers in food prices.

(B) Allocating additional sums to local authorities via the Revenue Support Grant (paragraphs 13 and 14 set out this alternative)

13. Increasing the Revenue Support Grant so that the additional costs would be met by the taxpayer would be in keeping with the traditional approach to food law enforcement and therefore far less contentious. It could, however, only be justified if it was felt that the proposals in the Bill raised such important public good considerations that the taxpayer should pay and that taxation was the fairest way of spreading the costs since the consumer was the ultimate beneficiary. Another objection is that there would be no guarantee that any additional cash allocation through the Revenue Support Grant would be spent on food safety and not on other areas. However, by using the power to lay down guidelines for enforcement authorities, backed by the stronger default powers, the Government should have a greater influence over how local authorities spend the money devoted to food safety.

14. Financial Implications This option would have public expenditure implications for both central government and local authorities from 1991/92 onwards. It would be

impossible to quantify these accurately without protracted negotiations with local authorities (which would in themselves absorb central and local government manpower). Even then local authorities would be likely to criticise whatever sum was agreed as grossly inadequate. As indicated in paragraph 8, the estimated cost is £34m in year 1 and £26.5m thereafter or £28m per year if the register is introduced gradually. These figures should, however, be treated with caution. The Treasury have stated that under the "new burdens" policy any increase in local authority spending would have to be offset by reductions in the agriculture and health departmental programmes, but MAFF and the DoH do not consider that the sums could be accommodated and would wish to make a claim on the Reserve if this option was chosen.

Discussion

15. The choice between the two options is largely one of general policy. Charging is the most clearly in keeping with the Government's philosophy and is likely to be the most effective way of ensuring that the necessary sums are found. Therefore, Option A is recommended, even though it is bound to make the Bill more contentious.

Privatisation and contracting out

16 Officials have looked at the scope for privatisation of enforcement work. It does not seem appropriate to privatise the whole function and authorities already have powers to subcontract parts of the work to private organisations. Ministers may, however, want to give more publicity and encouragement to this power.

SCOTLAND AND NORTHERN IRELAND

17 In Scotland responsibility for enforcement of food legislation rests solely with the Environmental Health Officers of the District and Islands Councils. The dichotomy between TSOs and EHOs which applies in England/Wales does not arise and there is less need for reviewing the structures for enforcement. Powers already exist for the Secretary of State to appoint an official where Local Authorities default in their enforcement responsibilities. In all other respects, however, (eg registration, uniformity of enforcement standards, etc) the requirements in Scotland are similar to those in the rest of Great Britain. These will have resource implications which are currently the subject of a separate costing exercise with the Convention of Scottish Local Authorities.

18. Northern Ireland will be the subject of separate legislation in due course.

TACTICAL HANDLING AND TIMING

19 Any criticism of the resources and mechanisms for enforcement is most likely to come when the Bill is published. This would therefore be the best time to announce a package of new mechanisms and make a statement on resources. This could be done by tabling an inspired PQ two days before the Bill is published and answering it at 10.30 am on the day of publication. This would avoid the risk of the media getting hold of the Bill without the decisions on enforcement or vice versa. A Press Conference could then be held that morning to publicise both the Bill itself and the decisions on how it is to be enforced. This tactic of answering an inspired PQ in the morning two days after it has been tabled requires the express permission of the Prime Minister. A draft is attached at Annex C.

RECOMMENDATIONS

20. Ministers are invited to agree:

i) to the new enforcement mechanisms designed to improve the quality of enforcement described in Annex A; (paragraph 4)

ii) that additional resources for food law enforcement should be obtained by requiring local authorities to charge for carrying out annual routine inspections of food premises. The precise arrangements would be the subject of consultations with interested parties following the announcement; (paragraphs 9 - 12)

iii) to the tactical handling set out in paragraph 19 and to the draft statement in Annex C.

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD/DEPARTMENT OF HEALTH

NOVEMBER 1989

ANNEX A

NEW MECHANISMS DESIGNED TO IMPROVE THE QUALITY OF ENFORCEMENT

1 The present system of local authority control is not always appropriate for the large food companies organised on a national basis to supply the national market. Some large manufacturers and retailers have voiced criticism about uneven enforcement and interpretation of detailed rules, but have not always backed this claim with hard evidence. The Richmond Committee on microbiological safety of food in their interim (unpublished) letter to Ministers have also emphasised the need for a mechanism which ensures common standards.

(A) Central Guidelines

2 An effective way to ensure more common standards would be to include in the Bill a power for Ministers to issue guidelines to local authorities on the exercise of their statutory functions. This would be combined with a requirement on local authorities to take the guidelines in to account in the exercise of their statutory functions and a fall back power for Ministers to direct local authorities to comply with the guidelines, should they depart from them without good reason. There would be no attempt to issue instructions to individual enforcement officers. Guidelines could, for example, lay down

- rates of sampling per head of population
- criteria for assessing food handling premises and grading them according to the degree of public health risk they may represent if badly operated
- guidance on the frequency of inspections appropriate to different categories of premises
- guidance on the objectives and level of expertise appropriate for enforcement officers and/or the need to employ specialist food scientists to enforce the law in relation to modern food technology
- other measures to make enforcement more cost effective.

The aim would be to have one set of guidelines for each category of premises, eg catering establishments or canners, covering all aspects of enforcement falling to both TSOs and EHOs.

3. The guidelines would be drawn up with the help of an Implementation Advisory Committee comprising the main Government Departments involved and the various local authority enforcement interests. This would be more

flexible and less costly than a new quango, but with the proposed guidelines it would improve coordination - This is particularly important in relation to the EHO area and will become more pressing following the introduction of new legislation.

(B) Stronger Default Powers

4 The Bill will include stronger default powers than the cumbersome powers in the 1984 Food Act. Ministers will be able to step in and take direct action if an enforcement authority fails to discharge any duty imposed by the Bill.

(C) Flexibility in the Division of Enforcement Responsibilities

5. The Bill will provide a power enabling Ministers to vary the division of enforcement duties between different cadres of enforcement officer and between local and central Government. This will offer a greater degree of flexibility in enforcement than hitherto and will enable Ministers to adapt the enforcement system to meet changing needs. For example, it would permit central Government enforcement of food law in factories operating particularly complex and potentially hazardous systems without introducing cumbersome licensing requirements. Although it is not the intention at present this would in theory allow us to go much further and assume central government control of more enforcement work. This could be used to ensure that resources were channelled towards the Government's priorities. It would, however, be contentious and would have very significant implications for Civil Service manpower.

6. Financial Implications of options A - C: Options A and B would represent a fairly substantial commitment in terms of the Whitehall and local authorities staff resources needed to draw up and consult upon the guidelines and the Whitehall resources needed to ensure compliance. These could amount to £¼m to £½m for central government and £¼m for local authorities per year from 1991/92. The costs on local authorities of complying with the guidelines are included in the costs in paragraph 7 of the main paper. The costs of option C would be minimal unless the power was used in such a way as to take on extra tasks for central government. This is not the intention at present.

(D) Expertise and Training

7 There is a clear need to ensure that enforcement authorities have the expertise to deal with problems that arise. In particular EHOs inspecting large modern food factories and complex processes need access to expertise and advice from food scientists. This might be tackled in four ways, of which the first two are the most promising:

i) by providing specialist training for enforcement officers whose work requires it. Rather than specify training requirements and qualifications centrally, Ministers could issue guidelines on the lines of (A) above, which would have the effect of encouraging local authorities to provide appropriate training;

ii) by making regulations requiring industry to have food processing plants inspected by an independent food technologist. The results would be available to enforcement officers who could continue to have the ultimate say on questions of compliance with food law generally;

iii) local authorities could "buy in" expertise to assist their existing enforcement officers;

iv) the Richmond Committee has suggested creating a new cadre of Specialist Food Technologists possibly drawn from amongst existing local authority enforcement officers. Both TSOs and EHOs would be able to make use of their expertise. They could provide a second opinion in individual cases or prepare written guidance for general circulation. However, this raises awkward questions about who would employ and pay such staff (central government or a few larger local authorities?) and their status under the Act(could they bring prosecutions?). There would also be a danger that their knowledge could become out of date in this rapidly developing area.

9. Financial Implications of Option D The cost of (i), (iii) and (iv) would depend on the extent to which they were used, with (iv) being the more costly solution. These costs could be recovered by the charges proposed in the main paper. Alternatively there could be pressure for them to be financed by a specific grant, following the precedent for financing training of TSOs under certain Consumer Protection legislation. The cost of option (ii) would fall on the industry.

Conclusion

10. Local authority interests might object to this package as tending towards excessive centralisation. Indeed, this approach does to some extent cut across the Government's policy of deregulation. This is, however, unavoidable. The Bill must include a power to enable implementation of the EC Official Control of Foodstuffs Directive, and this calls for a degree of centralist involvement and direction which will cut across the UK's traditional devolved attitude to enforcement. Moreover, the package is less interventionist

and more flexible than other possible approaches - such as laying down enforcement standards in legislation or trying to replicate the call-in system that operates for planning. It could also go a long way towards raising standards and silencing criticism of existing enforcement arrangements.

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD/DEPARTMENT OF HEALTH
NOVEMBER 1989

CHARGING

1. There are numerous possible mechanisms for charging. All have advantages and disadvantages, as discussed below.

Requiring/Enabling local authorities to charge

2. There are two broad approaches:

(i) requiring local authorities to charge;
(ii) providing no extra resources but enabling local authorities to charge (as an alternative to finding additional resources elsewhere in their budgets or via the Community charge).

Option (i) represents the best way of securing funds and ensuring that they are devoted to work on food safety, and would have a more even effect across the country as a whole. Option (i) is a more centralist approach and likely to be unpopular. But option (ii) could, in practice, be even more contentious since local authorities would probably have to charge to cover some or all of their costs, and some would no doubt take the opportunity to register all their objections to charging and criticise the Government for bringing it in by the back door.

Centrally/Locally determined rates

3. Scales of charges could be determined either:

(i) centrally; or
(ii) locally.

Option (i) would result in even charges across the Country as a whole and would allow Ministers to structure the charges should they so wish, for example to cushion the effects on small businesses. However, there are major drawbacks. The costs of enforcement vary drastically between areas and, if charges were set centrally there would inevitably be winners and losers among local authorities, with the losers likely to be vociferous in their opposition. Second, it would have heavy resource implications since Civil Servants would have to determine and keep under review the scale of charges and methods of collecting them. This would be a major task. Third, this is a centralist approach and, since it is very difficult to devise a system that is both simple and fair, the Government would inevitably be criticised whatever system was eventually chosen.

4. Option (ii) would have the advantage of distancing the Government from the task of devising scales of charges and methods of collection and would allow local authorities to

set charges that accurately reflected the costs of enforcement in their areas - if these could be assessed. The disadvantage is that there could be very wide variations in the amounts charged and this could be unpopular with industry - particularly in the case of national companies operating in numerous local authority areas with widely different charges. The effect of this could, however, be minimised if Ministers made use of their powers to make Regulations to stipulate that the charges should be reasonable and to provide any other safeguards that might be necessary, for example in relation to small businesses. Possibilities that could be considered further would be to require charges to be linked to the band in to which the premises fell for the purposes of the Standard Business Rate or (perhaps less promisingly) to the floor area of the premises.

Flat rate/differentiated charges

5. Again there are two options:

(i) a flat rate charge;
(ii) differentiated charges and/or exemptions.

Broadly speaking option (i) would be more simple, efficient and cheap to administer, but option (ii) could be used to make the system fairer, to reflect the higher costs of inspecting certain types of premises or to cushion the effect on small businesses. If charges are to be set locally this would be an issue for local authorities to consider although, as discussed above, Ministers could set down requirements in Regulations if appropriate.

Annual charge/charging for visits

6. There are two main ways of raising charges:

(i) an annual charge on all registered food premises
(ii) charging for certain visits.

An annual charge would be simple but unpopular. It would be viewed as a "poll tax on food businesses" and criticised as imposing new burdens on business contrary to Government policy. It could act as a disincentive to registration and make it difficult to argue, as the Government has hitherto, that registration will be "as of right". It might be criticised as unfair since "clean" businesses would be subsidising the costs of enforcement on "dirty" businesses. Legally it is closer to a levy than a charge so it would require a wider enabling power in the Bill and might attract complaints about overcentralisation. There would also be administrative difficulties: the cost of collecting the charge and the need for a mechanism to ensure that the revenue was shared fairly between the County Councils (who

employ TSOs) and the District Councils (who employ EHOs). Under this system registration would in effect have to be renewed annually. This is not the intention and it would add considerably to the cost of maintaining the register. Some premises might not receive any visits from enforcement officers during the year and would feel that they were getting nothing in return for their money.

7. Turning to the second approach it would not be possible to charge for all visits: for example, it would be inequitable and inappropriate to charge for those made in order to collect routine samples, those resulting from complaints by members of the public and those connected with proposed prosecutions. Enforcement authorities have a clear public health duty to make such visits and the need to collect a charge could deter enforcement officers from making them and give businesses stronger grounds for resisting.

8. However, there would be clear advantages to charging for certain routine inspection visits, during which enforcement officers gave advice designed to raise food safety standards. The EC Official Control of Foodstuffs Directive will require regular inspections. ("Regular" has yet to be defined, but is likely to mean annual.) The possibility of collecting charges for such visits could clearly give local authorities an incentive to make them more frequently. So this would probably be the simplest way of encouraging them to come up to the new, higher standards that will be required. This approach would also be easier to present since businesses would be getting a benefit in return for their money.

9. The disadvantage of charging for visits is that it would cost more to administer than an annual charge. Any system based on separate invoicing and collection for each visit would create administrative costs out of all proportion to the size of the charge. A possible way round this difficulty might be to allow premises to buy a stamp in advance entitling them to one inspection visit, which the enforcement officer could cancel or mark on completion of the visit. The administrative advantage of this option is that District and County Councils would collect their own charges and devote the money collected to food law enforcement.

How many visits to charge for

10. If local authorities could charge for unlimited numbers of visits the system could be open to abuse and businesses would not know how many visits to expect and budget for. It is therefore recommended that local authorities would be permitted to charge for a maximum of one visit to each premises per year. In practice this would mean that

premises in England and Wales would be visited once by a County Council TSO and once by a District Council EHO, and premises in Scotland would be visited once only by an EHO (who carry out all food law enforcement work in Scotland). The cost of the basic inspection visit would entitle the premises to as many follow up visits as might be necessary.

Summary

11. It is recommended (in paragraph 11 of the main paper) that local authorities should be required to charge for making up to one routine inspection visit per year to each commercial food premises, during which enforcement officers would give advice designed to raise food safety standards. Local authorities would be free to set their own scales of charges to reflect the costs of enforcement in their area, but Ministers could make regulations to stipulate that charges should be reasonable and to provide any other necessary safeguards, for example in relation to small businesses. Many points of detail would have to be worked out, for example the definition of a "routine inspection visit", the timing of the introduction of charging and any stipulations Ministers might wish to make in Regulations. The precise arrangements would be drawn up in consultation with local authority interests and other interested parties after an announcement had been made on the principle. A further announcement on the detailed arrangements would be made in due course.

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD/DEPARTMENT OF HEALTH
NOVEMBER 1989

ANNEX C

DRAFT STATEMENT ON ENFORCEMENT TO ISSUE WHEN THE FOOD SAFETY BILL IS PUBLISHED

Question: ..... to ask the Minister of Agriculture, Fisheries and Food what steps he will take to provide the mechanisms and resources needed to enforce the Food Safety Bill.

Answer:

1. My Right Hon Friends, the Secretaries of State for Health, Scotland and Wales and I attach the utmost importance to ensuring that food safety legislation is enforced effectively so that the consumer can be properly protected. As we made clear in the White Paper, "Food Safety - Protecting the Consumer," one of the main objectives of the Food Safety Bill, published today, is to create new and tougher powers for enforcement authorities to help ease their task. These include registration of food premises, enhanced powers to close down premises which pose a danger to health and new powers to catch batches of food that fail to comply with safety requirements.

2. In addition, to bring about more even standards of enforcement and to encourage the wider adoption of good practice:

- there will be a power for Ministers to issue central guidelines to local authorities building, wherever possible, on existing good practice. We intend that guidelines could cover such areas as the frequency of inspection appropriate for different types of food premises or rates of sampling per head of populations. The guidelines will be drawn up in discussion with enforcement interests and there will be an advisory committee for this propose;

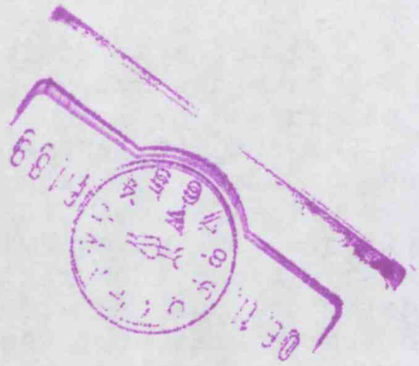
- we will take steps to ensure that all enforcement authorities have access to the level of technical expertise they need to keep pace with modern food technology. We will hold discussions with interested parties before taking final decisions on how to achieve this;

- the Government also welcome the Audit Commission's decision to conduct a study of food law

enforcement. We will cooperate fully with this study and look forward to seeing its recommendations in due course.

3. The Bill will create additional costs for local authorities. We have concluded that the extra resources needed should be raised by means of charges on commercial food premises. Subject to further discussions with local authorities we propose to require them to charge for carrying out routine annual inspections, during which enforcement officers will give advice designed to raise food safety standards. Local authorities will be able to set their own scale of charges to reflect the costs of enforcement in their area but there will be a power for Ministers to make Regulations to ensure that charges are reasonable, for example in relation to the size of the business. Special arrangements will be made to take account of the position of charities and voluntary organisations catering as a by-product of their social and money raising activities. Our intention is that only the additional costs of enforcement arising from the Bill will be financed in this way. The majority of food safety law enforcement work will continue to be financed via the Revenue Support Grant. The precise arrangements for introducing the charges will be drawn up after full consultation with the interests affected and we shall make a further announcement in due course.

4. The Food Safety Bill and the proposals outlined above will together ensure that the enforcement authorities of both local and central government have the powers, structures and resources they need to ensure that the law is effectively enforced and the consumer is properly protected.



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cc P.U.

DEPARTMENT OF HEALTH

Richmond House
79 Whitehall
London SW1A 2NS
Telephone 01 210 3000
From the Secretary of State for Health

03 NOV 1989

Prime Minister

FOOD SAFETY BILL: HYGIENE TRAINING FOR FOOD HANDLERS

I am writing to let you know that my Department will be publishing a consultation document on hygiene training for food handlers, to coincide with the Second Reading Debate on the Food Safety Bill in early December. I attach a copy of the latest draft for your reference.

You will recall that the White Paper "Food Safety - Protecting the Consumer" published in July included the proposal that the Food Safety Bill should make:

> "provision for the training of those who handle food commercially so that regulations may lay down the nature of training to be given in food hygiene. Many already receive such training through courses organised by the food industry, local authorities or other bodies. The Government intends to build on existing good practice to increase the take up. Local authorities would be able to charge for training."

The Bill will include a primary power enabling us to make regulations laying down specific requirements once the Bill has become law. The details of the regulations therefore do not need to be decided until mid-1990, and will be subject to the usual statutory consultation prooess. However, our proposals raise a number of complex issues, and I think it is advisable to seek the views of the food industry, enforcement agencies, consumer interests and training organisations at an early stage. I have therefore decided to issue a consultation document which is designed to be as open as possible, and to leave us free to draw up draft regulations in the light of the comments received.

I am copying this letter to members of MISC 138. A copy also goes to John McGregor and David McLean.

KENNETH CLARKE

HYGIENE TRAINING FOR FOOD HANDLERS

INTRODUCTION

1. The Food Bill includes an enabling power which will allow Ministers to make regulations requiring hygiene training for those employed in food businesses. The Government intends to raise general standards by building on existing good practice. This proposal raises a number of complex issues, and the Government wishes to consult the food industry, enforcement agencies, consumer interests, training organisations and other interested parties before deciding on the details of the requirements. This paper discusses the options available, and invites comment on these and any other relevant issues.

SCOPE OF THE REGULATIONS

2. The regulations may cover the manufacturing, wholesale, retail and catering sections of the food industry, as well as other organisations which supply food during the course of business, eg hospitals and schools in both the public and private sector. Good standards of hygiene are equally important in all of these areas, and bad practices in any one of them could put public health at risk. The Government would welcome comments on the extent to which the regulations should cover any other sections of the food industry such as farms and other specialist areas.

3. However, some food businesses pose only a minimal risk to health, either because the food they handle is not a good medium for bacterial growth, or because it is protected from contamination by a container or wrapper. Existing legislation already lays down hygiene standards for food premises and there may be some businesses eg greengrocers or newsagents selling packaged confectionery, which do not present a level of risk sufficient to justify mandatory hygiene training. The regulations should perhaps not apply to those who handle only wrapped, canned or bottled food, packaged confectionery, fresh fruit, fresh vegetables and wet fish. Correspondents may wish to comment.

4. The Government believes that the regulations should apply to those who handle food directly, whether fresh, frozen or chilled, but there may be others, eg kitchen supervisors, who affect the standard of hygiene in food premises, and for whom mandatory training might also be appropriate. The categories of employees covered by the regulations will be decided in the light of comments received.

5. The food industry employs large numbers of casual staff, and the Government recognises the difficulty of imposing training requirements on them. However, this type of worker often poses the greatest risk to health, and the Government does not believe that they should be exempt from the requirement to receive training. The Government would welcome comments on how the regulations might approach the training of casual staff.

BASIC TRAINING REQUIREMENT

6. The regulations will specify the minimum standard which those covered by the regulations should reach. The nature of individual food handlers' jobs varies considerably, and some need specialist knowledge which is not necessary for the majority of food handlers, eg. hospital catering staff, who need to prevent "clinical contamination". It may or may not be appropriate to specify this type of training in the regulations. However, the Government believes that the regulations should require the majority of food handlers to have a basic understanding of the ways and conditions in which bacteria multiply, the effects of food poisoning, the ways in which food poisoning and food contaminations can be prevented, personal health and hygiene, how to keep premises and equipment clean, pest control and food handlers' responsibilities under law. We would welcome comments on whether there are any categories of food handler for whom any of these subjects would be inappropriate, or whether there are any other subjects which should be included in the basic training requirement. The Institution of Environmental Health Officers' Basic Food Hygiene Certificate Course, the Royal Institute of Public Health and Hygiene's Primary Certificate in Hygiene for Food Handlers course and the Royal Society of Health's Certificate in Essential Food Hygiene course each provide a

minimum of six hours basic instruction which covers all the subjects listed above. The Hygiene Practices unit of the Hotel and Catering Training Board also requires trainees' understanding of these subjects to be assessed. The Government would welcome comments on whether the regulations should lay down this level of training (but not necessarily restricted to these courses) as a minimum standard for most food handlers.

FURTHER TRAINING

7. Many training organisations offer a variety of hygiene qualifications at higher levels, suitable for those pursuing a career in the food industry. The Government fully supports the efforts of employers and trainers to develop their managers' awareness of the importance of hygiene as their careers progress. The food industry is extremely complex, and individual businesses vary considerably in their size, the type and diversity of their operations and the nature of their management structures. Food businesses therefore need the maximum amount of flexibility to train their managers in the way that is right for them. Legislation is not the only nor the best way to encourage them to do so and might impose unnecessary or even harmful restrictions. The Government does not consider that it would be practicable to lay down in regulations levels of training above the basic requirement, but would welcome comments on the advisability or otherwise of doing so.

REFRESHER TRAINING AND UPDATING

8. The regulations may require food handlers to undertake refresher training. This would help employers to ensure that their staff maintained high standards, and kept abreast of developments in food hygiene. Staff would not necessarily have to re-take the whole of their previous training. However, in certain circumstances, eg., where a premises had been closed down because it was a danger to public health, re-training might be made a condition of re-opening. The Government would welcome comments on whether the regulations should require regular or exceptional re-training.

METHODS OF TEACHING AND ASSESSMENT

9. The food industry, local authorities and other bodies between them already offer a wide range of courses, teaching packs and home learning aids which allow employers a great deal of flexibility in deciding how their staff are trained and to make the training directly relevant to their duties. The Government believes that employers should continue to be able to choose whatever training methods best suit their needs. We also believe that local authorities should be able to provide and charge for courses which offer a variety of methods of instruction, in order to supplement the training provision in their districts. We therefore propose that the regulations should not specify the method of teaching.

10. The National Council for Vocational Qualifications (NCVQ) has been set up to improve vocational qualifications by basing them on the standards of competence required in employment, and to establish a national framework against which the varying qualifications can be measured. The new system is due to be in place in the early 1990s. In order to meet the criteria for inclusion in the scheme, a qualification has to include a practical assessment of a candidate's performance in the job. The NCVQ and the various awarding bodies throughout industry are currently discussing ways of adopting their existing assessment methods to enable their qualifications to be brought into the new structure. The regulations might be drawn up with the long-term aim of requiring food handlers to achieve a level or part of a level of competence within the NCVQ framework, depending on the nature of their work. For example, someone preparing food in a kitchen could be required to undertake a self-contained food hygiene unit, while someone operating food processing equipment could be required to undertake one or more units directly relevant to their work, each of which contained a different hygiene element. Employers, employees and enforcement agencies alike would benefit from a nationally - recognised scheme of assessments based on practical ability, which provides a structure for career development and in which training is directly relevant to the job.

CERTIFICATES OF TRAINING

11. Environmental Health officers (EHOs) need to be able to require those covered by the regulations to show proof of training in order to enforce the law. Regulations may lay down the type of documentation which must be produced. There are a number of options:

(i) In the long term, if the regulations require food handlers to achieve a level or part of a level of competence within the NCVQ structure, EHOs would be able to inspect each employee's National Record of Vocational Achievement. The NCVQ maintains a central register of qualifications, which would enable EHOs and employers to check the validity of a certificate. While the framework continues to expand, transitional arrangements could be based on one of the following options:

(ii) Employers could be required to keep records of training and produce them for inspection. However, it would be extremely difficult to judge the quality of the training, while the element of flexibility would almost certainly lead to different standards of enforcement across the country.

(iii) Local authorities could decide the type of records or qualifications which were acceptable in their districts. This might mean that employers who run their own training programmes could continue to do so, but would have to arrange for staff to be assessed at the end of basic training. This option has the advantage over option (ii) of including an assessment of the trainee's understanding of the course at the end of training. The centre could issue guidance designed to reduce the risk of different standards of enforcement.

(iv) Regulations could include a list of acceptable qualifications, which would be drawn up in the light of comments received. The list would set out not only basic hygiene certificates, but also broader-based qualifications which include a sufficient hygiene element. As in option (iii), trainees on an in-house course might have to be assessed at the end of basic training. This option would have a built-in element of quality control, as those running the courses and carrying out the assessment would have to be approved by the awarding bodies. This option would ensure a common standard of enforcement. Employees would be able to produce their certificates as evidence of training to prospective employers.

WRITTEN STATEMENT OF FOOD HYGIENE POLICY

12. The Government has received representations that all businesses should be required to produce a written statement of their food hygiene policy. A similar requirement already exists in health and safety legislation. The Government welcomes this proposal, because it requires all employers and managers to think positively about their responsibilities in relation to the standards of hygiene in their businesses, the best way of maintaining high standards and of communicating them to their staff. The Government believes that it would be appropriate to incorporate this requirement in the hygiene training regulations because it could serve both as the first step in the training process, and as a benchmark to check whether standards are being maintained after training.

13. The regulations could require employers to make a copy of the policy statement available to all their employees. Managers would need to satisfy themselves that their employees understood the statement before they commenced work. This would ensure that staff had been instructed in observing certain basic practices before being allowed to handle food. We therefore invite comments on whether the regulations should require all food businesses to produce a written statement of their food hygiene policy and the arrangements they have made for putting it into practice, and to make any necessary revisions from time to time.

14. During the course of his inspections of food premises, an EHO would be able to examine records of training and written statements of hygiene policy and satisfy himself that staff understood them. Where staff were unable to produce records of training, perhaps because they were newly employed, the EHO would need to be satisfied that arrangements were in hand for training them within a reasonable period, eg that they were booked onto a forthcoming course. If he were not satisfied, he would be able to issue an improvement notice requiring staff to be trained within a certain period. Anyone failing to comply would be committing an ofence and thus be liable for prosecution.

IMPLEMENTATION PERIOD

15. The Government will have to allow sufficient time to enable food businesses to comply with the new legislation. If the suggestion in paragraph 11 (i) is adopted, it might be appropriate to time the end of the implementation period to coincide with the completion of the lower levels of NCVO framework. A final decision will be made in the light of comments received.

16. The regulations will also have to allow employers sufficient time to train newly-recruited staff. It is open to question whether the regulations should lay down a fixed period, or whether EHOs should have discretion to decide what is a reasonable period in the light of local circumstances, eg the availability of places on training courses. The Government would welcome comment on what a reasonable period might be, and whether it would be practicable to specify such a period in regulations.

REVIEW OF REGULATIONS

17. Once the Regulations have been introduced, the Government might specify a period after which they would be reviewed. This would enable the Government to "fine tune" the Regulations to take account of the lessons learned during implementation, and of any other developments.



NBPM
AT 3/4

cc PS

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

A J Lebrecht
Principal Private Secretary
Ministry of Agriculture, Fisheries & Food
Whitehall Place
London
SW1A 2HH

2 November 1989

Dear Andy

FOOD SAFETY DIRECTORATE - CONSUMER PANEL

My Secretary of State was very interested to see your letter of 30 October to Andrew Turnbull outlining your Minister's proposals for organisational changes for handling food matters.

Mr Rifkind has no comments on your Minister's intention to establish a Food Safety Directorate. He has, however, made a number of comments on the proposal to create a Consumer Panel. My Secretary of State recognises that there is a case for a forum to receive consumer views. However he is somewhat concerned as to how these are to be balanced against scientific advice and feels that it may be necessary for the Panel's terms of reference to be more precisely defined. He is also concerned about the terms of the proposed announcement.

My Secretary of State recognises that in general food matters your Minister has the lead. Nevertheless Ministerial responsibility is actually a shared one and he feels that it is important that this point is not lost at a time when separate Scotland and England/Wales food legislation will be subsumed within a single GB Food Bill. He attaches great importance to the Scottish Office being represented on the Panel and for presentational reasons would like to see the following amendments to the suggested reply:-

> lines 4/5 substitute "At the same time with the agreement of the Secretaries of State for Health, Scotland and Wales I am setting ..."
>
> third paragraph delete "the Food Minister" and substitute "Government". Similarly delete "my Department" and substitute "Government".

MDL305L2

I am copying this letter to the recipients of yours.

Yours
Jim

JIM GALLAGHER
Private Secretary

MDL305L2

03.1.
AM 89

NBFM
AT 3/4

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

RESTRICTED

The Rt Hon David Waddington MP
Home Secretary
Queen Anne's Gate
London
SW1H 9AT

2 November 1989

Dear Home Secretary,

FOOD BILL: CROWN IMMUNITY

Thank you for your letter of 31 October.

We had a useful discussion about this problem last night. I very much understand your problems. Equally I think you took the point that there is a growing consensus that action must be taken to ensure that Crown Immunity is not used to provide cover for poor standards of food hygiene and food safety, particularly given the Prime Minister's statement in November 1988 that

> "The Government's policy in respect of Crown Immunity is that it should not lead to lower standards being accepted in Crown premises. This is reviewed in individual cases where there appears to be evidence of cause for concern."

Kenneth Clarke and I are clear that we must, at the minimum, proceed with arrangements of the kind described in my letter of 19 October which would allow EHO's rights of access to most Crown premises whilst maintaining Crown Immunity from prosecution.

Colleagues have in general supported this approach. If there are particular difficulties in relation to prisons, it might, however, be possible to defer application of the new provisions to the Crown. You said you would be prepared to consider this.

/The provisions of ...

The provisions of the Bill and its main implementing regulations are likely to come into effect in Autumn 1990 and the first half of 1991. Could I suggest that we apply them to the Crown from 1 April 1992 which would give you more time to get the prisons up to the required standards. I think it would be difficult to defer implementation for the Crown any longer and I would see great difficulty in justifying a different arrangement simply for prisons.

Perhaps, I could add for the record that I have taken note of the points in Nicholas Lyell's letter of 31 October and these will be reflected in our Instructions to Counsel.

I very much hope you can agree to this compromise approach. It would be helpful if your Private Office could let mine know by Monday morning (6 November) if you are content. I would obviously prefer to avoid having to discuss this at the MISC 138 meeting already scheduled to look at certain aspects of the Food Safety Bill on 9 November.

I am copying this letter to members of MISC 138, Tom King, Patrick Mayhew, Nicholas Lyell and Sir Robin Butler.

Yours sincerely.

L. D. Lambert

pp JOHN GUMMER

Approved by the Minister and signed in her absence

PRIME MINISTER

FOOD SAFETY DIRECTIVE - CONSUMER PANEL

You queried Mr Gummer's proposal to establish a Consumer Panel as you feared it would duplicate the numerous quangos and bodies already in existence. I have spoken to MAFF to clarify this and believe that a better case can be made than was set out in their letter:

i. the aim is to establish a clear channel by which existing consumer groups can communicate to the Department. No extra resources are required in the Department. It is in fact the opposite of a quango; rather than establishing a new non-ministerial body it is securing ministerial involvement in a function which already goes on in a less clear cut way.

ii. Mr Gummer sees this as strengthening the consumer voice in MAFF in order to counter the view that the Department is dominated by producers and scientists.

Content to proceed on this basis? Mr Gummer is anxious to table a PQ tonight in order to get the announcement out tomorrow.

AT

Agreed MS

Andrew Turnbull
1 November 1989

c: food (MJ)

8

Ref. A089/2822

MR TURNBULL

Food Safety: Consumer Panel

I promised to let you have advice on the proposal in the letter of 30 October from the Minister of Agriculture's private office, that he should set up a consumer panel on food safety and allied consumer protection issues.

2. My understanding is that the panel would not be a quango. It would in effect be an advisory committee chaired by a Minister, not an independent body, and the public expenditure would be minimal, involving no more than travel and other expenses of its members and a secretariat supplied by the Ministry.

3. As to the attitude of other Departments, my understanding is that they do not object to what Mr Gummer is proposing. I have discussed the proposal with the Permanent Secretaries concerned. The Department of Health were not consulted before it was put forward but Mr Clarke has now said that he is content.

4. On the substance of the proposal, the main question is whether it will do more good than harm. It is quite possible that it will have no marked impact either way. Once set up it will be difficult to disband and could on occasion prove an embarrassment. But Mr Gummer has no doubt weighed up these points. There is something to be said for setting up the consumer panel if he feels that he needs to have a direct channel of communication with consumer groups and to avoid the impression of being hemmed in by expert advice.

5. If the Prime Minister is content, you may wish to agree that Mr Gummer should proceed with his announcement, which he hopes to make tomorrow.

R.R.B.

ROBIN BUTLER

1 November 1989

FOOD : Safety PT3

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

FY
KK

bc:
Carolyn
Sinclair

1 November 1989

Dear Andy

FOOD SAFETY DIRECTIVE - CONSUMER PANEL

The Prime Minister has seen your letter to me of 30 October. She is content with the organisational changes to be made in the Ministry and for a Consumer Panel to be set up under the chairmanship of Mr. Maclean. She hopes that the latter will not involve a significant commitment of extra resources within the Ministry.

I understand that you are to table a Question for answer tomorrow.

I am copying this letter to the Private Secretaries to the Secretaries of State for Scotland, Wales, Northern Ireland and Health, to Martin Le Jeune in the Office of the Minister for the Civil Service and to Trevor Woolley in Sir Robin Butler's Office.

Yours sincerely

Andrew Turnbull

(ANDREW TURNBULL)

Andy Lebrecht, Esq.,
Ministry of Agriculture, Fisheries and Food.

EA

NSPM
AT
2/4

CABINET OFFICE
OFFICE of the MINISTER
for the CIVIL SERVICE

The Minister of State
Privy Council Office
The Rt. Hon. Richard Luce MP

Horse Guards Road
London SW1P 3AL
Telephone: 01 -270 5929

C89/4784

The Rt Hon John Gummer MP
Minister for Agriculture, Fisheries and Food
Whitehall Place
LONDON SW1A 2HH

31 October 1989

Dear John,

FOOD SAFETY BILL: CROWN IMMUNITY

Thank you for copying to me your letter of 19 October to Malcolm Rifkind setting out proposals for dealing with Crown Immunity in the Food Safety Bill.

As you will know, my officials were involved in the discussions aimed at developing alternative proposals which would not undermine the constitutional principle of the indivisibility of the Crown. In my view the latest proposals offer a realistic approach to meeting the twin objectives of ensuring that Crown premises comply (and are seen to comply) with the same standards in relation to food hygiene and safety as premises elsewhere in the public and private sectors, whilst retaining the Crown's immunity from prosecution. As you note in your letter, the proposals reinforce the present Government line on Crown Immunity in that they demonstrate that action will be taken if it appears that Crown Immunity is leading to lower standards than elsewhere. I am happy, therefore, to agree to the proposals, provided the Law Officers are satisfied that they are practicable and do not undermine the constitutional position.

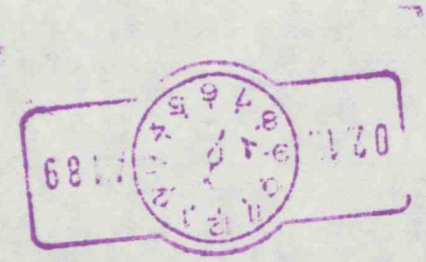
I think that it is important to recognise that any removal of Crown Immunity will increase pressure to remove Crown Immunity in other areas. Crown Immunity will be a live issue during the passage of the Food Safety Bill and the NHS Reform Bill. Parliamentary and public pressure for further removal of Crown Immunity can be expected. Colleagues may need to be in a position to respond on the substance of specific cases, at quite short notice.

I am copying this letter to members of MISC 138, Tom King, David Waddington, Patrick Mayhew, Nicholas Lyell and Sir Robin Butler.

Yours

RICHARD LUCE

FOOD: Safety PT3



NDPT

CCRU

ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

01-936 6269

The Rt Hon John Gummer MP
Minister of Agriculture, Fisheries and Food
Whitehall Place
London
SW1A 2HH

31 October 1989

Dear John

PROPOSED FOOD SAFETY BILL: CROWN IMMUNITY

file with AT

Thank you for sending me a copy of your letter of 19 October to Malcolm Rifkind.

Your proposal overcomes to a large extent the misgivings that I had earlier in the year. I see no constitutional objection to spelling out in the Bill that Government Departments are expected to comply with the standards set by the legislation, although it must be regarded as regrettable that Departments find it difficult to comply unless put under a statutory obligation to do so.

I shall be interested to see how Parliamentary Counsel tackles the drafting. Whereas the Health and Safety at Work etc Act 1974 is drafted in terms of duties, with a separate section (section 33) dealing with offences, the Food Safety Bill in its present form is drafted, like the Food Act 1984, in terms of offences. There will be some difficulty therefore in applying the Food Safety Bill obligations to the Crown without applying the offences.

I note that you propose a statutory power of entry to Crown premises, and, as you observe, there is a precedent for this in section 48 of the Health and Safety at Work etc Act 1974, which applies, inter alia, section 20 of the Act (powers of inspectors) to the Crown. If it is your policy to make admission of inspectors to

SOLICITOR GENERAL

Crown premises obligatory, rather than voluntary, I have no objection on legal grounds. Of course, as the obstruction offence will, quite rightly, not apply to the Crown, and as injunctions are not available against the Crown, the power of entry will not be enforceable except by declaration.

Departmental Ministers may wish to consider whether there should be some exceptions to the power of entry for such reasons as unrest (eg prison riots) or national security.

I understand that it is envisaged that the Crown notice procedure would be spelt out in the Bill. That, of course, would be a departure from the pattern set by the Health and Safety at Work etc Act 1974, where the Crown notice procedure operates extra-statutorily. Departmental Ministers will wish to consider whether they are content with that proposal, but again I do not think it raises any legal issue. It arises, I presume, for the regrettable reason that Departments find it possible to comply with legislation only if put under a statutory obligation to do so: likewise it seems that it is thought that Departments will respect notices only if the notices are issued under statutory authority. I assume the Health and Safety Executive have encountered problems resulting from the extra-statutory nature of the Crown notice system and consequent failures to comply with it.

If the Crown notice procedure is to be made statutory, I wonder whether it is necessary to provide additionally for declarations. The need for a declaration would arise only if a Government Department -

(a) failed (contrary to the obligation proposed to be imposed upon it) to comply with a standard set by the Act; and

(b) failed to observe the terms of a Crown notice.

As those two constraints on Departments are both new, it is impossible to predict whether a third constraint will be required. I hope that, if you decide to include

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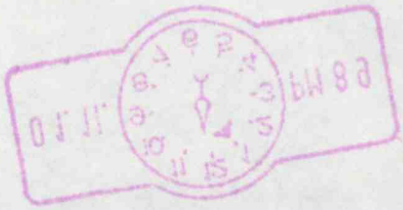


the declaration procedure, it will only be necessary to use it where there is a genuine difference of opinion as to whether the requirements of the legislation have been met. It would be inexcusable for a Department to fail to comply with a Crown notice where the breach of the Act was admitted. Public expenditure constraints would provide no excuse and no doubt the consequences in this respect have also been carefully considered and taken into account.

I am sending copies of this letter to Members of MISC 138, the Secretary of State for Defence, the Home Secretary, the Minister for the Civil Service and Sir Robin Butler.

Yours ever

Nick.

FOOD: Safety PT3



CONFIDENTIAL NAFA

QUEEN ANNE'S GATE LONDON SW1H 9AT

31 October 1989

Dear John,

FOOD BILL - CROWN IMMUNITY

I am grateful for the opportunity to comment on your 19 October letter to Malcolm Rifkind on the issue of Crown Immunity and the Food Safety etc Bill. I apologise for being unable to meet your timetable for comments on the changes you have proposed, but we received a copy of your letter only on 26 October.

While recognising the reasons for demonstrating our desire to take a more active and participative role in the area of food hygiene and good practice I am concerned that what is proposed is likely to present difficulties particularly to the Prison Service and to security and intelligence agencies.

We know that a number of prison kitchens fall below legal requirements. We have a comprehensive programme to remedy the situation but it will take time to complete the necessary building work and any immediate loss of immunity would cause grave operational and financial problems.

It seems likely that your proposals will lead fairly quickly to some local authority environmental officers pursuing matters through the court in order to secure a formal declaration of non-compliance presumably against an individual rather than the Crown.

If non-compliance results in no penalty and no legal requirement to comply then opponents to Crown Immunity will argue that the changes are purely cosmetic. Conversely if there is an enforceable requirement to comply then it will pose the same problems for the Prison Service as if Crown Immunity were to be removed.

/The proposal

The Rt Hon John Selwyn Gummer, MP
Minister of State
Ministry of Agriculture, Fisheries
and Food

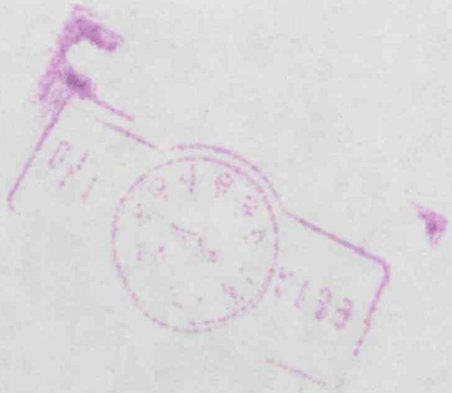
CONFIDENTIAL

CONFIDENTIAL

The proposal made in your letter, like the original proposal, is in effect breaking the doctrine of the indivisibility of the Crown. Whereas the original proposal argued for the piecemeal removal of Crown Immunity, the present proposals argues for its piecemeal retention, in the form of exemptions.

Your proposal also raises national security difficulties. Whilst access to premises occupied by the security and intelligence agencies under the Health and Safety Act is limited to a small number of civil servants from the Health and Safety Executive, inspection under the Food Safety Bill would be carried out by Environmental Health Officers, who are employees of local authorities. It would be important to ensure that such sensitive premises were not made vulnerable to inspection by persons who cannot be required to be security vetted, and to ensure that exemptions made for such premises were not in the names of the true occupants.

I would wish to avoid changing present arrangements until such time as the Prison Service has had a reasonable opportunity to put things right, and the security and intelligence agencies have had the opportunity to consider further the security implications of your proposals.



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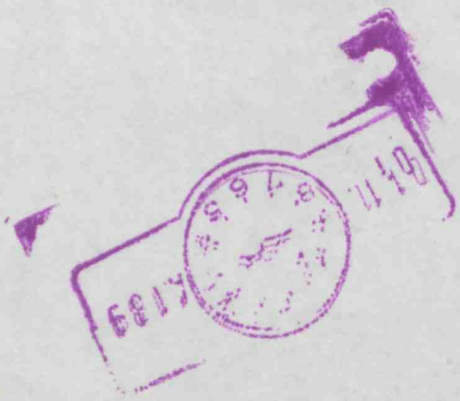

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Rt Hon John Selwyn Gummer MP
Minister of State for Agriculture,
Fisheries and Food
Whitehall Place
LONDON
SW1A 2HH

3 October 1989

Dear Minister

CROWN IMMUNITY UNDER THE FOOD SAFETY BILL

Thank you for copying to me your letter of 19 October to Malcolm Rifkind about the proposal for handling Crown Immunity under the Food Safety etc Bill.

From a Northern Ireland standpoint, I am content that you proceed as suggested. If your proposal goes ahead, I shall include corresponding provision in a Northern Ireland Order in Council. As you will readily appreciate I too will have to ensure that there are appropriate safeguards for national security in relation to particular types of premises eg those used by the security forces.

I am copying this letter to Members of MISC 138, the Secretary of State for Defence, the Home Secretary, the Minister for the Civil Service, the Attorney-General, the Solicitor General and to Sir Robin Butler.

Yours sincerely

PB

(Approved by the Secretary of State and signed in his absence)

Food: Safety Pt 3

31.10. AM 89



Prime Minister CCP.U.
Content with this initiative.
AT 30/10

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

Aren't there enough Consumer groups already without more Quango's?

From the Minister's Private Office

Mr Andrew Turnbull
Private Secretary to the Prime Minister
10 Downing Street
London

30 October 1989

Dear Andrew

FOOD SAFETY DIRECTORATE - CONSUMER PANEL

The Prime Minister will wish to know that my Minister is planning very shortly to announce the organisational changes he is making in the Ministry. These will bring together into a Food Safety Directorate under the Parliamentary Secretary (Mr David Maclean) all the main areas of food safety work for which the Department is responsible. He intends also to announce at the same time the setting up of a Consumer Panel. This will provide a more regular arrangement for listening to and taking into account consumer concerns on food safety and consumer protection issues.

Whilst our policies in this area are necessarily science based and must remain so, Mr Gummer believes that there is a danger that they will be increasingly seen as reflecting only the scientific viewpoint to the exclusion of those held by consumers. He sees the Panel as enabling him to counter this concern by giving consumers a direct and more formal means of communicating their views.

The panel would be chaired by Mr Maclean. On the consumer side, we propose to invite the main consumer organisations, namely the National Consumer Council, the Consumers in the European Community Group and the Scottish and Welsh Consumer Councils, to nominate representatives. We would also propose to invite the Consumers Association to make nominations. There are well over 30 other organisations who speak and lobby on various food issues, which we would not be inviting to be represented on the Panel. We propose, however, to set up arrangements that would enable them to notify issues for the agenda, either directly by approaching the Secretariat, or through the Consumer Council representatives.

We are proposing that the terms of reference for the Panel should be:-

> "To review matters relating to the implementation of food safety policies and to examine particular issues of concern to consumers."

We envisage the Panel meeting four times a year. Papers and issues for discussion would not be subject to confidentiality constraints. My Minister is concerned to try to dispel the myths of undue secrecy and lack of accessibility to consumer organisations and consumers generally.

Mr Maclean would, of course, be supported by senior officials from the Food Safety Directorate of MAFF. My Minister hopes that the Secretary of State for Health would also nominate a senior official from the Department of Health to serve on the Panel and that a senior official from each of the Territorial Departments would be available to attend.

The Panel would not affect the continuing need for advice from expert and independent committees, such as the Food Advisory Committee and the Advisory Comittee on Pesticides. Their work would continue as now but the Panel would be briefed on the tasks these specialist committees are addressing.

Subject to the Prime Minister's views and those of other Departments, we would intend to make an announcement on Wednesday 1 November. I attach a draft.

I am copying this letter to the Private Secretaries to the Secretaries of State for Scotland, Wales, Northern Ireland and Health, to Martin Le Jeune in the office of the Minister for the Civil Service and to Trevor Woolley in Sir Robin Butler's Office.

Yours sincerely

Andy

A J Lebrecht
Principal Private Secretary

DRAFT ANSWER TO PARLIAMENTARY QUESTION

Question To ask ..... if he is ready to make an announcement on the Food Directorate within his Department.

FOOD SAFETY DIRECTORATE

The Food Safety Directorate I am establishing in the Ministry of Agriculture, Fisheries and Food, will bring together under the Food Minister, Mr David Maclean MP, all the main aspects of food safety work for which the Ministry is responsible. At the same time, I am setting up a Consumer Panel chaired by the Food Minister to keep under review from a consumers' viewpoint, the implementation of policies on food safety and consumer protection. The Food Safety Directorate, together with new arrangements for bringing to bear more directly and systematically the views of consumer organisations, will strengthen my Department's organisation for dealing with food safety issues.

The Food Safety Directorate will consist of four main groups, each headed by a Grade 3 (Under Secretary). The Food Safety Group will have overall responsibility for policy on food safety and quality, including composition, labelling, additives, contaminants and new production processes. The Food Science Group, headed by the Chief Scientist (Food) and staffed at senior levels by scientists, will provide the scientific back-up on all food safety issues. This Group includes the new Food Science Laboratory at Norwich which will carry out necessary analytical and research work in support of food policy additional to that commissioned from other laboratories. The third Group will deal with pesticide residues and approvals, fertilisers and

feedingstuffs and biotechnology issues. Finally, the fourth Group will handle meat hygiene, veterinary medicines, animal health and the related public health issues, and animal welfare. The initial complement of the Food Directorate is 695. The resources devoted to this work have been increased and will be kept under review.

The Consumer Panel will provide a forum in which the Food Minister will be able to hear directly from representatives of consumers their views on food safety and consumer protection issues. The Consumer Panel will include representatives nominated by each of the main consumer bodies. The Panel will provide a more formal and systematic means of maintaining contact between my Department and the consumer organisations. I shall make an announcement shortly on the membership and terms of reference of the Consumer Panel.

These new arrangements do not diminish in any way the continuing need for advice from the existing expert and independent Committees, namely the Food Advisory Committee, the Advisory Committee on Pesticides and the Veterinary Products Committee, as well as the Department of Health Committees on Medical Aspects of Food, Novel Foods and Processes, Toxicity, Carcinogenicity and Mutagenicity. The Food Safety Directorate will work closely with the State Veterinary Service and will be advised on public health questions by the Government's Chief Medical Officer.

These changes will focus my Ministry's resources more effectively onto maintaining safety and quality of the nation's food supplies. The Food Safety Directorate will be responsible for keeping the public informed on food safety matters.

TH/9014p

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AP
30/10

DEPARTMENT OF HEALTH

Richmond House
79 Whitehall
London SW1A 2NS
Telephone 01 210 3000
From the Secretary of State for Health

30 OCT 1989

The Prime Minister

Dear Prime Minister,

MISC 138: GOVERNMENT RESPONSE TO THE SOCIAL SERVICES COMMITTEE SIXTH REPORT ON FOOD POISONING; LISTERIA AND LISTERIOSIS

I enclose a final version, agreed between my Department and the Ministry of Agriculture Fisheries and Food, of a response to the Sixth report, published on 29 June last.

In the expectation that the Committee might meet the Chief Medical Officer again to clarify ~~the~~ certain aspects which particularly concerned them, we did not respond before the Recess. However, the Committee has now invited the CMO to meet them again on 8 November to discuss the Government's response. Arrangements are in hand, therefore, to publish the attached (as a White Paper) on Wednesday 1 November with advance copies to the Social Services Committee on Monday 30 October.

Given the interest in the report in June, I am writing to inform members of MISC 138 of our plans for next week.

Yours ever,

KENNETH CLARKE

FOOD POISONING: LISTERIA AND LISTERIOSIS

RESPONSE OF THE GOVERNMENT TO THE SIXTH REPORT (1988-89) FROM THE SOCIAL SERVICES COMMITTEE

Introduction

1. This memorandum sets out the Government's response to the Sixth Report of the Social Services Committee, HC 257, Session 1988-89, on food poisoning: listeria and listeriosis.

2. The Government welcomes the Committee's examination of the trends in food poisoning and, in particular, listeriosis. The Government has taken action on many of the recommendations.

3. The Government is concerned that some of the Committee's conclusions appear to be based on incorrect scientific interpretations of the evidence (Conclusions 2 and 7) or on evidence which was not available at the material time (Conclusion 16). The Government has been working with all interests including the medical profession and food industry since the end of 1987 to assess and decide how best to deal with potential hazards from Listeria monocytogenes (Lm) as evidence of cases of listeriosis linked to contamination of food emerged in Europe.

4. The Government's policy has been to initiate action based

on established facts as soon as they have emerged and as soon as it is clear what the most appropriate action is. This same policy has been followed when deciding on the need for advice to be given to the public. The Government will continue to monitor evidence on the risk of food poisoning from whatever source and to take the appropriate legislative and other action as soon as it is appropriate.

5. The Government has encouraged and assisted the relevant sections of the food industry to prepare codes of practice in respect of the manufacture of soft and fresh cheese (August 1988 and February 1989*). Similar industry guidelines for good hygienic practice in the manufacture, distribution and sale of foods to be eaten cold or after reheating, which will subsequently be stored at a chill temperature, are nearing completion. Meanwhile the Department has been taking expert advice on the need for and the form of legislation required in this area and is now considering the result of consultation on draft regulations to control the temperature of these foods in distribution and retail sale.

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* Guidelines for Good Hygiene Practice in the Manufacture of Soft and Fresh Cheeses - published August 1988.
The Milk Marketing Board, Thames Ditton, Surrey KT7 OEL

Guidelines for Good Hygienic Practice for the Manufacture of Soft and Fresh Cheeses in Small and Farm-based Production Units - published February 1989.
The Creamery Proprietors' Association, 19 Cornwall Terrace, London NW1 4QP

6. The Government's response to the Committee's detailed recommendations and conclusions is set out below.

Food poisoning

Conclusion 1. We are disturbed by the apparent increase in food poisoning and listeriosis and the uncertainty which seems to have arisen regarding the safety of various food products (para 2)

Conclusion 2. The upward trend in food poisoning is almost entirely due to the increase in salmonella (para 6)

7. The Government shares the Committee's concern over the upward trend in food poisoning but does not agree that it is almost entirely due to an increase in salmonella. The increase is almost equally shared between reports of salmonellosis and of campylobacter. As far as the former is concerned the recent increase is mainly due to a single strain of Salmonella enteritidis (PT4). The Committee will be aware of the range of measures taken before and after its enquiry to deal with that particular problem which, in cases when it has been possible to determine the cause, has been traced mainly to the consumption of contaminated eggs and chicken. In his evidence, the Chief Medical Officer also drew attention to the upward trend in reports of campylobacter infection which, as the Committee points out, rose from 12,878 in 1982 to 28,714 in 1988. Between 1982 and 1988 salmonella enteritidis PT4 and

Campylobacter together accounted for the vast majority of reported food poisoning cases.

8. Preliminary results for salmonella enteritidis PT4 isolations for 1989 suggest that educational measures affecting catering practices in and outside the home, and the various Government measures, could now be beginning to have an effect on the number of human infections. These trends will need to be sustained for some time, and particularly through the Summer of 1990, before any firm conclusions can be made.

Recommendation 3. <u>In cases of miscarriage and stillbirth listeriosis is not routinely looked for: we recommend that it should be</u> (para 7)

9. Following the Department's public warning about listeria contamination of Swiss Vacherin Mont d'Or cheese and its withdrawal by the Swiss government, the Department drew the attention of the Royal College of Obstetricians and Gynaecologists to the possibility that there was under-reporting of listeriosis as a cause of miscarriage. We believe that the subsequent interest in this subject will have served to remind clinicians of the need to consider this possible diagnosis. Furthermore, the Chief Medical Officer wrote to all doctors on 16 February 1989 giving clinical advice and reminding them that the risk of listeriosis in pregnancy although small (1 in 7000) was much greater than among the remainder of the healthy population. In its

planning objectives for the NHS for 1989-90 the Government has required the Regional Health Authorities to ensure the appointment of at least one paediatric pathologist per region.

Conclusion 4. Most cases of food poisoning are preventable (para 16)

10. The Government agrees and is taking all possible steps both to deal with sources of contamination and to give advice to the public where necessary. However, as the Committee has pointed out, although it is now widely agreed that in the case of listeriosis "The primary means of transmission of listeria to humans is thought to be through contamination of foodstuffs at any point in the food chain" (para 13 of Sixth Report) it remains unclear what proportion of cases originate directly from food, which foods are involved and what determines whether or not an infection with Lm leads to illness. It must be borne in mind that it is estimated that at least 1 in 20 of the population carry Lm within their gut at any one time and only a very small minority of these ever manifest symptoms of illness. Lm is almost ubiquitous in samples of soil, vegetation etc and a wide range of foodstuffs are contaminated with it, yet listeriosis is a rare disease.

Conclusion 5. The risks of food poisoning generally and listeriosis in particular cannot be quantified exactly. The risks of a healthy person contracting listeriosis are small. For those who fall into one of the at risk groups, women who

are pregnant, the elderly and people with impaired immune systems, there may be some dangers involved in eating certain types of food. But we are convinced that these risks can be controlled and kept to a minimum if proper procedures are followed (para 17).

11. The Government agrees that all reasonable steps should be taken to minimise the contamination of food by Lm during food processing and handling to ensure that foods consumed by the public are free of Lm. Codes of practice for the production of foods which are particularly liable to contamination with Lm have been agreed in respect of soft and fresh cheeses, and a code in respect of pre-cooked chilled meals is nearing completion. Formal consultation has been completed on proposals to control, by regulation, the temperature at which these foods are distributed, stored and sold. The Government recently published advice for the consumer in the leaflet 'Food Safety - Food Sense' which has been widely distributed.

Listeria in food

Conclusion 6. On the limited information available, cook-chill meals prepared for hospital consumption appear relatively safe. Although this provides some reassurance, we believe that further monitoring of hospital catering is required (para 20)

12. The updated guidelines, "Cook Chill and Cook Freeze

Catering Systems", published on 22 June 1989, has a chapter on management of quality assurance which recommends a strict monitoring system based on hazard analysis and includes essential control checks and microbiological guidance. We have asked regional health authorities to implement the guidelines and report back on their programmes of implementation by December 1989. When we have received this information we will then consider what further monitoring of their cook chill systems is required.

Conclusion 7. <u>The evidence suggests that contamination of soft cheeses by listeria occurs post-production and is derived from environmental sources</u> (para 21)

13. There is evidence that contamination of soft cheeses with Lm may occur either before, during or after production. In view of their long shelf life soft cheeses at point of sale may contain high levels of Lm. Because these cheeses are usually consumed uncooked, it is crucial that action be taken to control temperatures at which they are kept at all stages and the proposed Food Hygiene Regulations on which the Government has consulted, are intended to ensure this.

Conclusion 8. <u>Cook chill products which are reheated before consumption, may still present a risk to the consumer if the product is contaminated with Lm. The risks are twofold. First, cross-contamination may occur in the kitchen if the infected product is brought into contact with other foods, or</u>

if poor hygiene practices are followed; second, if the food is not heated to and held long enough at a sufficiently high temperature then some bacterial contamination may remain (para 24)

14. The Chief Medical Officer's advice of 10 February 1989, aimed particularly at the vulnerable groups, was that the latter should avoid the consumption of certain types of soft cheeses and reheat cooked chilled meals and ready-to-eat poultry until they are piping hot. The advice included a plain man's guide to hygienic practices which would help to avoid cross-contamination. The Government has also expanded this in the food safety leaflet referred to earlier. The Ministry of Agriculture, Fisheries and Food identified a potential problem with microwave ovens and has issued interim advice to consumers on the preparation of foods in microwave ovens so as to avoid risks associated with under-cooking. It has also commissioned research into the problem.

FOOD SAFETY

Recommendation 9. Whilst responsibility for food safety does not only rest with central government, the Government should take the lead and take all reasonable steps to ensure food safety issues are given priority (para 28)

15. The Government fully accepts that it should take the lead in giving priority to food safety issues. The Government has

acted promptly on the advice it has received and is taking a range of measures to ensure food safety in the longer term:-

- it has introduced a comprehensive and wide-ranging package of measures to control the problem associated with salmonella and eggs;

- it has issued a leaflet to the public giving general food safety guidance on safe storage and cooking procedures. It has also, as the occasion demands, issued advice on foods which people at special risk should avoid;

- it set up the Working Party on Bovine Spongiform Encephalopathy and acted quickly on its recommendations;

- it has established an independent committee to consider the microbiological safety of food;

- it has reviewed and revised the guidelines on cook-chill and cook-freeze catering and these have recently been published;

- it has reviewed primary food legislation and has already stated its intention to introduce a Food Bill as soon as Parliamentary time permits;

- it has consulted on proposals to amend Food Hygiene Regulations so as to apply temperature controls to

certain food in distribution and at retail sale;

- it acted promptly to control the recent outbreak of botulism due to contaminated hazelnut yoghurt;

- it acted promptly to give advice on the risks from listeria in pate.

Conclusion 10. It is essential that Government policies on issues associated with food safety and hygiene are co-ordinated (para 29)

Recommendation 11. We recommend that an inter-departmental committee of ministers and officials from all the relevant departments should be established to review food safety issues, consider any action that may be necessary, and ensure that the objectives of different Departmental policies do not conflict (para 29)

16. The Government agrees on the importance of coordination between Departments. The measures set out above, and many others, have been handled with full co-operation between Departments at Ministerial and official level. There are well established mechanisms for obtaining the advice of experts and for this information to be shared. Apart from joint membership and servicing of standing committees, major issues are reviewed interdepartmentally so as to co-ordinate the assessment of information and the necessary action. This

ranges from routine joint Ministerial discussion (meeting the Committee's recommendation for an inter-departmental committee of ministers and officials) to daily contacts between officials.

Recommendation 12. In view of the recent misunderstandings surrounding food hygiene and food surveillance and the deficiencies of existing regulations and guidelines, we recommend that the Government acts promptly and brings the Food Bill before the House in the next parliamentary session (para 38)

17. The Government has already stated its intention of bringing a new Food Bill before Parliament at the earliest opportunity. This will reinforce existing legislative powers to enable UK food law to deal with future food control requirements and will improve the enforcement powers of local authorities. It will seek powers to require the training of foodhandlers, building on the training already provided by industry and other bodies, and allowing local authorities to provide it where necessary.

Recommendation 13. We recommend that the Richmond Committee considers scientific evidence, the views and needs of consumers, and current policies and practice of food safety issues followed by different groups (farmers, manufacturers, distributors, caterers etc) and makes recommendations to the Government as soon as posible (para 39)

18. The Committee on the Microbiological Safety of Food chaired by Sir Mark Richmond said in a Press Statement that it would make its first report to ministers as soon as possible and probably towards the end of 1989. The Committee's recommendations have been brought to the attention of the Richmond Committee.

Recommendation 14. We recommend that the Richmond Committee plays a key role in the preparation of the proposed Food Bill (para 39)

Conclusion 19. We expect that the Richmond Committee will look in detail at the issue of food storage and refrigeration temperatures (para 46)

Recommendation 32. We recommend that one of the tasks of the Richmond Committee should be to oversee research in the field of food hygiene and food safety, to consider the balance of funding and make recommendations accordingly (para 74)

19. Sir Mark Richmond has been asked by Ministers to let them know in advance of his report of possible recommendations which might affect the proposed Food Bill. The Government would expect the Richmond Committee to include research among the matters it considers. The Government's proposed regulations on food storage and refrigeration temperatures were also referred to the Richmond Committee during the

consultation process.

Conclusion 15. Too much information issued to the public on food safety and hygiene has come out in dribs and drabs. The Department of Health should have taken a more proactive stance (para 42)

26. At the time of the Select Committee Report the Government had issued advice on listeriosis on three occasions: November 1987, February 1988 and February 1989. The first two occasions related to the need to publicise the withdrawal of two specific cheeses which had been linked to cases of listeriosis: Vacherin Mont d'Or and Anari. The timing of the two warnings was determined by the identification in each case of a specific problem related to a particular cheese which was outside the Government's control.

27. The third warning, in February 1989, gave general advice on the implications of listeria contamination of food, reassured the general public and identified the need for special care to be taken by susceptible groups with respect to certain general categories of food ie certain soft cheeses and cook chilled meals and ready-to-eat poultry. The timing of this warning was determined by the expected publication of the results of the PHLS survey of cooked poultry and chilled meals, and by a re-evaluation of the position in the light of evidence which had become available in 1988 (see below).

28. Since the Select Committee Report was published the Department has issued two further press releases on listeria in pate. The first, in July 1989, related to pate in which a local survey had identified listeria. It warned pregnant women and suceptible groups to avoid this product while PHLS carried out a national survey. The second, in August 1989, reported the results of the PHLS survey and reiterated the need for these special groups to avoid pate.

29. When deciding on the need to issue any advice a balance has to be struck between the need to warn of a potential health hazard as soon as information becomes available and the need to verify the facts and their implications. The Government believes that each of these Press Notices was necessary to enable it to discharge its responsibility for safeguarding the health of the public.

Conclusion 16. <u>We believe that pregnant women could have been alerted to possible hazards far sooner</u> (para 42)

30. The Government disagrees strongly with the opinion of the Select Committee on this question and does not believe that the Committee had any factual basis for their assertion. The expert scientific advice available to the Government's Chief Medical Officer did not support the need for a warning to pregnant women and other vulnerable groups before February 1989. The evidence on which the advice was based was as follows:-

1. The reports in November 1988 of the first two cases of fetal listeriosis within the UK linked to food (respectively linked to cooked and chilled chicken and vegetable rennet).

2. The results of a PHLS survey (carried out at the Government's request) of the prevalence of Lm in ready-to-eat poultry and cooked and chilled meals. The results, which became available in January 1989 showed that Lm was present in between 10 to 20 per cent of the samples of pre-cooked ready-to-eat poultry and cooked and chilled or frozen meals purchased from retail premises. Prior to 1988, evidence about Lm in poultry had been limited to information on contamination of raw carcasses.

3. The publication in The Lancet in October 1988 of an American study which provided the first epidemiological evidence that in the USA at least a substantial proportion of sporadic (ie non-outbreak-related cases) of listeriosis might be foodborne.

31. In December 1987, there was no scientific consensus to support the view that the evident increase in cases of listeriosis was due to the consumption of contaminated food or that a general warning to the public or to pregnant women was necessary. Although a survey of soft cheeses conducted by PHLS published in February 1988 showed that about 10 per cent

of soft cheeses sampled in the UK contained Lm, the predominant serotype did not match that in human cases and the significance of the findings to human listeriosis was at that time uncertain. During 1988 it emerged that, as well as the well-defined outbreaks such as that due to Swiss Vacherin Mont d'Or cheese, some sporadic human cases of listeriosis (including materno-fetal listeriosis) could also be due to contaminated food. This view was supported by the evidence outlined above and the Report of a WHO Informal Working Group on Foodborne Listeriosis.

Recommendation 17. Coroners and pathologists may examine for the presence of Lm in the post-mortems of stillbirths or neonatal deaths, but it is still not a routine practice. We recommend that it should be (para 43)

32. The Committee draws attention to the need to keep under review the reporting arrangements for food poisoning. This has already been identified in the report entitled 'Public Health in England' which also recommended that the list of notifiable diseases should be reviewed. This review is under way. When new regulations are made the Government intends to draw these to the attention of health authorities and doctors in order to encourage a higher proportion of cases of notifiable diseases to be reported, and will consider the need to advise coroners and pathologists.

Recommendation 18. We recommend that the current arrangements for reporting listeriosis through the PHLS are kept under review to ensure that the information upon which preventive and control policies are based is as full and as accurate as possible (para 45)

33. The Government agrees with the Committee's view on this. The PHLS is currently restructuring its reporting, information and analysis systems.

Recommendation 20. We recommend that all commercial refrigerators be fitted with a thermometer, that households seriously consider purchasing a suitable thermometer and that all new refrigerators be fitted with thermometers (para 46)

34. The Government's food safety leaflet advises householders to store food in the refrigerator below 5°C, and to buy a fridge thermometer to check this. The Government has consulted on proposals to regulate the temperature at which chilled foods are stored and displayed for retail sale. Many commercial display cabinets already have thermometers and it seems likely that all will need to do so when the proposed regulations have effect. The positioning of sensors is important and this is under discussion with the manufacturers. Manufacturers have also shown some willingness voluntarily to design new ranges to include integral thermometers.

Recommendation 21. We recommend that the Department lower the critical safety limit in storage from 10°C to 4°C (para 51)

35. The Committee has made this recommendation in the context of NHS catering and cook-chill in particular. The 1980 Guidelines on pre-cooked chilled food (in catering) said a temperature of +10°C should be regarded as the critical safety limit for chilled food. The updated guidelines on 'Cook-Chill and Cook-Freeze Catering Systems' no longer use that expression. The 1989 guidelines say that the temperature of cooked food after chilling should be maintained at or below 3°C; if the temperature of the food during storage and distribution exceeds 5°C the food should be used within 12 hours; if the temperature exceeds 10°C the food should be destroyed. These tolerances are intended to allow for unavoidable increases in temperature, for example during defrost cycles, and the system is based on an intention to store and distribute at or below 3°C before reheating.

Recommendation 22. We recommend that the Government extends the application of the DHSS guidelines on the preparation and storage of cook-chill meals to the retail and catering sectors (para 52)

36. The proposed amendment of the Food Hygiene Regulations will have a substantial impact on the handling of chilled foods on retail sale. Recent surveys have indicated both that Lm may be present in a wide range of foods and that such foods

are often distributed, stored and/or displayed for sale at temperatures which would not necessarily restrain the further multiplication of these and other pathogenic organisms. The draft regulations result from extensive expert advice and wide consultation and, we believe, will be more appropriate than guidelines. Guidelines for good hygienic practice in the manufacture, distribution and sale of foods, to be eaten cold or after reheating, which will subsequently be stored at a chill temperature are nearing completion by industry with the assistance of the Department and the Ministry. Those on the safe production of soft and fresh cheese have already been produced. The Government does not accept that the cook-chill guidelines are appropriate for application to the distribution and display of retail foods. They are designed for cook-chill catering systems both within the NHS and elsewhere.

Recommendation 23. <u>There should be greater freedom in the exchange of information on matters relating to public health between statutory bodies to enable problem areas to be identified and effective solutions to be devised</u> (para 57)

37. There are working arrangements in place between appropriate statutory bodies on relevant public health matters. Close relationships exist between the Department of Health (DH) and the Institution of Environmental Health Officers (IEHO). Working parties exist on specific issues for example inspection guidelines for cook chill central production units with membership drawn from DH, the IEHO,

health authorities and local authorities. These activities encourage exchange of information and this is ongoing.

Recommendation 24. We recommend that the Government ensures that local authorities have sufficient funds and qualified staff to fulfil their important role in monitoring and enforcing food hygiene legislation (para 58)

38. The Government recognises the importance of monitoring and enforcement of food hygiene legislation. Discussions have been held with local authorities on the monitoring and enforcement implications of the proposed Food Bill. The Government has already stated its intention of bringing a new Food Bill before Parliament at the earliest opportunity.

Recommendation 25. We recommend that the Government reviews the powers of EHOs in the field of food hygiene in the preparation of the forthcoming Food Bill (para 58)

39. A review of primary legislation has been under way since December 1984 and the Government has already said that it will bring legislation before Parliament as early as possible. There has been extensive consultation with enforcement interests and it is expected that the Food Bill will reinforce existing legislative powers in food hygiene.

Recommendation 26. We recommend that the Government takes the existing practice of good employers in screening, treatment

and training in food handling as the basis for a code of practice (para 61)

40. Many good employers undertake health checks before employment. This is part of occupational health services provided by employers and, whilst not an explicit requirement under Health and Safety at Work legislation, may well be necessary to meet the duty of an employer to safeguard the health of employees and of those members of the public who may be affected by the work. The proposed Food Bill will seek powers to require the food hygiene training of food handlers.

Recommendation 27. In view of the possible confusion which may arise over different types of labeling and storage instructions, we recommend that the Department of Health and MAFF ensure that the term "sell by" is phased out as soon as possible and is replaced with labelling more easily understood by consumers. The terms "use by" or "eat by" should be used wherever possible (para 65)

41. The Government agrees. The UK law implements the EC Directive. In June, the Internal Market Council adopted a directive which amends the Food Labelling directive (79/112/EEC) to require, inter alia, the phasing out of the term "sell by" by 1993 and the introduction of a compulsory "use by" date for highly perishable foods. Once the directive has been implemented into UK law and takes effect there will be two sorts of date-mark: "Best before" which will apply to

most foods and "use by" for the highly perishable foods. We believe that these give clear advice to consumers. There is no change in the requirement that any special storage conditions or conditions of use must be given.

Recommendation 28. We recommend that if contamination of soft cheese products is to be avoided, or contaminated products prevented from reaching the consumer, consistent quality must be ensured by regular bacterial monitoring of products (para 66)

42. Quality is best ensured by adherance to good manufacturing practices and not by end product testing. The codes of practice produced by the industry, with the assistance of Government are designed to eliminate contamination during production and the proposed regulations on temperature control will apply during distribution, storage and display for retail sale.

Conclusion 29. Irradiation is no substitute for good food hygiene practices (para 69)

43. The Government is in complete agreement with this observation. The arrangements proposed for food irradiation in this country include provision for the examination of food prior to treatment - and it will be a condition of a Licence to operate an irradiating plant that only food of normal, sound acceptable quality shall be irradiated.

Recommendation 30. We recommend that the Government reassesses its policy to withdraw funding from agricultural and food research in the "public good" and ensures that such research is continued and centrally funded, even when it falls into the category of "near market" research (para 73)

44. The Government does not have a policy of withdrawing funding from agricultural and food research in the public good. Public expenditure plans indicate that the Government will continue to spend over £200 million a year on agricultural and food research when support for near market research is phased out in 1991/92. The withdrawal of public funding for commercial research related to the needs of the industry -"near market" research - does not affect our commitment to research of direct relevance to issues such as food safety or protection of the environment wherever such work falls in the R and D continuum. But in our view industry itself is best placed to fund and decide on priorities for purely commercial orientated research.

Conclusion 31. We would not wish to see research on issues of food safety and food hygiene dominated by the interests of the food industry alone (para 74)

45. Public sector food safety and food hygiene research is not dominated by the interests of the food industry. On the contrary this research is determined by Ministers acting in

the public interest. Advice from scientists in the academic world, in research institutes, industry and consumer organisations is taken into account in determining the priorities.

Recommendation 33. <u>More epidemiological research should be commissioned by the Department of Health. The incidence of, and factors associated with, listeria in stillbirths and neonatal deaths is one area for further investigation</u> (para 75)

46. A number of projects on the epidemiology and microbiology of listeriosis are being undertaken by the PHLS which is funded by DH. PHLS is proposing to undertake an extensive case control study: they are also developing monoclonal antibodies and using molecular biological techniques to assist in epidemiological tracing; monoclonal antibody is also being used for antigen detection and for rapid identification of listeria. Proposals for a study on listeriosis in pregnancy which may provide further information on the prevalence of infection with Lm in pregnancy, the natural history of the disease during pregnancy, the possible relevance of dietary factors and the relationship between infection with Lm and spontaneous abortion and perinatal death are being considered.

NMBPM
AT
30/10

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon John Gummer MP
Minister of Agriculture,
Fisheries and Food
Ministry of Agriculture,
Fisheries and Food
Whitehall Place
LONDON
SW1A 2HH

27th October 1989

Dear Minister,

Thank you for your letter of 19 October outlining your proposal for handling the subject of Crown Immunity in the forthcoming Food Bill.

The issue is a delicate one, particularly for the likes of prisons and defence establishments. Nevertheless there is a considerable groundswell of opinion against the present arrangements and I agree that there is merit in our seizing the initiative and announcing at the outset of the passage of the Bill the positive steps which we intend to take.

The proposal to distinguish between the investigative element of food legislation and that of enforcement is a sound one. In practice it essentially provides the legal basis for the right of entry to prison establishments which is currently provided to enforcement authorities on a voluntary basis. Whilst it may not go as far as some might like I would certainly be prepared to endorse that approach.

I am copying this letter to the recipients of yours as well as the Lord Advocate.

Yours sincerely

Ian Wright

MALCOLM RIFKIND

(Approved by the Secretary of State and approved in his absence)

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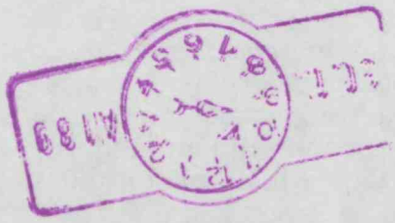


10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

27 October 1989

Dear Andrew

FOOD SAFETY BILL: CROWN IMMUNITY

The Prime Minister has seen the Minister of Agriculture's letter to the Secretary of State for Scotland of 19 October. She was content with the proposals for applying the disciplines of the Food Safety Bill to Crown premises without conceding Crown immunity from prosecution.

I am copying this letter to the Private Secretaries to members of MISC 138, and to Brian Hawtin (Ministry of Defence), Colin Walters (Home Office), Martin Le Jeune (Office of the Minister for the Civil Service), Michael Saunders (Law Officers Department) and Trevor Woolley (Cabinet Office).

Yours sincerely
Andrew Turnbull

(ANDREW TURNBULL)

Andrew Lebrecht, Esq.,
Ministry of Agriculture, Fisheries and Food.

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

Prime Minister
Content, subject to colleagues with these proposals for applying disciplines of the Food Safety Bill to Crown premises without conceding Crown immunity from prosecution.
AT 26/10

RESTRICTED

From the Minister

The Rt Hon Malcolm Rifkind MP
Secretary of State for Scotland
Dover House
Whitehall
London
SW1A 2AU

Yes

19 October 1989

Dear Secretary of State

reference here PT 2+3.

You will remember correspondence between us earlier this year in which we set out our proposals for dealing with the issue of Crown Immunity under the Food Safety etc Bill. These were that we intended to introduce enabling legislation in the new Bill to permit Crown Immunity to be removed from specific Crown bodies as and when necessary. This would have gone beyond Section 133 of the Food Act 1984, which mirrors Section 52 of the Food and Drugs (Scotland) Act, as these only allow the removal of Crown Immunity from all Crown Bodies at the same time.

The Solicitor General was concerned that our original proposals would, by removing Crown Immunity from prosecution under the Food Act, break the constitutional doctrine of the indivisibility of the Crown. Officials were therefore asked to reconsider the issue and to bring forward alternative proposals which would achieve our objective of ensuring that Crown premises should comply with (and be seen to comply with) the same standards in relation to food hygiene and safety as private sector premises, whilst maintaining Crown Immunity from prosecution.

What we now propose has a precedent in Section 48 of the Health and Safety at Work etc Act 1974 and was suggested, during the course of our correspondence, by the Lord Advocate. Subject to appropriate safeguards for national security, and a limited number of exemptions - for premises such as the Royal residences - the intention would be to allow the investigative machinery of the proposed Food Safety Bill to be applied to the Crown (ie access by enforcement officers, sampling, etc.) which I gather is the current voluntary arrangement with prisons. We would, however, stop short of applying the full enforcement provisions.

FOOD. Food Safety B3

Thus the Crown would not be open to prosecution, nor would the improvement notice and closure procedures apply. Instead, we intend that there should be a separate procedure (to be known as a Crown notice procedure) under which any deficiencies could be brought to the attention of the Minister responsible for a Department or an equivalent person nominated by the Crown in other cases. As a long stop, there would also be statutory provision for enforcement officers to apply to the High Court, or in Scotland the Sheriff Court, for a formal declaration of non-compliance if all other procedures failed to have any effect.

Although there may be some criticism that this proposal does not go far enough, we are sure that it will be welcomed as demonstrating our wish to take a more active role in the prevention of problems caused by poor hygiene or other unsafe practices. It will provide statutory backing for the existing position - as we have always said that we would not accept lower standards in Crown premises than elsewhere. It will also enable us to announce, at the time of the introduction of the Food Safety Bill, a change in the legislation which will avoid criticism from a number of our own supporters and head off an attack by the Opposition. On this basis we are seeking the agreement of colleagues to our proposals.

Since the Food Safety Bill is now being finalised, if colleagues see any objections to what is proposed, perhaps they could respond as soon as possible and certainly by 28 October. Copies of this letter are being sent to Members of MISC 138, the Secretary of State for Defence, the Home Secretary, the Minister for the Civil Service, the Attorney General and the Solicitor General and to Sir Robin Butler.

Yours sincerely

A Lebrecht

pp JOHN GUMMER

(approved by the Minister & signed in his absence).

ccPu

NBPM

AT 22/9

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

Andrew Turnbull Esq
Principal Private Secretary
10 Downing Street
London
SW1

21 September 1989

Dear Andrew,

PESTICIDES AND FOOD: A BALANCED VIEW

The Prime Minister and other members of MISC 138 may like to be aware of the booklet which my Minister intends to publish on 6 October, exactly three years after the coming into force of the Regulations which introduced wide-ranging controls on Pesticides. The booklet is part of our strategy for food marketing and will sit alongside other leaflets aimed at improving 'Food Sense' such as 'Food Additives - The Balanced Approach'. It focusses on pesticide residues in food, and is not designed to deal with the wider environmental and user safety aspects. These are of course very important but to include them would make the booklet much longer. The aim is to set pesticides in perspective, to explain our controls over their approval and use, and the implications for residues in food. Initially 100,000 copies will be made available on request but it is hoped that a wide circulation will be made thereafter.

Baroness Trumpington will be launching the booklet with media coverage when she opens new offices for the British Pest Control Association in Derby.

/I attach a ...

I attach a copy of the text, on which interested Departments have been consulted and which has just gone to the printers.

I am copying this to the Private Secretaries to other members of MISC 138, the Secretaries of State for the Environment and Employment and to Sir Robin Butler.

Yours sincerely,

Stephen Lambert.

Stephen Lambert
Private Secretary

PESTICIDES AND FOOD - A BALANCED VIEW

INTRODUCTION

Pesticides are in common use all over the world: in agriculture, in the home, in the garden, for preserving timber and treating textiles and in a wide range of everyday industrial processes. In agriculture they have helped improve yields and protect crops both in developed countries and in the third world.

But there's more to pesticides than that. They are used after harvest thereby extending the life of produce by protecting them from pests and diseases in store. This makes a wider range of produce available to consumers. They are used to improve hygiene by killing flies and cockroaches and by preventing other food hazards. They fight plagues of locusts and rodents. Pesticides protect human health by, for example, controlling malarial mosquitos. They are preserving the magnificent timbers of the newly-restored York Minster.

What are pesticides?

Pesticides kill pests. Pests are animals or other organisms, such as moulds, that harmfully affect our food, our health, or our environment - in other words, the way we live. The

term also covers weedkillers (herbicides) so that crops can grow better.

"Pesticides" is a very wide-ranging subject. It raises issues as varied as residues in food, effects on wildlife and the environment and the safety of people who work with them.

It would not be possible to address all these issues here: this booklet answers the questions asked most about pesticides and food - their control; their entry into the food chain; and what is being done to help ensure public safety.

The following are all pesticides:

insecticides	herbicides	fungicides
wood preservatives	soil sterilants	plant growth regulators
masonry biocides	rodenticides	food storage protectors
bird and animal repellants		anti-fouling paints for boats

public hygiene & industrial pest control products

Why use pesticides?

We enjoy a good supply and a wide-range of quality foodstuffs all year round. It would not be possible to maintain this

supply or the quality we now expect, at today's prices without using some pesticides.

It is estimated that without pesticides, some 30% of world crops would be lost before harvest.

When we buy food, we are likely to reject anything that's mouldy or has pest damage - not only does it not look attractive, it may be harmful to health. Pesticides can improve quality and increase yield, helping to keep prices down.

Pesticides help exotic foodstuffs from around the world to reach our shops in good condition, giving us a wider choice.

Pesticides provide one way of lengthening storage times to extend the seasons and give a year-round supply of the most popular produce.

Pesticides can play an important role in food hygiene. These prevent contamination being spread by rats, mice flies and other insects while foods are in store, on display for sale, in restaurants and home kitchens.

Aren't there enough chemicals already?

Chemicals have to be put in perspective - even we ourselves, are made up of chemicals. It is therefore a mistake to think of chemicals as being all man-made. Nature produces some highly effective chemical pesticides and toxins. Pyrethrum is a natural insecticide produced by a variety of chrysanthemum. The stinging nettle produces a natural toxin as a defence mechanism. We eat only the stalks of rhubarb - not the leaves, because they contain too much natural oxalic acid.

What are the risks?

We have to face the simple fact that pesticides are designed to kill pests. It is because they are effective against pests that there is a potential risk to people and the environment, which is why they are not allowed to be used without the most thorough checks and safeguards to ensure that they are properly targetted and do not harm other species. The risks are carefully assessed by Government Departments and independent scientists before a pesticide is allowed on the market and its use is controlled.

However, we must put the risks into perspective. As the 16th Century Swiss physician Paracelsus said "the dose makes the poison". A single dose of 10g of caffeine could kill an adult but that much caffeine is the equivalent of drinking 75

cups of black coffee at a single sitting. Carrots are a good source of vitamin A but a man has died from taking too much of it.

What are the safeguards?

Before a new pesticide may be used in the United Kingdom, it must pass stringent safety standards as laid down under Part III of the Food and Environment Protection Act 1985. This is called the approval process. <u>If a pesticide does not meet these standards it is not approved.</u>

<u>The Approval Process</u>

Before any approval can be given for the sale, supply, use, storage or even advertisement of a pesticide it has to be demonstrated to Ministers that it can be used safely.

In order to obtain approval for a pesticide, its manufacturers have to provide a mass of highly detailed scientific information gathered from some 4-10 years of testing under controlled conditions. The information includes studies on the long-term and short-term toxicity of the pesticide; its cumulative effects and any other effects which might emerge after a period of time.

The information is submitted to completely independent experts who form the Advisory Committee on Pesticides. Most

are medical experts and they provide the Government with impartial advice.

That advice must then convince Ministers that the pesticide may be used without risk to people (and this includes anyone using it; or living near where it is used; or buyers of the product it has been used on); without risk to livestock or domestic animals and without undesirable effects on the environment. Only then, after the Ministers are convinced, will approval to market the pesticide be given.

As an added safeguard, it is a condition built into this approval process that all pesticide products are subject to review at any time. This ensures that any new scientific evidence can be taken into account as soon as it becomes available. Should there be new scientific evidence powers exist to ban a product forthwith.

Even if a pesticide is granted "Approved" status, the products still may not be used freely, since there are strict controls on their supply, storage, sale, advertisement and use.

Controlling the use of pesticides

First, only "approved" pesticides may be used in the United Kingdom. Then, under the Control of Pesticides Regulations 1986 (1987 in Northern Ireland) (COPR), pesticides may only

be used for their approved purpose and only according to very specific label instructions, which themselves have been through an approval process.

Approval restricts the use of each pesticide to specific purposes and, where necessary, sets limits on the amount that can be used on a crop; the stage of crop development at which it can be applied; and the harvest interval - that is the time that must elapse between when the pesticide was last used and when the crop may be harvested.

The label must also include any necessary statements about operator protection or training requirements and environmental protection. Many pesticides are only available through specialist outlets.

Controlling residues

Contrary to popular belief, not all pesticides used on crops leave residues in food. Herbicides account for some 75% of the agricultural pesticides used in the UK but many uses of herbicides leave no residues in our food.

As a control on many of the pesticides which can leave residues, Maximum Residue Levels (MRLs) have been set down in law. They act as a double check that pesticides are being used properly.

To date, MRLs have been laid down for a wide range of pesticides in the more important areas of the UK diet. These can be found in the Pesticides (Maximum Residue Levels in Food) Regulations 1988. They cover meat and dairy products, cereals, fruit and vegetables. The regulations make it an offence to leave residues above these levels and apply to all imported food as well as to UK produce. More MRLs will be added as a result of UK or European Community decisions.

The EC is actively working towards harmonisation of MRLs on as wide a range of pesticides as possible, so that the same standards apply throughout the Community. Maximum Residue Levels should not be confused with safety limits. MRLs are expert assessments of the maximum residue that should arise in foods when pesticides are correctly used.

Safety limits are expressed in terms of the Acceptable Daily Intake (ADI) of a particular pesticide residue from all sources. In checking this the diet of people who consume extreme amounts of products which might contain residues is assessed as well as the diet of average consumers. MRLs are set very strictly, with the aim that likely intakes should be well within ADIs.

Who monitors food?

Our food in the UK - both home-produced and imported - is constantly being monitored for pesticide residues. This is done by the Working Party on Pesticide Residues (WPPR) which reports to the Advisory Committee on Pesticides and to the Steering Group on Food Surveillance. Reports made by WPPR are published in the form of Food Surveillance Papers.

WPPR analyses some 3,000 samples a year. Each individual sample is tested for a wide range of pesticides. Residues analysis is a skilled and complex business carried out by trained analysts in specialised Government laboratories. They use highly sophisticated equipment capable of detecting residues as low as one part in one hundred million. That's something like looking for one particular grain of sugar in 100 kilogram bags.

Enforcement

Regulations made under the Food and Environment Protection Act cover many aspects of the use of pesticides. These are enforced by a number of authorities including the Agriculture departments, the Health and Safety Executive and Local Authorities.

If misuse is suspected - for example, if residues in a sample are found to be over the MRLs laid down in the Regulations - then the origin can be traced. Prosecution may be considered

before Magistrates or in a Crown Court and the penalties can be from £2,000 to unlimited fines. Food found to exceed MRLs can be seized and destroyed.

How else is information used?

Information on pesticide residues in food, human tissues and the environment is collected by a number of organisations. That information is used by Ministers as a basis for their decisions; by consumers and pesticide users; by researchers; and by those who investigate into possible misuse.

The information is also valuable in the international context. It enables the UK to negotiate in the European Community - which is aiming to harmonise MRLs and approval procedures - and in other international discussions. There is a regular exchange of information with other countries, which keeps all regulatory authorities informed about any new concerns with pesticides.

The Balanced View

This booklet describes the high quality of care that goes into the control of pesticides, from the initial approval process; through the laying down of conditions for their use, which include maximum permitted residue levels, right through to constant surveillance and enforcement.

There are those who prefer to buy food which has been produced without the use of pesticides. That is why the Government has supported the establishment of the UK Register of Organic Food Standards (UKROFS) which sets strict national rules for organic foods. However, most people accept that we simply could not enjoy the range, consistent quality, and value of reasonably priced food that we do today without the controlled use of pesticides. But we must ensure the safest possible use of pesticides if our food is to be wholesome.

In the UK we now have a legislative framework of controls which is comprehensive and based on professional advice which is kept fully up to date. Our monitoring is designed to detect potential problems at a very early stage and we can act quickly to deal with them.

<u>The policy of stringent controls on pesticides and their use, together with surveillance and enforcement ensure that all of us are properly protected.</u>

(To appear on inside back cover ...)

If you would like further copies of this booklet or information on other food matters, the leaflets and booklets listed below are available. They can be obtained free of charge by writing to FOOD SENSE, LONDON SW99 7TT.

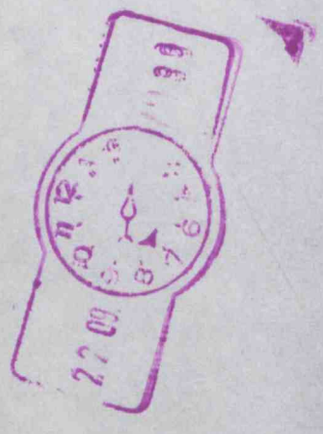
Food Safety

Food Additives the Balanced Approach

Look at the Label

Government Food & Nutrition

Government Food Surveillance



10 DOWNING STREET

Prime Minister

You signed an earlier version of this minute to the Secretary of State for Health. He would like to show it to staff more widely but before doing so would like to add a reference to Environmental Health Depts who were omitted from the earlier version.

AT
6/8

Food Safety

4.26 pm

The Minister of Agriculture, Fisheries and Food (Mr. John Gummer): The Government have today published a White Paper "Food Safety—Protecting the Consumer". Copies have been placed in the Vote Office and in the Libraries of both Houses.

Consumers expect that the food they buy should be safe—and they are perfectly right to do so. All those who provide food—whether it be the farmer, the manufacturer, the caterer or the retailer—have a clear interest in the consumer's confidence. There is, therefore, no conflict between responsible producers of food and the Government's determination to set high—indeed, the highest practicable—standards of consumer protection.

Those standards must be comprehensive, independent, up to date, and properly explained.

Already there exist wide-ranging laws which apply at every stage in the food chain. These are based, and action is taken, on the best available expertise and advice. The White Paper shows how comprehensive is the network of advisory committees on which the Government rely for independent, objective advice. Those committees, as well as advising Government, publish their reports and their findings.

There continue to be rapid developments and changes in food technology, in the range of products marketed, and also in consumer preferences. Great benefits are gained from this progress in terms of choice, convenience and value for money, but it means that our food legislation must keep pace so that consumers continue to be safeguarded. Therefore, after consultation with all interests, such as manufacturers and retailers, including enforcement and consumer bodies, the Government now intend to introduce legislative changes at the earliest possible opportunity.

The White Paper sets out the main changes proposed. These will include tighter controls on unfit food and food which is not of the nature, substance or quality demanded. These controls will apply to food before it is put on sale and allow suspect food to be withheld while investigations take place. The legislation will provide powers to adapt the law to cover new technical developments such as food irradiation, to ensure that the process is properly controlled. Powers will be strengthened to control contaminants and residues, including those which might arise from bad practices on farms or in manufacture. Ministers will have powers to make emergency control orders to deal with potentially serious problems, such as accidental contamination. Ministers will also be able to set training requirements for those who handle food commercially, building on existing good practice and thereby increasing the numbers of people trained by the food industry, local authorities and others.

To be effective, the rules and standards laid down must be applied. Most enforcement is carried out by local authorities. In a previous job, I found their work in that respect to be of particular importance. They have long experience and have developed considerable expertise in food safety, and the Government intend that that expertise should continue to be used in full. The registration of all food premises, for which the proposed new legislation will provide, will help local authorities to identify premises. Also, new enforcement measures will strengthen the existing system so that, for example, local authorities will be able to take action to have whole batches of unfit food condemned. At the moment, a local authority has power only to condemn the particular part of the food that has been found to be dangerous.

No matter how comprehensive and rigorous are the controls on food production and marketing, consumers themselves have a part to play. They have the responsibility for good kitchen hygiene, proper cooking, and reading and following instructions on the care, storage and cooking of food.

The proposals in the White Paper demonstrate the Government's commitment to food safety. We are always ready to consider adaptation when needed. We believe that our proposed legislation will provide the right framework for protecting consumers now and in the future.

Dr. David Clark (South Shields): I had hoped that the advent of a new Minister of Agriculture, Fisheries and Food would signal a new and safer approach to food in Britain. Sadly, having heard the Minister's statement and, more importantly, read his White Paper, my hopes have been dashed. The Minister's statement and his White Paper contain a mere seven proposals—no more—and they reek of complacency. The White Paper, which was heralded in advance by multitudinous press briefings as a new approach to food hygiene, has turned out to be little more than media hype. Very little in the Minister's proposals would have helped to prevent recent food poisoning incidents.

Opposition Members welcome the proposals for training staff in handling food, but will the requirements be statutory? That question is absolutely vital. Similarly, we welcome the proposal for the registration of commercial food premises, but those powers are useless unless local authorities have the resources with which to carry out that function. Plainly, at the moment they do not have the resources, either financially or in terms of personnel.

In the statement today and in the White Paper, the Minister says nothing about meat products. It has been suggested that the proposed legislation will follow the line of the American legislation and will not cover meat and meat products. Will the Minister enlighten us about the position.

Apart from those measures, little in the Bill will help to combat the contamination of our food. There is clearly a commitment to force irradiation of food on to the people of Britain, but that will do little to tackle the real problem. There is no need for irradiation if food is good and wholesome. We need irradiation only when food is not good and wholesome.

The Minister's statement and the White Paper are the result of five years' consultation. I doubt whether in the history of government such a long consultation has produced so little. The very first line in the first chapter of the White Paper states:

"The variety and quality of our food have never been better."

[HON. MEMBERS: "Quite right."] Despite the shouts of Conservative Members, that statement is not only grossly irresponsible but highly inaccurate. It is also an insult to the many thousands of people who have suffered from food poisoning. Where have Conservative Members been for the past few years? Do they not know that food

debate on the impact of the poll tax on the electoral register. It seems to be fiddling the franchise in Finchley and a number of other constituencies.

Sir Geoffrey Howe: One of the factors that the hon. Gentleman should bear in mind is that, in the context of his question, there is no sense in referring to the community charge under the misleading title of poll tax.

Mr. Bill Walker (Tayside, North): I welcome my right hon. and learned Friend to his new position. May we have an early debate on the duties and responsibilities of hon. Members, including Select Committees? If so, could we not look forward to the opportunity of explaining that Conservative Members welcome the opportunity to work for the Prime Minister in whatever job we do, whether as Back Benchers or Ministers? We do not expect former Secretaries of State for Defence, whether they are from Leeds or Ayr, to serve on Select Committees if they do not wish to.

Sir Geoffrey Howe: My hon. Friend makes two important points which deserve to be supported by acclamation.

Mr. Michael Jack (Fylde): My right hon. and learned Friend will be aware that hon. Members can see television programmes from the existing land-based channels. During the recess, will he give thought to providing the terrestrial facility because satellite television may bring to us programmes which will expose the inadequacies of the Opposition and their policies and I would not like to miss the opportunity of seeing them?

Sir Geoffrey Howe: I shall try to take advantage of my longer sojourns in this country to follow my hon. Friend's example.

Mr. Graham Riddick (Colne Valley): Is my right hon. and learned Friend aware of early-day motion 1237 entitled "The Parliamentary Labour Party and the NUR"?

[That this House notes that no Labour honourable Member including his Deputy and the entire Shadow Cabinet and Parliamentary Labour Party have publicly supported the Leader of the Opposition in his common-sense remark to the leadership of the National Union of Railwaymen.]

Does he think that we should have a debate on the motion, which reminds the House that not a single Labour Member—including the shadow Secretary of State for Transport and the deputy leader of the party—has publicly supported the Leader of the Opposition's common sense remark to the leadership of the NUR? Does he think that it would be a good wheeze suddenly to arrange a debate for either today or tomorrow [illegible]nat the Leader of the Opposition has to return from wherever he has gone for his early holiday?

Sir Geoffrey Howe: I do not think that we need a debate to follow through the implications of what my hon. Friend has said. We all welcome the observations attributed to the Leader of the Opposition in urging a sense of reality upon the NUR. We must all hope that Opposition Members will take an early opportunity universally and unanimously to follow their leader's example and urge the NUR to follow the advice of many in its own leadership and bring the strikes to a halt as soon as possible.

Mrs. Teresa Gorman (Billericay): How nice it will be for those of us who have long admired my right hon. and learned Friend's achievements—not least his greatest achievement in removing exchange controls—to have him back in the House at a time when we will be discussing the fiscal relationship between our country and Europe. Will he find time early in the new Session to debate alternative monetary structures so that we can consider the free market alternatives to EMS, the ecu and central banking? Those alternatives include the liberalisation of legal tender so that European currencies can be exchanged freely within European countries and the denationalisation of central banks so that we can develop a free market in currencies as an alternative to EMS, ecu and so on.

Sir Geoffrey Howe: My hon. Friend wishes a pretty comprehensive agenda on the House. I do not think that I can follow her quite as far down the road that she has taken us this afternoon. However, my hon. Friend was right to draw attention to the fact that my right hon. Friend the Prime Minister and I achieved a very fair conclusion at the Madrid summit to the effect that the suggestions made in the Delors report are by no means the only way of approaching the matter.

Mr. Roger Knapman (Stroud): Is my right hon. and learned Friend aware that Government Back Benchers achieved a rare but nevertheless welcome victory in the vote following the ten-minute Bill procedure yesterday? Does my right hon. and learned Friend agree that those engaged in providing essential public services should not strike either on a full-time or a part-time basis while tribunals or arbitration procedures are available to them? Is it not time that we had a debate on that issue and time that we protected the public during industrial disputes?

Sir Geoffrey Howe: My hon. Friend is entirely right to draw attention to the importance of being ready continually to examine and re-examine the best way of trying to protect the public from the undoubtedly massive inconvenience of strikes and industrial disruptions to essential services.

CCDC
AT
Q

Ministry of Agriculture, Fisheries and Food
Whitehall Place, (West Block), London SW1A 2HH
Tel: 01-270-3000 Direct line: 01-270- GTN: 270
Telex: 889351 Fax: 01-270-8125

Mr Dominic Morris
No 10 Downing Street
London SW1

27 July 1989

Dear Dominic,

As you know my Minister will be making a statement to the House today launching the White Paper "Food Safety : Protecting the Consumer". I now enclose a copy of the final statement.

I am copying this to Bernard Ingham (No 10), Murdo MacLean (Chief Whip's Office), Douglas Slater (Chief Whip (Lords) Office), Trevor Woolley (Cabinet Office), Stephen Catlin (Lord President's Office), Nick Gibbons (Lord Privy Seal's Office), Stephen Williams (Welsh Office), David Crawley (Scottish Office), Mike Maxwell (Northern Ireland Office), Flora Goldhill (Health) and Carys Evans (Treasury).

Yours sincerely

R L Alderton

R. L. Alderton
Parliamentary Clerk

MINISTRY OF AGRICULTURE 1889 100 years FISHERIES AND FOOD 1989

FOOD SAFETY - PROTECTING THE CONSUMER

STATEMENT TO THE HOUSE

The Government has today published a White Paper "Food Safety: Protecting the Consumer". Copies have been placed in the Vote Office and the libraries of both Houses.

Consumers expect that the food they buy should be safe - and they are perfectly right to do so.

All those who provide food - whether it be the farmer, manufacturer, caterer or retailer - have a clear interest in the consumers confidence. There is therefore no conflict between responsible producers of food and the Government's determination to set high - indeed, the highest practicable - standards of consumer protection.

These standards must be comprehensive, independent, up to date, and properly explained.

Already there exist wide-ranging laws which apply at every stage in the food chain. These are based, and action is taken, on the best available expertise and advice. The White Paper shows how comprehensive is the network of advisory committees on which the Government relies for independent, objective advice. These committees, as well as advising Government, publish their reports and their findings.

There continue to be rapid developments and changes in food technology, in the range of products marketed, and also in consumer preferences. Great benefits are gained from this progress in terms of choice, convenience and value for money. But it does mean that our food legislation must keep pace, so that consumers continue to be safeguarded. Therefore, after consultation with all interests, such as manufacturers and retailers, including enforcement and consumer bodies, the Government now intends to introduce legislative changes at the earliest opportunity.

The White Paper sets out the main changes proposed. These will include:

- Tighter controls on unfit food and food which is not of the nature, substance and quality demanded. These controls will apply to food before it is put on sale and allow suspect food to be withheld while investigations take place.

- The legislation will provide powers to adapt the law to cover new technical developments such as food irradiation, to ensure that the process is properly controlled.

- Powers will be strengthened to control contaminants and residues, including those which might arise from bad practices on farms or in manufacture.

- Ministers will have powers to make emergency control orders to deal with potentially serious problems, such as accidental contamination.

- Ministers will be able to set training requirements for those who handle food commercially, building on existing good practice and thereby increasing the numbers of people trained by the food industry, local authorities and others.

To be effective, the rules and the standards laid down must be applied. Most enforcement is carried out by local authorities. They have long experience and have developed considerable expertise in food safety, and the Government intends that this expertise should continue to be used to the full. The registration of all food premises, that the proposed new legislation will provide for, will help local authorities to identify premises. Also, new enforcement measures will strengthen the existing system so that - to give an example - local authorities will be able to take action to have whole batches of unfit food condemned.

No matter how comprehensive and rigorous are the controls on food production and marketing, consumers themselves have a part to play. They have the responsibility for good kitchen hygiene, proper cooking, and reading and following instructions on the care, storage and cooking of food.

The proposals in the White Paper demonstrate the Government's commitment to food safety. We are always ready to consider adaptation when needed. We believe that our proposed legislation will provide the right framework for protecting consumers now and in the future.

CWQ
DC
JAT

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

Mr Dominic Morris
No 10 Downing Street
London SW1

26 July 1989

Dear Dominic,

As you know my Minister will be making a statement to the House tomorrow launching the White Paper "Food Safety : Protecting the Consumer". I now enclose a copy of the draft statement. Should be grateful for any comments by 10.00am tomorrow.

I am copying this to Bernard Ingham (No 10), Murdo MacLean (Chief Whip's Office), Douglas Slater (Chief Whip (Lords) Office), Trevor Woolley (Cabinet Office), Stephen Catlin (Lord President's Office), Nick Gibbons (Lord Privy Seal's Office), Stephen Williams (Welsh Office), David Crawley (Scottish Office), Mike Maxwell (Northern Ireland Office), Flora Goldhill (Health) and Carys Evans (Treasury).

Yours sincerely

Ray Alderton

JP Shirley Stagg (Mrs)
Principal Private Secretary

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There continue to be rapid developments and changes in food technology, in the range of products marketed, and also in consumer preferences. Great benefits are gained from this progress in terms of choice, convenience and value for money. But it does mean that our food legislation must keep pace, so that consumers continue to be safeguarded. Therefore, after consultation with all interests, such as manufacturers and retailers, including enforcement and consumer bodies, the Government now intends to introduce legislative changes at the earliest opportunity.

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- The legislation will provide powers to adapt the law to cover new technical developments such as food irradiation, to ensure that the process is properly controlled.

- Powers will be strengthened to control contaminants and residues, including those which might arise from bad practices on farms or in manufacture.

- Ministers will have powers to make emergency control orders to deal with potentially serious problems, such as accidental contamination.

- Ministers will be able to set training requirements for those who handle food commercially, building on existing good practice and thereby increasing the numbers of people trained by the food industry, local authorities and others.

To be effective, the rules and the standards laid down must be applied. Most enforcement is carried out by local authorities. They have long experience and have developed considerable expertise in food safety, and the Government intends that this expertise should continue to be used to the full. The registration of all food premises, that the proposed new legislation will provide for, will help local authorities to identify premises. Also, new enforcement measures will strengthen the existing system so that - to give an example - local authorities will be able to take action to have whole batches of unfit food condemned.

No matter how comprehensive and rigorous are the controls on food production and marketing, consumers themselves have a part to play. They have the responsibility for good kitchen hygiene, proper cooking, and reading and following instructions on the care, storage and cooking of food.

The proposals in the White Paper demonstrate the Government's commitment to food safety. We are always ready to consider adaptation when needed. We believe that our proposed legislation will provide the right framework for protecting consumers now and in the future.

JD

bcBI

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

24 July, 1989.

Dear Shirley

The Prime Minister has seen a copy of the draft statement for the Minister of Agriculture, Fisheries and Food to make on Food Safety on Thursday. She has commented that it is rather long, but is otherwise content with it.

I am copying this letter to Murdo Maclean (Chief Whip's Office), Douglas Slater (Chief Whip's (Lords) Office), Trevor Woolley (Cabinet Office), Stephen Catlin (Lord President's Office), Nick Gibbons (Lord Privy Seal's Office), Stephen Williams (Welsh Office), David Crawley (Scottish Office), Mike Maxwell (Northern Ireland Office), Flora Goldhill (Department of Health) and Carys Evans (Chief Secretary's Office, HM Treasury).

Yours ever

Dominic

Dominic Morris

Mrs. Shirley Stagg,
Ministry of Agriculture, Fisheries and Food.

Ministry of Agriculture, Fisheries and Food
Whitehall Place, (West Block), London SW1A 2HH
Tel: 01-270-3000 Direct line: 01-270- GTN: 270
Telex: 889351 Fax: 01-270-8125

Prime Minister
Content?
AT 20/7

Mr Andrew Turnbull
No 10 Downing Street
London SW1

It is rather long - otherwise agreed AT

20 July 1989

Dear Andy?

As you know it has been agreed that my Minister, Mr MacGregor, will make a statement to the House of Commons at approximately 4.00p.m, Thursday 27 July 1989. The statement will deal with the White Paper "Food Safety : Protecting the Consumer"..I now enclose a copy of the draft statement for your comments, which I would be grateful for by 4.00pm on Monday 24 July 1989.

I am copying this to Bernard Ingham (No 10), Murdo MacLean (Chief Whip's Office), Douglas Slater (Chief Whip (Lords) Office), Trevor Woolley (Cabinet Office), Stephen Catlin (Lord President's Office), Nick Gibbons (Lord Privy Seal's Office), Stephen Williams (Welsh Office), David Crawley (Scottish Office), Mike Maxwell (Northern Ireland Office), Flora Goldhill (Health) and Carys Evans (Treasury).

Yours sincerely

Ray Alderton

R. L. Alderton
Parliamentary Clerk

MINISTRY OF AGRICULTURE · 1889 · 100 years · FISHERIES AND FOOD · 1989

FOOD SAFETY : PROTECTING THE CONSUMER

The Government has today published a White Paper "Food Safety : Protecting the Consumer". Copies have been placed in the Vote Office and the Libraries of both Houses.

The Government gives the highest priority to food safety. The White Paper describes comprehensively the existing arrangements for protecting consumers, highlights measures which the Government has taken recently and sets out the Government's proposals for new legislation, which it intends to introduce as soon as the Parliamentary timetable allows.

Wide-ranging laws to safeguard consumers already apply at every stage of the food production and distribution chain. Our food safety measures are supported by extensive programmes of research, to which the Government continues to have a growing commitment, and are based on the best available expertise and advice. Independent, objective advice is provided by numerous specialist committees composed of leading scientists, doctors and other experts.

On the basis of this advice, the Government has used its existing powers to act promptly wherever necessary and on very many occasions. For example, our 19 measures to deal with salmonella in eggs are among the most comprehensive in the world. The Government quickly set up an expert Working Party when Bovine Spongiform Encephalopathy (BSE) was identified and was swiftly implemented all its

recommendations. During the recent botulism outbreak, local and central coordination made prompt action possible to protect consumers throughout the country.

Much enforcement is carried out by local authorities. Through their long experience they have developed very considerable expertise, and Government intends that their role should continue undiminished.

Rapid developments in food production and preparation techniques, and in the range of products available, offer great benefits in terms of convenience, choice and economic advantage. But they also necessitate review and adaptation to ensure that food safety legislation continues fully to safeguard consumers. Therefore, as we announced in October 1987, before the latest interest in food matters began, the Government has been reviewing carefully and comprehensively how the law should be adapted to take account of several developments, including recent changes to technology, which affect the entire food chain.

The new legislation which the Government intends to introduce will include:

Tighter controls on unfit food and food which is not of the nature, substance or quality demanded, so that enforcement powers can be exercised even before food is put on sale and so that suspect food can be detained while investigations take place.

New enforcement measures to strengthen the existing system, so that, for example, action can be taken to condemn whole batches of food.

Provision for registration of commercial food premises, to enable local authorities to identify them more readily. Local authorities will be able to require deficiencies to be put right, and to have premises closed down in emergency situations that present an immediate risk to health.

Extended powers to adapt the law to technological developments such as food irradiation.

Enhanced powers to control contaminants and residues, such as veterinary drug residues in meat, including those which may arise from bad practices on farms or in manufacture.

Powers to make emergency control orders to deal with potentially serious problems, such as accidental contamination.

Provisions on training for those who handle food commercially, to build on existing good practice and increase the numbers of people trained by the food industry, local authorities and others.

The proposals outlined in the White Paper reflect the Government's rigorous commitment to food safety and consumer protection now and into the future.

20 JUL 1989

CONFIDENTIAL

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign & Commonwealth
Affairs
Foreign & Commonwealth Office
Downing Street
LONDON
SW1A 2AL

CBB
16/7

14 July 1989

Dear Geoffrey, Minutes attached.

At the OD(E) meeting on 16 June I reported on the discussions on food quality standards which had taken place at the Informal Agriculture Council the previous month and agreed to provide a note on the subject. Given that the agenda for the next OD(E) meeting on 20 July is very full, I am therefore circulating it to you and colleagues under cover of this letter.

As you may be aware, France, with support from other Member States and DG.VI of the Commission, is attempting to undermine the agreed "new approach" to Community food law harmonisation with suggested measures which are unnecessarily regulatory and which amount to a return to "recipe law". The measures they have in mind would, I believe, stifle product innovation, reduce consumer choice and be contrary to the Single Market philosophy. Our own Food Sector believes they would hinder their opportunities in the Single Market.

Discussion at Ministerial level on this issue has so far taken place only at the Informal Agriculture Council and at the Consumer Affairs Council on 1 June, where the United Kingdom had little support. With the advent of the French Presidency, and with food law on the Presidency's list of priorities, we must counter the French ideas which are certain to be pressed forward. Since the Greek Presidency, the Internal Market Council has dealt with food law issues and will therefore be the likely forum for discussion but they may well be raised in the Agriculture and Consumer Affairs Councils; indeed I would guess they almost certainly will - Agriculture.

My main concern therefore is to alert colleagues to the impending debate, bring them up to date on the progress made on food law harmonisation, set out our position and also the action we need to take. This will ...

CONFIDENTIAL

take. This will ensure that our approach is a unified one should we be faced in different fora with arguments for a change of direction to Community food law policy. I would be grateful for colleagues' views and, if necessary, we could discuss at a subsequent OD(E) meeting.

...I am copying this letter to the Prime Minister, members of OD(E) and Sir Robin Butler.

Yours ever,

JOHN MacGREGOR

COMMUNITY FOOD LAW HARMONISATION; FOOD QUALITY STANDARDS
NOTE BY MINISTER OF AGRICULTURE, FISHERIES AND FOOD

Introduction

1. The purpose of this paper is to outline progress so far in harmonising food law. Attempts are, however, now being made, largely by the French, to undermine the principles which are the basis of the good progress that has been made. Their wish is to see a return to "vertical" recipe law and legally enforced "appellations d'origine". These ideas are supported by the Commission paper "The Future of Rural Society". In view of the French Presidency we clearly need to agree the principles that should guide us in the negotiations ahead and the steps we should take to influence others to support the basic approach of the Commission's White Paper on the Completion of the Internal Market.

Background

2. The Commission's White Paper on the Completion of the Internal Market of June 1985, and subsequent paper on food law (COM 603(85) Final) of November 1985, together set down the principles for the harmonisation of food law by the end of 1992. The programme of measures needed to achieve this was also set down. The general approach, which was agreed by the Heads of Governments of all Member States, is that Community food law should concern itself with essential horizontal measures dealing with food safety, food hygiene and proper consumer information. Wisely, this meant abandonment of attempts to establish Community compositional standards for a vast number of individual foodstuffs (known as recipe law). Subsequently the Internal Market

Directorate General (DG.III) put before the Council a series of proposals consistent with this programme and the result is that harmonisation of food law is now well advanced.

3. The Commission has not however indicated what should happen to all the recipe law that exists, especially at national level, beyond suggesting that there should be mutual acceptance of each other's recipe law along the lines of the series of judgements in this area made by the European Court of Justice. The Commission undertook to prepare a paper on this issue (it should be published shortly) which is expected to follow the principle of mutual acceptance of each other's standards.

4. The general approach of COM 603(85) and the move away from recipe law has, however, troubled some Member States, particularly those with a body of compositional food law at national level. They claim that horizontal measures alone will lead to a fall in food quality in the Community with the lowest common denominator becoming the standard for the Community market. Accordingly they are pressing for fixed food quality standards agreed at Community level to preserve, so they claim, the quality of food. In my view these are dubious arguments and little more than a smokescreen covering protectionist aims to preserve exclusive use of well known product names for certain groups of producers or certain regions. In any event, there is no evidence that where no legal quality standards exist, products are of inferior quality. On the contrary, the evidence points to much increased variety from which consumers can choose.

5. The French have deposited two memoranda in Brussels setting out their views. Their thesis is that food labelling requirements on their own are insufficient because consumers do not trouble to study or interpret descriptions and lists of ingredients on labels and rely on the name of a foodstuff to indicate its quality or composition. For a number of foods (eg cheeses, types of sausage etc) the French advocate an inventory of sales names, each of which would be reserved for products of a specified and, therefore, strictly enforced composition. This, of course, would simply amount to the very policy of recipe law which the Commission abandoned in their November 1985 document.

6. In addition, the French favour extending to certain foodstuffs the concept of appellations d'origine which applies to wine. This would mean reserving by law certain designations for products originating in specified geographical areas and, almost certainly complying with specified production or compositional requirements. Apart from its close connection with recipe law, this concept is open to the objection that many food names which are geographic in origin have long ceased to be connected with the area concerned (eg Cheddar, Brie, Brussels pate).

7. In the course of a lengthy document on the Future of Rural Society, originating in the Agriculture Directorate General (DG.VI), the Commission urged the adoption of a policy to promote the quality of foodstuffs, on the grounds that this would help to improve the prosperity of rural areas. Though drafted in unspecific terms, the note indicates that the Commission will make proposals on the use of food labels to deal with foods of particular geographical origins, production quality requirements and special

production methods. The concepts are thus close to those exposed in the French memorandum.

8. The French, using their Presidency, can be expected to ensure that these issues are placed on the agendas of the Agriculture Council, the Internal Market Council and/or the Consumer Affairs Council. There have already been preliminary discussions at the informal Agriculture Council in Salamanca on 16 May 1989 and at the Consumer Affairs Council on 1 June 1989.

Position of the UK

9. The UK has consistently supported the position set out by the Commission in 1985. This, I believe, is not only the right position but the only practical solution that will enable harmonised food law to be achieved by the end of 1992. Food quality is a subjective matter; it would take many years to harmonise differing views on the specific composition of numerous products. Experience on the few existing Community compositional laws so far agreed (but only after inclusion of national derogations which are contrary to the essential purpose of harmonisation) points to this. My view is that the concept of quality must be left to the consumer. Proper labelling will allow him or her to make an informed choice. Imposing from the centre, by a stream of regulations, compositional rules and thus concepts of quality for a host of food products, is not the course to follow. It would restrict innovation and product development, hinder trade and restrict full consumer choice.

10. My views are fully shared by the UK food industry which is rightly concerned that food quality standards would be

used to create barriers to trade and to protect traditional (often primary agricultural) products at the expense of new (eg low fat) or "substitute" products for which there is strong consumer demand. Because of strict compositional standards in some other Member States, product development has not taken place as it has in the UK and, for example, the Netherlands. Given mutual recognition of standards our industries will be well placed to make the most of export opportunities in a Single Market. UK consumer groups are also opposed to the idea of legally enforced compositional "quality" standards and see improved labelling as the approach to follow.

11. I recognise, however, the need for some developments over and above those set out in the 1985 Commission papers. Gaps exist in the coverage of the labelling rules which either leave scope for national action by Member States, which could become barriers to trade or could fail adequately to inform consumers of differences between "look alike" foodstuffs. Thus I would support Community action in those areas (eg claims on labels, selective requirements for quantitative ingredient declaration and, perhaps, a very few reserved descriptions for certain foodstuffs). I also support the need for agreed rules on food hygiene to give assurance that food imported into the UK meets hygiene standards acceptable to us and also to prevent hindrance to our exports. Also I have no objection to <u>voluntary</u> quality schemes set up by producers in, for example, certain regions, for marketing reasons so long as they are not exclusive; indeed I welcome such producer led initiatives and enterprise. My overall objective is a Single Market in which all foods can be freely traded and available to all consumers across the Community, subject to essential food

safety and hygiene measures and to labelling rules which ensure that consumers are fully and accurately informed.

12. A memorandum on these issues was recently deposited with the Council and the Commission by the British Permanent Representative in Brussels; a copy is attached as Annex I.

Position of Other Member States

13. There would appear to be considerable division of views both within and between Member States which I believe we must exploit. France is the main protagonist for the food quality standards approach, supported by Spain and Portugal. There is evidence, however, that even in France these views may not be unanimously held, with the department responsible for competition and consumer affairs apparently less rigidly committed to the line taken in the two memoranda the French have deposited in Brussels. Discussion at the informal Agriculture Council, however, indicated that apart from myself and the Netherlands Minister, other agricultural Ministers supported the idea of establishing food quality standards to protect rural and regional producers. Discussion at the Consumer Affairs Council gave a similar impression although on that occasion other Ministers present may not have appreciated or fully evaluated the issues at stake. A more recent meeting of officials in Brussels from food law (as opposed to agriculture) national departments suggested that there was less support for the quality standards route. Supporting the UK were Denmark, Germany and Greece with the Benelux countries divided within themselves.

Position of the Commission

14. The agricultural directorate (DG.VI) is clearly committed to the paper on the Future of the Rural Society and the proposals contained therein, which are producer protectionist. DG.III, as custodians of the internal market programme, wish to achieve the objectives as set out in the 1985 papers. There is thus a conflict of interest within the Commission. The commitment in the Rural Society paper will mean that the Commission will have to table some form of proposals. DG.III, heartened by what it now sees as increasing support for its policies of avoiding quality standards, may be able to influence substantially the exact form of any proposals. Without the Commission being persuaded to make the appropriate proposals in their support, the ideas in the French memoranda will clearly be difficult to run.

The Policy Principles We Should Follow

15. I would propose that our approach as and when these issues are discussed over the next few months should be guided by the following principles:-

(i) the goal must be to achieve the White Paper programme for harmonisation of food law as part of the Single Market by the end of 1992; work already in hand is considerable (including as it does food safety and hygiene) and additional issues should not be included unless they are clearly essential to reach the goal;

(ii) informative food labelling remains the key to resolution of problems in the food law sector; where it is

shown that present labelling rules are inadequate for achieving proper and full information for consumers, further measures may be considered;

(iii) in this connection, proposals such as those relating to claims on food labels (such as low fat, high fibre), declaration of quantities of ingredients in certain cases and the listing of ingredients, where presently exempted, can certainly be considered and judged on their merits. This is also the case with proposed Community rules on food hygiene;

(iv) the case for other food labelling improvements needs to be substantiated and proved, taking into account policies on deregulation and the need to avoid burdening small and medium-sized firms with bureaucratic requirements;

(v) voluntary quality schemes for the promotion of specific foodstuffs are a legitimate marketing tool provided they do not exclude from the market those who wish to trade differently; mutual recognition of the rules of such schemes or voluntary harmonisation of them between Member States are also laudable aims; the follow-up to the ideas in the paper on the Future of the Rural Society should thus look in this direction and not towards regulation;

(vi) freedom of trade and freedom of consumer choice must be maintained within the parameters of food safety and proper consumer information.

Future Action

16. Given that differing views exist in other Member States and in the Commission, we need to press our ideas strongly on several fronts. I believe we must -

(i) reinforce the will of DG.III to follow the philosophy of the 1985 Commission papers to achieve the 1992 goal.

(ii) resist the attempts by DG.VI to introduce protectionist regulatory measures designed to support rural food producers.

(iii) ensure that our food trade associations are well seized of the issue and encourage them to influence their opposite numbers in Member States.

(iv) continue to explain our views to competition and consumer affairs departments in other Member States.

and (v) brief Cabinets of the Commission as these food law issues emerge.

Action along these lines will, I believe, exploit the divisions and, I detect, uncertainties, that now exist on these matters within the Community. If we follow this course we stand a good chance of maintaining our line and 1992 objective.

JOHN MACGREGOR
MINISTER OF AGRICULTURE, FISHERIES AND FOOD
14 JULY 1989

EUROPEAN COMMUNITY FOOD LAW: MEMORANDUM FROM THE UNITED KINGDOM GOVERNMENT

PURPOSE

1. This Memorandum sets out the views of the United Kingdom on the future development of food law within the European Community.

THE COMMUNITY FOOD SECTOR

2. The food sector in the Community encompasses an immense variety of products, reflecting the diverse culinary traditions of different regions of the Community. An objective of the Single Market is to give Community citizens greater access to this culinary diversity and to the traditions which the various regions offer. The food sector is also highly disparate and competitive, with a broad structure ranging from small artisanal producers to large multi-national companies operating in most Member States. The industry is characterised by innovation and technological change. It is important that the Community's legislative framework should not stifle this but allow it to advance. The key guidelines for the Community food sector should, therefore, be freedom of trade and freedom of consumer choice in food that is safe, wholesome and informatively labelled.

COMMUNITY FOOD LAW HARMONISATION: BACKGROUND

3. The Commission outlined its strategy for completing the Internal Market by 1992 in the White Paper of 14 June 1985. This was followed in November 1985 by the Commission Communication (COM(85)603 Final) on the harmonisation of the food sector, including a large programme of proposed food legislation. The approach set out in this communication reflected a move away from detailed composition requirements (recipe law) towards a more informative system of food labelling, backed up by essential food safety and hygiene measures. This approach is based, inter alia, on the principle that Community legislation should not extend beyond essential consumer protection measures (including both consumer health and fair trading, ie the "transparency of commercial transactions"). Indeed, as the Commission pointed out in the communication, this strategy is fundamental to the completion of the Internal Market within the given time scale. The failure of the earlier policy of vertical harmonisation (recipe law) demonstrates the impossibility of obtaining Member States' agreement to the numerous points of detail. One of the

principal reasons for this is that judgements on the composition of foodstuffs are by their nature subjective, with rarely a clear, single composition on which the Community can agree. It should be recalled, for example, that it took the Council 14 years to agree the Jams Directive and 10 years for the Fruit Juice Directive. Qualified majority voting is unlikely to resolve such difficulties.

4. Many of the proposals flowing from the Commission's communication have already been translated into concrete legislative form. However, a large volume of work remains to be done, mainly on subsidiary legislation deriving from the horizontal "framework" Directives. The current position on food law harmonisation legislation is examined in more detail below.

5. The principle that Community legislation should not extend beyond essential Community protection measures was reflected in the "Cassis de Dijon" judgement of the ECJ. This has been reinforced by subsequent judgements, notably those covering beer, pasta, sausages, Edam cheese and frozen yoghurt. Thus the mutual recognition principle has been upheld in the foodstuffs sector in respect of all matters except the essential public health and safety provisions set out in Article 36 of the Treaty.

HARMONISATION LEGISLATION

6. The Council has already adopted or reached a common position on the series of major framework Directives which will govern the operation of the market in foodstuffs. Specifically, these are:

- the framework Directive on additives (plus the earlier framework Directive on flavourings)
- the framework Directive on foods for special dietary purposes
- the framework Directive on materials and articles in contact with food
- the amendment to the Food Labelling Directive
- the Directive on food control (inspection)
- the Directive on lot marking of foodstuffs.

The Commission has also tabled proposals concerning nutrition labelling of foodstuffs and food irradiation.

7. Further horizontal measures are also necessary to complete the programme of providing at Community level for food safety, food hygiene and proper information for consumers. Deriving from the food inspection Directive the Community will need to develop common rules governing food hygiene, particularly food handling practices during manufacture, distribution and sale. The Community also needs to safeguard all citizens from misleading statements or presentation of foodstuffs. The general rules on this are contained in the Food Labelling Directive but need to be supplemented by Community rules covering the various types of claim that can be made (either on food labels or in food advertisements) about particular foodstuffs. The provision of quantitative declarations for the main characterising ingredients of certain foodstuffs, on the lines already required for ingredients given a special emphasis in the naming of the food, would also be needed to enable consumers to distinguish between different foodstuffs.

8. There have however been suggestions that there is an additional requirement, which needs to be addressed within the Community legislative framework. This would relate to food quality and sales names (denominations). It is necessary to consider whether this is indeed a problem requiring action at Community level and the implications for the process of completion of the Single Market in foodstuffs.

FOOD QUALITY

9. It has been claimed that the application of the principle of mutual recognition to the foodstuffs sector would lead to a reduction in the quality of food offered to the consumer. This would occur, it is argued, because consumers, being unable to distinguish between the quality of competing products, would tend to purchase cheaper (and thus lower quality) products. Producers of higher quality products would be driven to reduce quality in order to compete. There would thus be a general "levelling down" of quality standards.

10. This thesis does not hold up to critical scrutiny. Food quality is a subjective issue. The quality of a foodstuff is best defined as fitness for the purpose for which it is intended. Individual consumers' requirements vary considerably. Quality cannot be measured against an absolute standard. To impose one concept of quality from

the centre would restrict consumer choice and reduce the culinary diversity which is a desirable feature of the Community food sector. This culinary diversity should be available to all consumers in the Community. Efficient and transparent food markets by their nature display wide product differentiation and market segmentation to meet differing consumer needs. There is moreover no evidence that the absence of "quality" (compositional) standards leads to a market of inferior food. For some consumers price will be the most important consideration and their requirements will be met by competitively priced goods. For others, different elements will be important and consumers will be willing to pay for enhanced properties which they perceive some products to possess. There are many examples of foodstuffs selling at premium prices, eg "organic products", "additive-free" food, and hand-made or craft-produced foods. Food producers and manufacturers already respond to these varied demands without central direction or control.

11. Consumers are capable of making their own judgements about the relative attractions of different foods provided the products concerned are labelled in a manner that is informative and easy to follow. Indeed the consumer's right to make such choices and have access to safe, low-cost, nourishing food is as fundamental as his right to have access to high-cost, higher added-value products. The consequences of acting upon any alternative basis would almost certainly be less choice, less market transparency and less consumer satisfaction.

12. In the view of the United Kingdom, therefore, the creation of the Single Market in foodstuffs does not pose any problem of quality for consumers which is not effectively dealt with by current general Community legislation and other proposals which are under discussion or awaited. The United Kingdom recognises however that greater consumption of high added-value foods would be of benefit to producers. It does not therefore exclude the possibility of encouraging food producers within the Community to improve their marketing, if appropriate, by developing means of promoting "high quality" images for higher added-value products. Such encouragement however must be designed to ensure that consumers continue to have completely free choice of products and that there is no interference with the general principles of the Treaty and the creation of the Single Market.

ROLE OF VOLUNTARY QUALITY CERTIFICATION SCHEMES

13. A possible means of achieving this, without the need for legislation, might be through voluntary, producer-operated quality certification schemes which identify the distinctive characteristics of particular products. The consumer would be free to make an informed choice between such products and others.

SALES NAMES

14. One justification sometimes given for specifying compositional criteria and quality standards is that consumers will otherwise be misled. It is argued that for consumers in certain parts of the Community the sales name or denomination of a foodstuff may convey specific information about its composition. This is either because national law links the name concerned to certain compositional requirements or simply because the foodstuff has been traditionally made from particular ingredients in that part of the Community. It is therefore suggested that consumers risk being deceived when under a regime of mutual recognition, products of different composition, from other Member States, are marketed alongside domestic products under the same sales name. This will happen particularly where the two products look alike. An example often quoted is pasta imported into Italy from another Member State, made from a mixture of soft and durum wheat, and sold alongside pasta made in Italy solely from durum wheat.

15. It has been suggested that an inventory of sales names should be established with their associated "technical characteristics". Inclusion of a name in the inventory would reserve it for products conforming to those characteristics. This solution would, of course, go in the opposite direction to the policy set out in COM(85)603 Final.

16. It is true that, if the labelling of a foodstuff conveyed incorrect information to consumers (for example, because it was fraudulent or because they drew the wrong conclusions about the nature of the product), their legitimate interests would be infringed. But a solution which consisted in specifying compositional standards at Community level for a range of foodstuffs would infringe other legitimate rights of consumers. These are their right to have the widest possible choice of product and to benefit from the natural propensity of the food industry to innovation and the development of new products. In some regions of the Community, for example, the name "pasta" does

not imply a product made entirely from durum wheat, and pasta products which include soft wheat among their ingredients are readily available. If, therefore, the sales name "pasta" were reserved at Community level for products made solely from durum wheat, the range of products customarily known as pasta in those regions would be restricted, to the detriment of consumers. Such restrictions would also damage the interests of Community producers (other than those whose products were protected), and could prevent them from developing new products.

17. The philosophy in the COM(85)603 Final and the general provisions in the Food Labelling Directive (79/112) already point the way to the solution. COM(85)603 Final states at paragraphs 18 and 19:-

> "The rejection of recipe law implies a well-developed and clear system of labelling, presentation and advertising ..... so that consumers [may be protected] against misleading practice." "Directive 79/112 already goes a long way in this direction. However it needs to be supplemented in some respects."

Directive 79/112 says at Article 5(1):-

> "The name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or in the absence of any such name, the name customary in the Member State where the product is sold to the ultimate consumer, or a description of the foodstuff and, if necessary, of its use, that is sufficiently precise to inform the purchaser of its true nature and to enable it to be distinguished from products with which it could be confused."

This makes clear the obligation on Member States and the Community to require foodstuffs to be labelled in a way which is meaningful to consumers. The flexibility it provides ensures that the sales name in each Member State carries the appropriate message for the consumer without causing disproportionate hindrance to trade or unfairness to consumers.

18. A small number of special products may nevertheless pose more complex problems if, for example, their sales name is held to imply the presence or absence (or presence to a certain degree) of particular ingredients. An example is pasta, mentioned above. Here a solution would be to amend the Food Labelling Directive to require pasta labels to

indicate whether the product was made from durum wheat or soft wheat or a mixture of the two. A further example could be mayonnaise, a sales name which consumers in some parts of the Community associate with very specific compositional standards. The Food Labelling Directive requires the listing in order of weight of all the ingredients in a foodstuff. However, this requirement may be insufficient to inform the consumer fully in cases where the quantitative presence of characterising ingredients is relevant, as for mayonnaise. This problem should be dealt with by the proposed amendment to the Food Labelling Directive to require the quantitative declaration of the ingredients of a foodstuff in these circumstances. Combined with Article 5(1), such a proposal would ensure that no consumer in the Community need be confused as a result of the variations in sales name.

ORIGIN DESIGNATIONS

19. Linked with ideas on food quality standards and sales names is the suggestion that "appellations d'origine" be implemented. These would add a further restrictive criterion (to those arising from restrictive use of sales names), namely that of geographical source. For many products, such as Brussels paté or Cheddar cheese, the names now mean a particular type of product rather than a product deriving from a particular area of the Community. There are, however, cases where consumers would expect a product to come from one area, for example Devon fudge. The Community labelling rules already state that the place of origin must be stated if not to do so would mislead consumers, hence Somerset brie and French Cheddar. Producers may voluntarily label their products with the place of origin and actively promote them on that basis. There is therefore no need, by legislative means, to restrict the use of product origins as this would create barriers to trade and restrict consumer choice.

CONCLUSION

20. The interests of Community food consumers and producers will best be met by early completion of the Single Market in this sector. The United Kingdom therefore considers that:

- the momentum towards completion of the Single Market in foodstuffs by 1992 must be maintained by early adoption of the implementing measures giving effect to the framework Directives recently agreed by the Council;

14 JUL 1989

- this programme should be complemented by early adoption of the proposals currently on the Council's table, and by early submission by the Commission of horizontal proposals dealing with food hygiene, and food claims;

- there is no reason why groups of Community food producers should not organise themselves to market the specific characteristics of their products without need for legislative protection; this would not impede moves towards completion of the Single Market;

- problems posed by specific meanings being attached to certain foodstuff sales names in parts of the Community should be dealt with in the framework of the Food Labelling Directive. The Commission should bring forward proposals on the quantitative declaration of characterising ingredients (QUID). Consideration can then be given to the kind of declarations on labels that will assist consumers to make informed choices;

- there are no valid reasons to return to the establishment of Community-level "harmonisation" of compositional standards, which would limit consumer choice and frustrate the achievement of the Internal Market.

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
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Minister of Trade and Industry

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Our ref
Your ref
Date 11 July 1989

Dear John.

FOOD BILL - DEFENCES

Thank you for copying me your minute of 6 July to the Prime Minister with an enclosed draft paper on the options for defences in the Food Bill.

I agree that of the three options outlined, Option 2, (Due Diligence and Deemed Due Diligence), seems likely to command the widest support from the food industry and to offer most potential for minimising costs to small businesses.

Subject to anything which might be thrown up by the revised CCA which our officials have been discussing, I support Option 2.

I am copying this to recipients of your minute.

Yours ever,
Tony

TONY NEWTON

RC6AAQ

Recycled Paper

Food: Safety Pt 3

cst.ps/2jm10.7/drfts

UNCLASSIFIED

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John MacGregor OBE MP
Minister of Agriculture, Fisheries and Food
Whitehall Place
London
SW1A 2HH

10th July 1989

Dear John,

FOOD SAFETY: PROTECTING THE CONSUMER

Thank you for your letter of 3 July.

I am content with the line you propose to take on food safety enforcement resources when the White Paper is launched. It would be helpful, however, if this section of the briefing could be cleared in advance with my officials.

I note what you say about meeting the costs arising from the Food Bill proposals. In this context, I see that the second draft of the White Paper now excludes the reference to allowing enforcement authorities to charge for registration of food premises. And I am of course well aware of the current high level of concern about food safety issues. Nevertheless when you have completed your consultation with the local authorities, I should like you to look at the priorities within your programme with a view to identifying how you might meet the costs of this work. My agreement to the publication of the White Paper is of course without prejudice to our public expenditure discussions in this and future years.

I am copying this letter to members of MISC 138, Douglas Hurd, George Younger and Sir Robin Butler.

Yours Ever,
John

JOHN MAJOR

Food : Sauces PT3

17 JUL 1969

RESTRICTED

JD

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

7 July, 1989.

Dear Shirley,

FOOD BILL: DEFENCES

The Prime Minister has seen the Minister of Agriculture's letter of 6 July. She agrees with his conclusion that Option 2 provides the best balance between the various interests.

I am copying this letter to the Private Secretaries to Members of Misc 138, Paul Stockton (Lord Chancellor's Office), Colin Walters (Home Office), Michael Saunders (Law Officers' Department), Alan Maxwell (Lord Advocate's Department), and Trevor Woolley (Cabinet Office).

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Mrs. Shirley Stagg,
Ministery of AGriculture, Fisheries and Food.

RESTRICTED

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

7 July, 1989.

Dear Shirley,

FOOD SAFETY: PROTECTING THE CONSUMER

The Prime Minister has seen your Minister's letter of 5 July to the Secretary of State for Health, and has noted that the reference to possible changes in Crown Immunity will be deleted from the forthcoming White Paper. She has noted also that work is continuing to bring this matter to a resolution within Whitehall.

I am sending copies of this letter to the Private Secretaries to the Members of Misc 138, the Secretary of State for Defence, the Home Secretary, the Minister for the Civil Service, the Attorney General, the Solicitor General, the Chief Medical Officer, and the Secretary to the Cabinet.

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Mrs. Shirley Stagg,
Ministry of Agriculture, Fisheries and Food.

cc P.U

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

Prime Minister
Agree MAFF's proposals for modifying the statutory defences. Policy Unit agree Option 2 strikes the right balance

AT 6/7

From the Minister

RESTRICTED

PRIME MINISTER

FOOD BILL: DEFENCES

1. As requested at the last meeting of MISC 138, I am circulating a paper on the statutory defence which we propose to make available in the new Food Bill. This has been agreed with Douglas Hurd, Kenneth Clarke and Malcolm Rifkind.

2. In reviewing the defences in the Food Acts we need to respond to the criticisms of consumer and other interests about the operation of the existing arrangements. These generally give a lesser degree of consumer protection than equivalent arrangements outside the food area. A particular loophole we have identified is that the warranty defence permits sellers of defective imports to escape prosecution leaving no-one who can be charged with the offence in this country. Another problem is the use of the warranty by some retailers to pass responsibility back to manufacturers even where the fault is their own, for example in respect of own brand goods manufactured to retailers` specification. At the same time the absence of a proper due diligence defence for manufacturers also means that they may have to take criminal responsibility for offences due to causes beyond their control.

3. I have looked again at how we might tackle these problems. In doing so I have been conscious of the need not to impose undue burdens on small businesses and to strike the right balance between the interests` of importers and retailers, who tend to benefit from current arrangements, and of consumers and manufacturers.

4. The enclosed paper by officials reflects discussions with interested parties, including small business interests. It puts forward three options and on consideration I agree with the conclusion that we should go for Option 2. This combines a due diligence defence for the main offences under the Act with a special provision which would replace the warranty. This provision would lay down what would need to be done by retailers who were not also importers, and others in a similar position, to satisfy the due diligence defence and avoid conviction. This would close the import loophole and reduce the need for the sort of precautionary checking by retailers about which MISC 138 was concerned. Small retailers who generally buy in branded goods rather than selling own label would benefit from the lower level of scrutiny which would be required for these goods under the special provision. Whatever we propose is likely to be controversial, but I think this solution stands the best chance of securing the eventual acquiescence of the conflicting interests involved.

5. Our decision on this issue could obviously have implications for the short reference in paragraph 6.10 of the White Paper. It would therefore be helpful to know whether you and colleagues are content with this approach by Tuesday 11 July so that any necessary minor adjustment can be made at proof stage.

6. I am copying this to the members of MISC 138, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate and Sir Robin Butler.

JM

JOHN MacGREGOR

Ministry of Agriclture, Fisheries & Food
6 July 1989

RESTRICTED

DRAFT NOTE BY OFFICIALS (To be circulated under cover of a minute from the Minister of Agriculture)

FOOD BILL: DEFENCES

PURPOSE

1. This paper considers the statutory defences to be made available to those prosecuted under the new Food Act.

BACKGROUND

2. In August 1987, when 'H' Committee approved the preparation of a Food Bill, it was envisaged that this would include a due diligence defence for manufacturers. At the meeting of MISC 138 on 2 May concern was expressed about the introduction of the due diligence defence combined with the withdrawal of the statutory warranty. In the light of discussion the Minister of Agriculture was asked to give further thought to the legal regime, taking into account, inter alia, the need not to place unreasonable burdens on traders, especially small businesses.

THE PROBLEM

3. The Food Acts contain a number of offences (see Appendix 1) and provide some statutory defences which qualify their absolute nature. In revising these defences the objective has been to provide a system that is fairer to defendants; to ensure that liability can be pinned on those responsible for a defect; and to close the loopholes identified during consultation - in particular the warranty defence often allows sellers of defective imports to escape prosecution leaving no-one who can be charged with the offence in this country and retailers use it to pass all responsibility back to manufacturers even where this is not appropriate.

4. The consultation process has shown this to be a very controversial area and whatever is decided will be contentious. An underlying problem is the deep suspicion between retailers, who feel that given the opportunity the more enthusiastic enforcement officers will seek out opportunities to put the big retailers in Court, and enforcement officers, who think the retailers want to be able to evade their real responsibilities to the consumer.

DISCUSSION

5. In these circumstances the Government needs to decide on what is appropriate and be prepared to defend the position during the passage of the Bill. There are three basic options:

Option 1

6. To replace the existing system of defences with a due diligence defence and to dispense with the warranty defence altogether. This would apply at any point in the food production chain. It would enable a defendant to be acquitted if he could prove that he took "all reasonable precautions and exercised all due diligence to avoid the commission of the offence". It would be fairer than the present system of defences which requires a defendant to prove that the fault lay with another person to establish a successful defence. Thus manufacturers, growers and retailers would benefit from not being liable for offences due to an accident or cause beyond their control, eg in respect of a caterpillar in a tin of peas. Warranties and other assurances given by suppliers could still be used as part of a due diligence defence even though they no longer had statutory status. Purpose-built defences would not be ruled out in Regulations made under the new Act.

7. This option would certainly gain considerable credit with consumer interests and be popular with enforcement officers who believe that due diligence alone has worked well under other consumer protection legislation, notably the Trade Descriptions Act 1968. Manufacturers and growers* should also welcome the introduction of due diligence and the closing of the loophole the warranty creates on imports.

8. However, as MISC 138 noted, it would be viewed with alarm by retailers. They would argue that they would be uncertain how much checking they had to do to establish due diligence and that they would be at the mercy of developing case law. Instead of relying on quality control undertaken by others earlier in the chain, retailers and wholesalers would feel obliged to introduce checking and sampling systems of their own. This could be very costly given the complexity of food law and the nature of some of the testing required - for example that for pesticide residues. They would argue that this would be particularly hard on small businesses.

9. Retailer concern about the amount of checking required to establish due diligence may be overstated. Case law drawn from the Trade Descriptions Act (notably Garrett -v- Boots and Riley -v- Webb) indicates that large retailers would need a proper and statistically significant system of quality control of the kind they generally operate anyway. But smaller businesses, about which MISC 138 were especially concerned, would not have to introduce much, if any, extra checking and none if this could be shown to be uneconomic. However, it is true that until a handful of cases had been taken before the Courts, the concept of what constituted due diligence in the food area would not be firmly established. In these circumstances the retailers could be expected to bring substantial pressure to bear on the Government backbenches during the passage of the Bill if Option 1 were adopted. A last-minute concession to defuse this would be widely viewed as anti-consumer. This could be very damaging, and an alternative solution needs to be included in the Bill.

Option 2

10. To introduce both a due diligence defence and a deemed due diligence arrangement similar to that we have explored with interested organisations, but adapted to reflect the further representations that have been made. This would apply to retailers and others in a similar position such as caterers and wholesalers who were selling food they had not made or imported. Importers would be excluded, as would manufacturers except when acting like retailers, and both would have to satisfy the normal due diligence defence to escape prosecution for offences under the Act. The precise wording would be a matter for Parliamentary Counsel, but the special defence might include the following features:

a) in respect of food sold under his own name or mark,
   i) that the defendant had carried out reasonable checks on the food or that it was reasonable in all the circumstances for him to rely on checks carried out by his supplier; and

   ii) that he had no reason to believe that the food could not lawfully be sold; or

b) in any other case, -
   i) that the alleged offence was not his fault or that of one of his employees; and
   ii) that he neither knew nor could reasonably have been expected to know that the food could not lawfully be sold.

11. The retailers could probably live with a solution on these lines, although they might protest at the more stringent controls on own brand foods. In general, it would give them a greater degree of certainty and they would be less reliant on the development of case law on due diligence generally. They should

welcome the proposal to cover all food, thus bringing in loose goods (a point that concerned MISC 138) and the delicatessen counter provided that the fault can be shown to be that of the supplier. Retailers would, of course, remain liable for contamination introduced in the shop, eg from a dirty knife.

12. Enforcement and consumer interests would be opposed to this option and might try to argue that offenders would be let off too easily. This could be rebutted by

a) pointing out that an importer would have to satisfy a full due diligence defence, like a manufacturer, to escape liability for a fault and this would encourage importers to check out their supplies more carefully, eg for aflatoxin levels in figs from Turkey.

b) pointing out that a greater degree of care would be needed to satisfy deemed due diligence in the case of sellers of own-brand food; and

c) by referring to the retailers' fears about the significant extra checking that due diligence alone might involve and to the risk of consequential cost and price increases and reductions in the range of goods supplied.

Option 3

13. To introduce a due diligence defence and retain a statutory warranty revised to remove its worst features. The warranty is designed to protect retailers and others selling on food in the same state. It may be no more than a name on a label or a description on an invoice and provides a complete defence if the retailer can say that he had no reason to believe that the food was anything other than lawfully sold. The position on imported food is more onerous, but in practice allows the retailer to

escape liability. A revised warranty would exclude importers in order to plug the imput loophole. The new wording would be a matter for Parliamentary Counsel, but a defendant might be required to show:

* a) that he purchased it as being food which could lawfully be sold and with a written warranty to that effect (although a name or description entered in an invoice would no longer be deemed to be a warranty);

* b) that he had no reason to believe at the time of the alleged offence that it was otherwise; and

c) that the alleged offence was not his fault nor due to the act of one of his employees;

* These provisions are taken from the existing statutory warranty.

14. This solution would be welcomed by the retailers. However, it would be heavily criticised by consumer interests and enforcement officers who want the warranty defence withdrawn altogether because warranties protect the trade rather than the consumer and do not feature in either the Trade Descriptions Act 1968 or the Consumer Protection Act 1987. Even in its strengthened form this defence would offer insufficient incentive to retailers to provide safe food and take responsibility for it, particularly by comparison with Option 2. This option would also be misinterpreted as giving way to industry pressure which could be damaging to the Government's credibility on the Bill generally.

EUROPEAN COMMUNITY IMPLICATIONS

15. Legal advice is that the sort of arrangements proposed in this paper would be permissible under EC law (cf the Bouchara case - ECJ No. 25/88). One cannot make useful comparisons about the impact of this new system of defences with that in other Member States because the various legal systems are different and the Treaty of Rome does not attempt to harmonise them. Nor are there any forthcoming EC proposals either in the food area or more generally which would conflict with the proposals on defences. Any such proposals by the EC would in any event have much wider ramifications.

CONCLUSION

16. Option 2 appears to represent the most balanced and realistic solution. It also stands a reasonable chance of securing the acquiescence of industry interests and their sponsored MPS, although there may be some reluctance to admit it. Enforcement Officers and consumer interests will complain. However, this option also goes a significant way to meeting their main concerns, for example, about the import loophole and it should be noted that there are other aspects of the Bill which they could be expected to welcome.

IMPLICATIONS FOR THE WHITE PAPER

17. It would not seem prudent to indicate much more than the Government's broad approach in the White Paper, perhaps on the following lines:

> "6.10 Changes in the defences which can be used by defendants in the Courts. In developing our proposals, we have been aware of the importance of striking the right

balance between the interests of consumers, manufacturers, retailers and importers. Accordingly we intend to introduce a due diligence defence for the main offences in the new Legislation. We shall withdraw the statutory warranty defence which can allow retailers to escape too easily from responsibility for the food they sell to consumers. Instead of such a defence, the new legislation will specify certain circumstances where retailers and others buying in food would be deemed to have shown due diligence. This will help to reduce uncertainty about what due diligence entails. Special defences will continue to be included, where appropriate, in regulations. This approach will be fairer than the present arrangements, being designed to ensure that liability for any failure rests where it should and to emphasise to all in the food chain their responsibilities for the safety of the food they sell."

RECOMMENDATIONS

18. It is recommended that Ministers should agree:

i) to the introduction of a due diligence defence with a deemed due diligence arrangement of the sort discussed in paragraph 10 (Option 2); and

ii) to the wording in paragraph 16 for Chapter 6 of the White Paper.

MINISTRY OF AGRICULTURE FISHERIES AND FOOD
DEPARTMENT OF HEALTH
6 July 1989

APPENDIX I

DEFENCES IN THE FOOD ACTS AND OTHER CONSUMER PROTECTION LEGISLATION

1. The Food Acts

The Food Acts contain a number of offences notably in relation to:

a) the preparation and sale of injurious foods (Section 1);

b) the sale of food not of the "nature, substance or quality" demanded by the purchaser (Section 2);

c) the sale etc. of unfit food (Section 8).

When these Sections are revised in the Food Bill the offences will all apply throughout the food production and distribution process from the factory to the final point of retail sale.

The Food Acts also provide a number of statutory defences which qualify the absolute nature of the offences to some extent. The most important of these are (references are to the 1984 Act):

i) Section 100. This provides a defence for a person who can prove that the contravention was due to the act or default of some other person and that he himself had used all due diligence to secure that the provisions in question were complied with. Moreover, where the enforcement authority is content this defence can be satisfied, they can "by-pass" the original defendant and proceed directly against the other person instead.

ii) Section 102 which makes statutory provision for a written warranty defence which may be pleaded when the defendant (a seller other than the manufacturer of the product) has sold the food on in the same state in which he purchased it provided that he had

no reason to believe at the time that it was not lawful. The warranty and the name and address of the person who gave it have to be supplied before any Court hearing. A by pass prosecution can then be taken under the terms of Section 100(3). There is a higher burden of proof in the case of a warranty given by a person resident outside the UK: the defendant has to prove that he has taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in it. Under Section 102(5) a warranty may be no more than "a name or description entered in an invoice".

The Acts also provide various regulation making powers which will be extended in the Bill, eg to permit the prosecution of farmers responsible for excess veterinary residues in animals. Such regulations will either apply the defences in the Act , such as the due diligence defence, or provide other defences appropriate to the particular problem at issue.

There are also a number of minor provisions on defences, some of which are due to be revised, which are not dealt with in this paper.

2. Trade Descriptions Act 1968

No warranty defence.

Where the commission of an offence is due to the act or default of "some other person, that other person shall be guilty of the offence ... whether or not proceedings are

taken against the first-mentioned person", (Section 23). This is the "by-pass" provision which allows the enforcement authority to take action directly against the "real offender".

There is a "two limbed" due diligence defence at Section 24(1);

i) the defendant must prove "the commission of the offence was due to a mistake or to reliance on information supplied to him or the act or default of another person, and accident or some other cause beyond his control; and

ii) "that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control" (Section 24(1)).

If defendant wishes to allege third party involvement he must give notice to prosecutor at least 7 days before hearing. (Section 24(2)).

There is a "lack of knowledge" defence at Section 24(3). A supplier can plead that "he did not know and could not with reasonable diligence have ascertained, that the goods did not conform to the description".

3. Weights and Measures Act 1985 (a consolidation Act)

Section 17 relates to false or unjust weighing equipment or

fraud. It provides a defence for an employee to show:

a) "that he used the equipment only in the course of his employment by some other person; and

b) that he neither knew, nor had any reason to suspect, the equipment was false or unjust".

Section 32 is equivalent to the "by-pass" provisions in the Trade Descriptions Act.

Section 33 is a warranty defence similar to that in the Food Act. It includes a provision that if the warranty was given by a person resident outside GB, the person charged (ie the importer) should have taken reasonable steps to check the accuracy of the statement contained in the warranty. (Sub-section (1)(d)).

Section 34(1) is a due diligence defence in a "one-limbed" form, ie "it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence".

If the person charged wishes to cite "another person", he must give 7 days notice to the prosecutor and give "information identifying or assisting in the identification of the other person". (Section 34(2)).

4. <u>The Consumer Protection Act 1987</u>

Section 10(4)(b) concerns the general safety requirements of consumer goods and provides a defence relating to the selling (and supply) of goods "in the course of carrying on a retail business". It provides a defence for a retailer

that "he neither knew nor had reasonable grounds for believing that the goods failed to comply with the general safety requirements".

For the purposes of the above, "retail business" is defined in Section 10(5). Goods are deemed to be "supplied in the course of carrying on a retail business" if it involves ... "making a supply of consumer goods available to persons who generally acquire them for private use or consumption". It excludes the supply of such "manufactured or imported goods which have not previously been supplied in the UK".

"Consumer goods" excludes growing crops, waters, food, feedingstuffs or fertilizers.

Section 39(1) provides a due diligence defence in the "one limbed" form, ie "it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence".

If the defence involves an allegation against another person, 7 days notice must be given (Sub-section (2)). This notice "shall give such information identifying or assisting in the identification of the person who committed the Act".

Section 39(4) does not allow the defendant to claim he was relying on information given by another person unless he can show that "it was reasonable in all the circumstances for him to have relied on the information" having regard to the steps he took and might reasonable have taken to verify the information and whether he had any reason to disbelieve it.

There is a "by-pass" provision at Section 40.

At Section 4 in Part I (dealing with product liability) it is a defence for a person to show that "the state of

scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect".

5. Food and Environment Protection Act 1985

There is a "one limbed" due diligence defence at Section 22(1), ie "it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

At sub-section (2) a person is deemed to have established the defence if he "acted under instructions given to him by his employer" or "acted in reliance of information supplied by another person without any reason to suppose that the information was false or misleading". In either case he must have taken "all such steps as were reasonably open to him to ensure that no offence would be committed".

If the defence involves an allegation against another person, 7 days notice must be given (sub-section (3)). This notice shall give "such information identifying or assisting in the identification of that other person as was then in his possession".

6. Regulations

Regulations made under primary legislation such as that described above may include additional or adjusted defence provisions. For example the Meat Products and Spreadable Fish Products Regulations 1984 and the Food Labelling Regulations 1984, both made under the Food Act 1984, contain additional "all reasonable steps" defences in respect of some offences.

On the other hand the defence in Section 10(4)(b) of the Consumer Protection Act 1987 applies only to the general safety requirement in the Act. It is not applied in regulations made under the Act.



NBPM
AT 6/7 CCPM

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

Mr Andrew Turnbull
Principal Private Secretary to
the Prime Minister
10 Downing Street
London SW1

6 July 1989

Dear Andrew

— flap

FOOD SAFETY: PROTECTING THE CONSUMER

Thank you for your letter dated 3 July which reached me Tuesday lunchtime.

Your drafting suggestions (i), (iii) and (iv) have been incorporated in the text which has now gone to print. Your comment (iii) caused us rather more difficulty, since there is little more that can be said in Chapter 7 without becoming repetitious, platitudinous or both, particularly since Chapter 1 now provides a summary of the White Paper. Nevertheless we have expanded Chapter 7 a little and hope that the new version, although still brief, is rather less "abrupt". Copies of the amended paragraphs, with the extent of the alteration shown underlined, are attached for your information.

I am copying this letter to the Private Secretaries to members of MISC 138, Brian Hawtin (Ministry of Defence), Colin Walters (Home Office), Michael Saunders (Law Officers' Department), Martin Le Jeune (Office of the Minister for the Civil Service) and to Sir Robin Butler and Sir Donald Acheson.

Yours sincerely,
Stephen Lambert.

pp SHIRLEY STAGG (MRS)
Principal Private Secretary

1.17 In response to the problem of listeria monocytogenes, as soon as an adequate scientific basis was established, the Government gave guidance to consumers on storage and cooking methods and on types of food which people particularly at risk should avoid. The United Kingdom was the first country in the world in which such advice was given. The Government also intend to amend the Food Hygiene Regulations to control commercial storage temperatures.

2.3 Food safety is an overriding consideration in the administration of the food chain and an essential aspect in safeguarding the nation's health. Within central government, therefore, responsibility for food safety inevitably lies with both the Ministry of Agriculture, Fisheries and Food and the Department of Health. Their responsibilities are complementary and together assure the protection of consumers.

2.4 The Departments maintain close, continuous, contact with one another at all levels to ensure that action is fully coordinated. Proposals and consultations about food legislation are initiated and agreed jointly by the Secretary of State for Health and the Minister of Agriculture, Fisheries and Food. The need for coordination could not be removed by grouping the responsibilities differently.

3.51 Listeria monocytogenes, the effects of which on man were first described in 1929, is an organism widespread in the environment. An unusual feature of this bacteria is its ability to multiply at normal refrigeration temperatures. It can therefore be a particular problem in contaminated foods eaten without further cooking or which are not heated thoroughly before consumption. As soon as an adequate scientific basis was established the Government gave guidance to consumers on safe storage and cooking methods in the home, and on certain types of food which

people particularly at risk, such as pregnant women and the elderly, should avoid. This country was the first in which such advice was given to consumers. In addition, the Government intend to amend the Food Hygiene Regulations to control commercial storage temperatures. For example, limits will be set on the temperatures in freezer cabinets in shops and supermarkets.

6.10 **Changes in the defences which can be used by defendants in the Courts.** In developing our proposals we have been aware of the importance of striking the right balance between the interests of consumers, manufacturers, retailers and importers. Accordingly, we intend to introduce a due diligence defence for the main offences in the new legislation. We shall withdraw the statutory warranty defence which can allow retailers to escape too easily from responsibility for the food they sell to consumers. Instead of such a defence, the new legislation will specify certain circumstances where retailers and others buying in food would be deemed to have shown due diligence. This will help to reduce uncertainty about what due diligence entails. Special defences will continue to be included, where appropriate, in regulations. This approach will be fairer than the present arrangements, being designed to ensure that liability for any failure rests where it should, and to emphasise to all in the food chain their responsibilities for the safety of the food they sell.

CHAPTER 7 - CONCLUSION

A Comprehensive Strategy

7.1 Consumers are entitled to expect that the food which they buy should be safe, wholesome and properly described. Tough and wide ranging laws, based on extensive research and the best scientific advice, are designed to safeguard consumers. New problems have arisen from time to time, and the Government have acted decisively to meet each new challenge in order to provide consumers with maximum protection.

7.2 Developments in food production methods offer many benefits - new products, more convenience and important economic advantages. The Government have consulted widely and considered carefully how present legislation should now be developed and reinforced to keep pace with change.

7.3 The proposals for new legislation which are outlined in this White Paper reflect the Government's continuing commitment to the highest possible standards of food safety and consumer protection, now and in the future.



8

FOOD: Safety pt 2

NDPM
AT 6/7

CC Pitt

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH
01-270 8709/8667

From the Minister's Private Office

Andrew Turnbull Esq
Principal Private Secretary to the
Prime Minister
10 Downing Street
London SW1

6 July 1989

Dear Andrew,

FOOD SAFETY WHITE PAPER: LEAFLET

Thank you for your letter of 4 July 1989 to Shirley Stagg on the above. We spoke about the advisability of proceeding with this leaflet earlier in the week, and as you know, my Minister shared the Prime Minister's doubts. In the absence of strong views from others, we are therefore abandoning it.

top end

I am copying this letter to the Private Secretaries to members of MISC 138, to Trevor Woolley and Sir Donald Acheson's Office.

Yours sincerely,

Stephen Lambert

STEPHEN LAMBERT
Private Secretary

FOOD : Safety

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

Prime Minister
To note

AT 5/7

From the Minister

The Rt Hon Kenneth Clarke QC MP
Secretary of State for Health
Richmond House
79 Whitehall
London
SW1A 2NS

5 July 1989

Dear Secretary of State.

RESTRICTED

FOOD SAFETY: PROTECTING THE CONSUMER

You will have seen Nicholas Lyell's minute of 3 July expressing concern about the reference to the removal of Crown Immunity from the Food Acts in paragraph 6.11 of the draft White Paper. I am writing to you about this urgently since you take the lead on this issue.

I have noted Nicholas' reservations. However, this is a politically significant issue and one on which we have been pressed to take action during the consultation exercise. In order not to prejudice the issue now I accept reluctantly that we should delete the reference to Crown Immunity in the White Paper which has to go to the printers this week. However, Parliamentary Counsel has already started work on the Bill and we are trying to finalise outstanding parts of our Instructions. So I think we must ask for the Law Officers to look at this proposal as a matter of urgency, in consultation as necessary with your Lawyers.

Copies of this letter go to members of MISC 138, the Secretary of State for Defence, the Home Secretary, the Minister for the Civil Service, the Attorney General, the Solicitor General, the Secretary to the Cabinet and the Chief Medical Officer.

Yours sincerely
Margaret MacGregor

JOHN MacGREGOR
(approved by the Minister
and signed in his absence)

FOOD: safety pt 2.



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File

10 DOWNING STREET

From the Principal Private Secretary

4 July 1989

Dear Shirley

FOOD SAFETY: LEAFLET

Having considered the text of the proposed leaflet, the Prime Minister doubts whether it is worthwhile proceeding with it. Most of the people who are interested in the subject will be content with the summary which is now provided by Chapter 1 of the White Paper.

I am copying this letter to the Private Secretaries to members of MISC 128 and to Sir Robin Butler and Sir Donald Acheson.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

Mrs. Shirley Stagg
Ministry of Agriculture, Fisheries and Food

CONFIDENTIAL

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon John MacGregor MP
Minister of Agriculture
Fisheries and Food
Whitehall Place
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Department of Trade and Industry

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Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 4 July 1989

Dear John.

FOOD SAFETY PROTECTING THE CONSUMER

Thank you for copying to me your minute of 29 June to the Prime Minister enclosing the revised draft of the White Paper on Food Safety.

I understand my officials discussed with yours the references to product innovation in the earlier draft, which seemed to strike a rather negative note. I am glad that the relevant paragraph has been amended and am therefore content for the paper to be published.

I am copying this letter to the Prime Minister, other members of MISC 138, George Younger, Douglas Hurd.

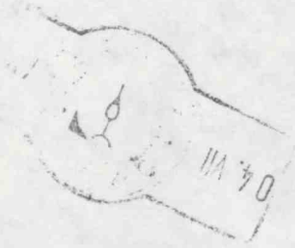
Yours ever.
Tony

TONY NEWTON

RC4AAQ

Recycled Paper

food: Salem PTZ



NDPM
AF 517

copy

SOLICITOR GENERAL

ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

01-936 6269

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MINISTER OF AGRICULTURE

FOOD SAFETY: PROTECTING THE CONSUMER

Thank you for sending Patrick Mayhew a copy of your minute of 29 June 1989 to the Prime Minister. Patrick was abroad last week and I looked at the minute and for the first time at the draft White Paper.

I am concerned at the proposal in paragraph 6.11 of the draft White Paper to provide for the removal of immunity from the Food Acts (which I take to mean immunity from prosecution under the Food Acts) from individual Crown bodies by Order in Council.

There are constitutional objections to the removal of Crown immunity from prosecution. The principal difficulty lies in squaring the prosecution of a Government Department with the constitutional doctrine of the indivisibility of the Crown. Successive Law Officers have taken the view that each proposal for such a departure requires special and careful consideration. There is a substantial risk that removal of immunity in any one area would increase pressure for its wholesale removal.

In view of the timetable outlined in paragraph 3 of your minute, I wonder if the best course would be for you to delete paragraph 6.11 from the draft Paper and for us to discuss the matter further in the context of the preparation of instructions for Parliamentary Counsel for the proposed Bill.

I am copying this minute to recipients of yours.

Nicholas Lyell.

3 July 1989

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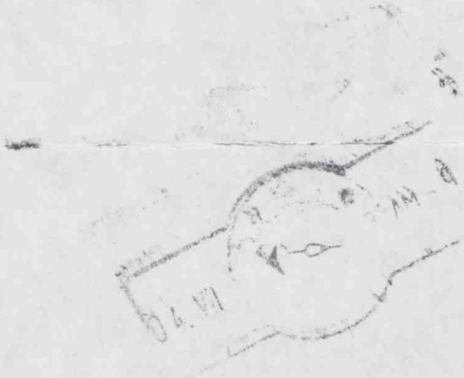
FOOD: Satean PT2



PRIME MINISTER

FOOD SAFETY: LEAFLET

I attach a copy of the text of the leaflet which Mr. MacGregor has approved. It is envisaged that it would be made available to Libraries, Citizens Advice Bureaux, Doctors' surgeries etc. but not given a mass circulation.

Although Mr. MacGregor has approved the text he still remains lukewarm about the need for a leaflet at all. In particular, he is doubtful that a leaflet can do justice to the complexity of the subject. If you too are unenthusiastic he will readily drop the idea.

Do you share his doubts about the merits of a leaflet?

Yes

AT

ANDREW TURNBULL
3 July 1989

KK1ASH

FOOD SAFETY - PROTECTING THE CONSUMER

THE FOOD WE EAT

Our food has never been better. We have more variety and higher quality. Along with exciting new manufactured foods, there is a vast choice of fresh produce right through the year.

The Government's food strategy has many important aims. Consumer safety comes top.

This leaflet outlines the present food safety arrangement and the Government's plans for changes in the law, subject to Parliament's approval.

SAFETY THROUGHOUT THE FOOD PRODUCTION AND DISTRIBUTION CHAIN

Safeguards are provided all the way from the farm to the table. There are stringent checks and controls over what food contains, how it is produced, packed and handled, and how it is labelled.

United Kingdom food legislation is already tough and wide ranging, but further changes are being proposed by the Government to ensure that it keeps pace with changing food technology and other developments.

SHARED RESPONSIBILITY

The Government is responsible, along with everyone in the food chain, for making sure that our food is as safe as it can possibly be, so the Government

- lays down strict hygiene standards;
- controls the use of additives;
- strictly limits residues and contaminants;
- aims to minimise the risk from germs;

- assesses new foods and processes to make sure these are safe

The Government's food safety strategy rests on:

- research, to increase our understanding and to keep our knowledge right up to date;
- the best available expert advice;
- laws to protect consumers against safety hazards, fraud and misleading claims, with penalties to back them up;
- extensive monitoring and testing of food;
- enforcement of the law at every level.

HOW DOES IT WORK?

The best advice

The Government gets independent advice from a large number of leading scientists, doctors and academics. Many specialist, expert committees provide objective advice on a wide range of food safety issues. Their members include scientists, medical experts, veterinarians, nutritionists, geneticists and numerous other specialists. Further expert advice is obtained whenever it is needed.

Rapid action

The Government acts promptly on the advice it receives. Recent examples include:

Botulism: In the recent outbreak in the North West of England the Government's central coordination system - alerted whenever local authorities investigate cases of foodborne illness - triggered rapid action to protect consumers.

BSE in cattle: Bovine Spongiform Encephalopathy (BSE) is a newly discovered disease in cattle. An expert working party chaired by Sir Richard Southwood (Professor of Zoology at Oxford) considered the risk to humans remote. It made a number of recommendations, all of which the Government acted on promptly.

- All suspect cattle are destroyed, to take them out of the food chain.

- Regulations will ensure some types of offal from cattle are banned as human food.

- The use of milk from suspect cattle is prohibited and the milk destroyed.

Listeria: The bacterium Listeria Monocytogenes occurs everywhere. Because it can multiply at cool temperatures, it is a particular hazard in foods that are not heated thoroughly before consumption. The Government has -

- advised consumers on safe storage and cooking methods and on which foods people at special risk - eg pregnant women, the elderly - should avoid.

- introduced changes to the rules to control commercial storage temperatures.

Salmonella: The Government has tackled the new international problem of salmonella in eggs with some of the most comprehensive controls in the world. Among these 19 measures are:

- Compulsory bacteriological monitoring of poultry.

- A prohibition on the sale of eggs from infected flocks for human consumption.

- Infected flocks are destroyed, premises thoroughly cleansed and disinfected.

Guidelines and advice: The Government have published new guidelines on cook-chill and freeze catering for commercial caterers and also given advice to consumers on buying, storing, preparing and cooking food.

LOOKING TO THE FUTURE

Rapid technological change is improving our food, but putting new demands on safety controls.

So the Government is acting to bring in new legislation subject to Parliament's approval to supplement and strengthen the present food safety laws.

HOW THE LAW MAY CHANGE

The Government's proposals include new safeguards in seven important areas:

1. Tighter controls on unfit food so that suspect food can be detained while investigations take place.

2. New enforcement measures to strengthen the existing system, so that action can be taken against whole batches of food, not just the items tested.

3. Provision for commercial premises used for food to be registered, so local authorities can identify them more easily. Local Authorities will be able to require deficiencies to be put right, and have premises closed down in bad cases.

4. Extended powers to adapt the law to technological developments like food irradiation.

5. Enhanced powers to control contaminants and residues, eg veterinary drug residues in meat, or contaminants due to bad practices on farms or in manufacture.

6. Powers to make emergency control orders to deal with potentially serious problems, like accidental contamination.

7. Provision for better training of people who handle food commercially, by building on good existing practice and increasing the numbers of people who are trained.

SAFE AS WELL AS BETTER ...

Innovation and development in food production methods offer many benefits - new products, more convenience and important economic advantages with a comprehensive approach to food policy.

A The Government keeps food safety top of the priority list. That is why the Government has reviewed the food laws, within a clear overall strategy, to ensure they meet not only today's, but also tomorrow's needs.

Alternative to A.

In its policies for the food sector, the Government gives top priority to food safety. The new legislation will be designed to ensure that our food laws maintain the highest standards of food safety for consumers now and into the future.

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

RESTRICTED

The Rt Hon John Major MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
London
SW1P 3AG

3 July 1989

Dear John,

FOOD SAFETY: PROTECTING THE CONSUMER

Thank you for your letter of 23 June.

I appreciate your reluctance to agree to any additional expenditure on food safety until we have looked at the case in detail. Equally I cannot accept that the cost should be met from within existing public expenditure and running cost provisions without knowing what the scale of the problem is. This does, of course, involve colleagues in other Departments who have responsibilities in this area. The whole subject now has a dangerously high public profile and we must be able to counter the criticism that adequate resources are not being devoted to food safety thus endangering public health.

In any event the problem goes wider than the proposals for new legislation set out in the White Paper. There may be an under-resourcing problem already and some of the changes in the Bill are in fact needed to implement obligations under EC Directives.

We need to look at all of this thoroughly including ways of improving value for money, as soon as useful data is available from local authority associations. Unfortunately they have been rather slow in responding on the subject. But, I would hope that we would consider this during the summer and well before the Bill is introduced into Parliament. I understand that officials are in touch on this.

/In the meantime ...

In the meantime I propose that when we launch the document we should say that we are looking at the resources devoted to food safety enforcement to ensure that they are adequate and reflect good value for money. Our first step is to establish what local authorities are doing at present and how this varies across the country. I expect there will be a lot of questions on this at the launch.

+ I am copying this letter to members of MISC 138, Douglas Hurd, George Younger and Sir Robin Butler.

Yours ever,

JK

JOHN MacGREGOR

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Like EAA

10 DOWNING STREET

LONDON SW1A 2AA

3 July 1989

From the Principal Private Secretary

Dear Shirley,

FOOD SAFETY: PROTECTING THE CONSUMER

The Prime Minister was broadly content with the latest draft of the White Paper and, subject to the views of other members of MISC 138, is content that the text should be sent to the printers this week.

A few drafting suggestions remain:

i. The reference to listeria in paragraph 1.17 and in paragraph 3.51 should be strengthened to provide a robust reply to the Select Committee Report, eg 'As soon as an adequate scientific basis was established, the Government gave guidance to ..., the first country in the world to do so.'

ii. The final chapter is still rather abrupt. A few more eloquent sentences are needed to round it off.

iii. The reference to permissible defences in paragraph 6.10 is still a bit obscure. In line 8, one could add '... warranty defence which allows a retailer to claim ... Instead of such a defence, the new legislation ...'.

iv. Paragraphs 2.3 and 2.4 merely state that responsibility for food safety is shared between MAFF and DoH. They do not, therefore, provide a robust defence against those proposing a major re-organisation of responsibilities. Without referring explicitly to the Food Standards Agency advocated in the Labour Party Policy Review document, the present position could be more robustly defended. For example, it could be noted that food safety inevitably crosses the borders of MAFF and DoH and that co-ordination is essential. The need for such co-ordination would not be removed by re-grouping the responsibilities in a different way.

The Prime Minister has observed that one of the most likely attacks on the White Paper will be to argue that there

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is no extra money to finance more Environmental Health Officers who will be needed to police the new controls. The briefing for the launch of the document will need to cover this point.

The Prime Minister is still considering the leaflet. In the meantime, the views of the Cabinet Office, on propriety, and of the Treasury, on value for money, should be sought.

I am copying this letter to the Private Secretaries to members of MISC 138, Brian Hawtin (Ministry of Defence), Colin Walters (Home Office), Michael Saunders (Law Officers' Department) Martin le Jeune (Office of the Minister for the Civil Service) and to Sir Robin Butler and Sir Donald Acheson.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

Mrs Shirley Stagg
Ministry of Agriculture, Fisheries and Food

File

10 DOWNING STREET

THE PRIME MINISTER

Personal Minute
No. M4/89

SECRETARY OF STATE FOR HEALTH

BOTULISM

I was very concerned to learn of the recent outbreak of botulism, which previously has been very rare in this country. I was especially saddened to learn that one of the victims has now died.

Nevertheless, it is clear from the account provided by Sir Donald Acheson of the incident that work of quite exceptional quality in a number of different organisations prevented a very much worse outbreak. The speed with which the symptoms were diagnosed and the source of the outbreak traced was remarkable, and this made possible the very prompt warning to the public.

Those concerned in the Health Service, the Public Health Laboratory Service, Environmental Health Departments, the Department of Health, and the food industry should be commended not only for the high quality of their work but also for the effective way in which they worked together.

I Margaret Thatcher

3 July 1989

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10 DOWNING STREET

THE PRIME MINISTER

SUBJECT cc Master
OPS

Personal Minute
No. M4/89

SECRETARY OF STATE FOR HEALTH

BOTULISM

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DTS

PART 2 ends:-

AT to PM. 30.6.89

PART 3 begins:-

PM to SS/HEATH 3.7.89



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