

INITIAL FSA RESPONSE TO THE *E.COLI* PUBLIC INQUIRY REPORT AND RECOMMENDATIONS**EXECUTIVE SUMMARY**

1. The paper sets out the major areas where action has already been taken by the FSA to address the issues raised in the report and explains that we will establish a managed programme to develop a road map and timelines for addressing the Inquiry's recommendations in a co-ordinated way across the UK.
2. This initial response will be followed by regular updates from the Executive detailing the planned outcomes and their delivery by the FSA.
3. This paper records the recommendations of the report of the *E.coli* public Inquiry, established to investigate the outbreak of *E.coli* O157 in Wales in 2005. The report was commissioned by the Welsh Assembly Government with whom responsibility for a formal response rests.
4. The Board is asked to:
 - **note** the actions taken since 2005 and our plans to address the recommendations of the Inquiry through a managed programme of work;
 - **note** that information on the work programme will be given in the Chief Executive's regular reports to the Board; and
 - **comment** on the content of the Inquiry Report and on any aspect of the work to help shape future direction.

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INITIAL FSA RESPONSE TO THE *E.COLI* PUBLIC INQUIRY REPORT AND RECOMMENDATIONS

Issue

1. Action being taken in response to the report of the *E.coli* public Inquiry¹, established to investigate the outbreak of *E.coli* O157 in Wales in 2005.

Strategic Aims

2. To improve public health by making food safer through reducing food borne disease.

Background/Discussion

Background to the Public Inquiry

3. The 2005 outbreak – the largest ever incidence of *E.coli* O157 in Wales and the second largest in the UK – affected more than 150 people, most of whom were children in 44 schools across four local authority areas. Thirty-one people were admitted to hospital and a five-year-old boy died. Mr W J Tudor, the butcher at the centre of the outbreak, was sentenced to a 12 month custodial sentence and prohibited from managing a food business.
4. A Public Inquiry was set up, chaired by Professor Hugh Pennington. The Inquiry's terms of reference were: "To inquire into the circumstances that led to the Outbreak of *E.coli* O157 infection in South Wales in September 2005, and into the handling of the outbreak; and to consider the implications for the future and make recommendations accordingly".
5. Professor Pennington had previously chaired an Expert Group to examine the circumstances that led to the 1996 *E.coli* outbreak in Scotland, to advise on the implications for food safety and to identify the lessons to be learnt. In that outbreak there were 17 deaths either caused by *E.coli* O157 or in which infection was a significant contributory factor, and 279 confirmed cases².
6. *E.coli* O157 is a highly infectious organism. Both outbreaks were caused by food that had been contaminated. *E.coli* O157 is one of the five key pathogens targeted by the FSA under its Foodborne Disease Strategy. The FSA and other bodies are actively involved in research that may lead to new controls although, as the Report notes³, the delivery of meat uncontaminated by *E.coli* O157 cannot

¹ The full Inquiry Report is available at <http://wales.gov.uk/ecolidocs/3008707/reporten.pdf>

² Ref. Paragraph 4.34 of the *E.coli* Inquiry Report

³ Ref Paragraph 17.6 of the *E.coli* Inquiry Report

be guaranteed. **Annex 1** includes information on reported cases of UK acquired *E.coli* O157 from 2000, when the FSA was created, and research activity.

Inquiry report

7. The report was commissioned by the Welsh Assembly Government who will respond formally to the report in due course. The 24 recommendations are listed at **Annex 2**. Three recommendations are directly addressed to the FSA. We have a clear role in addressing many more of them and intend to do so.
8. This paper describes actions taken since the 1996 and 2005 outbreaks and how the FSA is responding to the Public Inquiry's recommendations.
9. The FSA and MHS have already undertaken a lot of work which has had an impact on the reduction of contamination risks (see **Annex 3**), in particular:
 - the revision of the Food Law Code of Practice;
 - training for enforcement officers, notably in auditing skills and HACCP-based systems;
 - the development of practical approaches to help operators of small catering and food retail businesses to understand HACCP-based systems and how to implement them i.e. "Safer Food Better Business" (SFBB) in England and Wales; "Cooksafe" for caterers and "RetailSafe" for high risk retailers in Scotland and "Safe Catering" in Northern Ireland.
10. However, we are not complacent and will review our actions in light of the Inquiry report. We will particularly address those areas where the report says we should have done better in 2005.

Key findings

11. The key findings of the Inquiry for the FSA/MHS were that:
 - the risk of contaminated raw meat leaving the abattoir implicated in the outbreak was higher than it should have been;
 - the policy decision not to use the full enforcement hierarchy and apply "light touch" enforcement from the outset in relation to HACCP was wrong; and
 - the FSA's audit of Local Authority systems and procedures should have been more effective in assessing the conduct of inspections, e.g. by including "reality checks" in food businesses.

12. A significant factor is the report's finding that the systems of control in place in 2005 should have been such as to minimise the risks associated with the practices which led to the outbreak. This points to the need for further and continuous improvement, both for food business operators in complying with the legislation and for enforcement officers in taking robust and effective enforcement action.

Programme managed delivery of outcomes

13. A programme of work will be developed and progressed to deliver the outcomes. However, we see six main themes emerging on which outcomes will be set and measured:

- uptake of HACCP based procedures by FBOs;
- knowledge, training and skills of enforcement officials;
- consistent and appropriate risk based enforcement;
- audit and monitoring of enforcement;
- evaluation to ensure programme objectives of securing public health protection are met; and
- improving our understanding of the science.

14. The work will be the responsibility of a Programme Board, led by the FSA Chief Scientist and Head of the Food Safety Group, and including the Director of FSA Wales. Membership will reflect the broad impact of this work across the FSA and senior management commitment to its successful delivery.

15. The Programme Board's role will include ownership of the risk management and issue resolution functions for the programme and a role in determining resource allocation. It will also be responsible for determining the governance structures below this level, including the way in which stakeholders are involved.

16. The Programme Board will define the themes and priorities, actions and outcomes, that fall to the FSA, reviewing progress that has already been made towards addressing the recommendations and determining what further action and new initiatives are necessary. Information on the work programme will be given in the Chief Executive's regular reports to the Board.

Impact

17. Addressing the recommendations of the report and seeking to improve the level of public health protection offered by food businesses, underpinned by effective

official controls, are fully in line with both the Agency's current and new Strategic Plans. While the circumstances of the outbreak were particular to Wales, we will take action in respect of the UK as a whole.

18. Food businesses are already responsible for the safe production of food. Where there is no immediate prospect of providing an appropriate level of consumer protection, robust and timely enforcement action needs to be taken against non-compliant businesses to protect public health. In light of Board Members' comments at the last Board meeting, **Annex 4** sets out the current legal framework. Board members will want to be assured that it provides adequate and effective powers for enforcement officers.

19. The Inquiry has recommended (Rec.21) that there should be a substantial review of hygiene enforcement in Wales after approximately five years. While it is for the Welsh authorities to determine the form that any such review should take, we will undertake a programme of action over the next five years and will include a review in our Strategic Plan for 2010-15.

Conclusion

20. Delivery of actions to address the recommendations will build on existing work aimed at improving public health protection. The planned programme approach will enable actions to be managed and improvements delivered. One measure of many envisaged is that these can be demonstrated when the response to the report is reviewed in five years' time.

Previous Board consideration

21. On 25 March the Chief Executive reported on the publication of the Inquiry report on 19 March. This paper is the first opportunity the Board has had to consider the FSA's response to the Inquiry's recommendations.

Board Action Required

22. The Board is asked to:

- **note** the actions taken since 2005 and our plans to address the recommendations of the Inquiry through a managed programme of work;
- **note** that information on the work programme will be given in the Chief Executive's regular reports to the Board; and
- **comment** on the content of the Inquiry Report and on any aspect of the work to help shape future direction.

E. COLI O157

“Certain strains of the bacterium Escherichia coli known as verocytotoxin producing E.coli (VTEC) produce a potent poison, or toxin, which causes illnesses ranging from mild diarrhoea through to very severe inflammation of the gut. The most important toxin-producing strain associated with human illness is known as E. coli O157.”
(www.hpa.org.uk)

E.coli O157 is not an exclusively a foodborne infection and can also be transmitted to humans via contaminated water; person to person spread; contact with livestock; and environmental exposure.

Food safety is the Agency’s top priority. *E.coli* O157 is one of the five key pathogens that the Food Standards Agency has been targeting since 2000 under its Foodborne Disease Strategy to reduce foodborne disease and will continue to be an important part of the Agency’s new Strategic Plan for 2010 -2015.

The table below shows the number of UK-acquired laboratory-confirmed cases of *E.coli* O157 reported in UK countries between 2000 and 2007 (data for 2008 are currently still provisional). Although these data suggest a small overall decrease in cases, these numbers are relatively small and are subject to year-to-year fluctuation. Any large outbreak will have a significant impact on annual reported figures. FSA statisticians have reviewed annual UK data between 2000 and 2007 and found no discernible upward or downward trend over that period.

Laboratory confirmed_cases of UK-acquired *E.coli* O157, by UK country, 2000-2007

	2000	2001	2002	2003	2004	2005	2006	2007
UK	1,035	916	748	777	819	1,029	1,146	976
England	749	639	493	578	598	679	833	699
Wales	41	38	32	17	19	159	50	31
Scotland	196	200	196	132	185	143	218	192
N. Ireland	49	39	27	50	17	48	45	54

Sources

England and Wales: Health Protection Agency
 Scotland: Health Protection Scotland
 Northern Ireland: Communicable Diseases Surveillance Centre NI.

Research Activity

- Research has been conducted into factors affecting shedding rates and patterns, funded by Defra and by FSAS and SEERAD in Scotland. This research, which began as part of the Wellcome-funded International Partnership Research Award in Veterinary Epidemiology (IPRAVE) project in July 1999, is ongoing.
- A comprehensive review of past and current research on VTEC in relation to public health protection was published in June 2008⁴.
- In recent years, FSA Scotland has funded a cross-section of VTEC research, which has particularly focused on analysis of frequency and shedding patterns of VTEC in cattle and sheep in Scotland. The research has established the prevalence of VTEC in animals destined for the food chain, and allowed seasonal and regional comparisons to be made between the concentration and prevalence of VTEC shed by animals. It has also assisted in the refinement of current risk assessments for infection in humans and assisted in future intervention and education strategies.
- A Scottish VTEC research meeting in March 2006 discussed current knowledge on VTEC, the Agency's plans for the future, ways to control VTEC in the environment, and MLVA (Multiple Loci VNTR Analysis) as an alternative to PFGE for typing.
- The Microbiological Safety of Food Funders Group (MSSFG) published a report on VTEC research ("UK public funded research relating to pathogenic *E.coli*") in 2004 and is expected to consider an updated report on this topic covering 2000-2008 at its next meeting in May 2009 when these recommendations will also be considered.

⁴ The summary of research can be found at <http://www.food.gov.uk/science/research/researchinfo/foodborneillness/ecoliresearch/b11prog/b11projlist/b11010/>

RECOMMENDATIONS OF THE PUBLIC INQUIRY INTO THE OUTBREAK OF *E.COLI* O157 IN SOUTH WALES IN SEPTEMBER 2005

Recommendation 1: All food businesses must ensure that their systems and procedures are capable of preventing the contamination or cross-contamination of food with *E.coli* O157.

Recommendation 2: Food businesses must get to grips with food safety management based very clearly on the seven key HACCP principles, ensuring it is a core part of the way they run their business.

Recommendation 3: Additional resources should be made available to ensure that all food businesses in Wales understand and use the HACCP approach and have in place an effective, documented, food safety management system which is embedded in working culture and practice.

Recommendation 4: The principles underpinning the Butchers' Licensing Scheme, which was introduced in response to the 1996 *E.coli* O157 outbreak, should guide food hygiene measures in businesses processing raw meat and unwrapped ready-to-eat foods.

Recommendation 5: The Food Standards Agency should review its current guidance and should be proactive in generating new guidance where needs are identified.

Recommendation 6: The Food Standards Agency should remove the confusion that exists among food business operators about what solution(s) should be used to prevent cross-contamination from surfaces and equipment.

Recommendation 7: Regulatory and enforcement bodies should keep the choice of "light touch" enforcement for individual food businesses under constant review.

Recommendation 8: The inspection of HACCP plans must be audit-based.

Recommendation 9: Training provision should be developed to ensure that all officers in Wales who check HACCP and HACCP-based plans, including those responsible for overseeing the work of those officers, have the necessary knowledge and skills.

Recommendation 10: Environmental Health Officers should obtain a copy of a business's HACCP/food safety management plan at each inspection, which should be held on the business's inspection file.

Recommendation 11: A system of logging issues, concerns or potential problems, whether by "red flagging" specific documents or by file notes, should be standard practice.

Recommendation 12: Decisions about confidence in a business's management of food safety should be evidence-based.

Recommendation 13: All inspections, primary and secondary, must be unannounced unless, exceptionally, there are specific and justifiable circumstances or reasons why a pre-arranged visit is necessary.

Recommendation 14: Discussion with employees must be a standard part of food hygiene inspection visits.

Recommendation 15: The Food Standards Agency should develop, as part of its Audit Scheme or as an adjunct to it, a means of assessing how food hygiene inspections are undertaken by local authorities, including assessment of HACCP and HACCP-based plans.

Recommendation 16: Businesses contracting for the supply of high-risk foods, such as raw and cooked meats, to public sector organisations must be subject to independent food hygiene audits.

Recommendation 17: All health and care organisations should have an effective means of contacting key personnel during and outside normal working hours and for disseminating important information.

Recommendation 18: Every local authority should have a programme of audits to ensure that all schools have adequate toilet and hand washing facilities.

Recommendation 19: All local authorities in Wales should review their policies, procedures and systems against issues raised by this report.

Recommendation 20: The National Assembly for Wales should consider my recommendations and monitor and report progress on implementation.

Recommendation 21: A substantial review of food hygiene enforcement in Wales should take place approximately five years after the publication of this report.

Recommendation 22: Good practice advice and guidance issued by public bodies should be subject to follow-up and/or more detailed evaluation.

Recommendation 23: Variable Number Tandem Repeat (VNTR) should be validated as a standard method for the typing of *E.coli* O157.

Recommendation 24: The feasibility of identifying "supershedder" cattle on farms should be explored as a potential means of reducing the likelihood of spreading *E.coli* O157 to other cattle.

ACTIONS TAKEN AFTER THE PENNINGTON INQUIRY INTO THE FATAL OUTBREAK OF *E.COLI* O157 IN CENTRAL SCOTLAND IN 1996 AND SUBSEQUENTLY

The Welsh Inquiry has refocused attention on the action taken by Government to implement the recommendations of the Pennington inquiry into the fatal outbreak of *E.coli* O157 in Central Scotland in 1996. The Pennington Group made 32 recommendations, all of which were accepted by Government across the UK and have been actioned.⁵

The Group's recommendations focused mainly on improving hygiene standards and strengthening enforcement controls in fresh meat plants and butcher shops. There were also recommendations around consumer education and awareness, improving surveillance methods, research and outbreak management.

The most significant measures put in place after the Pennington Inquiry were:

- **The MHS Clean Livestock Policy** - introduced measures whereby animals that did not achieve a certain standard of cleanliness were rejected for slaughter, reducing the possibility of contaminated meat getting into the food chain and causing problems further down the line. With the introduction of the EC food hygiene regulations on 1 January 2006, farmers must take adequate measures to ensure the cleanliness of animals going for slaughter, and slaughterhouse operators must include controls for dealing with dirty animals in their food safety management plans. The MHS guidance was carried forward together with other guidance produced by FSA into the Meat Industry Guide⁶.
- **Butchers licensing** – pending the introduction of EU legislation, national regulations were made that required the annual licensing by local authorities of retail butcher shops handling unwrapped raw meat and ready to eat food. Government contributed substantial resources to support implementation of the licensing scheme. All licensed butchers' shops in England and Wales had to have a HACCP system in place, while in Scotland, butchers were permitted to employ either a HACCP system or a strict physical separation regime for raw meats and ready to eat foods. In 2006, the EC Food Hygiene Regulations introduced a requirement for HACCP-based procedures in all food businesses that superseded the licensing requirement.
- **Food Law Codes of Practice (CoP)** - were revised to address enforcement issues identified in the Pennington Report. They were further revised in 2008.

The CoP sets out the framework for approaches to enforcement and the need for a risk based and proportionate approach to inspections. The CoP also requires the lead officer for food hygiene to ensure that all officers undertaking food hygiene inspections are suitably qualified and competent to undertake assessments of food premises. It further states that visits should be unannounced except where an FBO's presence is required e.g. audit.

⁵ 'Report on the circumstances leading to the 1996 outbreak of infection with *E.coli* O157 in Central Scotland, the implications for food safety and the lessons to be learned.' (The Scottish Office, 1997), <http://www.scotland.gov.uk/library/documents-w4/pgr-00.htm>

⁶ Page 162 of the MIG available at <http://www.food.gov.uk/multimedia/pdfs/migparttwo.pdf>

Additional FSA action

- **Audit skills for enforcement officers** - Since its inception in 2000, the FSA has provided Lead Auditor training for LA enforcement officers throughout the UK in recognition of the skills needed to audit food safety management systems. The Agency also runs HACCP assessment courses for enforcement officers to provide them with the necessary skills.
- **Other training for enforcement officers** - Courses have been made available for food enforcement officers on a variety of issues, including HACCP, meat products and vacuum packing.
- **An FSA Framework Agreement** requires all Local Authorities to have a food law enforcement policy which identifies the stepped approach to achieving compliance. The fourth amendment was issued in July 2004⁷.
- **HACCP support for smaller businesses** – innovative and practical approaches were developed to help operators of small catering and food retail businesses to understand and put in place food safety management procedures and comply with food hygiene regulations.
 - Since September 2005, a major programme of Agency support has provided direct assistance for the “Safer Food Better Business” (SFBB)⁸; approach to over 55,000 businesses in England and Wales and the Agency has met requests for over 450,000 SFBB packs. Similar schemes have operated in Scotland with “Cooksafe” for caterers and “RetailSafe” for high risk retailers⁹ and “Safe Catering” in Northern Ireland¹⁰.
 - An introduction to food hygiene 'Working with food? What you need to know before you start' and a DVD guide in 16 different languages, have been produced to help food businesses implement SFBB and train staff on SFBB.
 - An SFBB supplement has been produced to help caterers and staff working in small residential care homes prepare and cook safer food for their residents.
- **Guidance materials for slaughterhouses and cutting plants** have been made available including a food safety management diary for meat producers and information on effective cleaning¹¹.
- **An FSA Regulatory Framework** for regulatory decision making within the Agency was agreed in December 2006¹².
- **FSA audit programmes** have, since 2007, included on site reality checks in food businesses to help assess the effectiveness of inspections/checks undertaken by local authorities, including their assessment of HACCP based food safety management systems.

⁷ <http://www.food.gov.uk/enforcement/enforcework/frameagree/>

⁸ <http://www.food.gov.uk/foodindustry/regulation/hygleg/hyglegresources/sfbb/>

⁹ <http://www.food.gov.uk/foodindustry/regulation/hygleg/hyglegresources/cookretailsotland/>

¹⁰ <http://www.food.gov.uk/northernireland/safetyhygieneni/safecateringni/>

¹¹ <http://www.food.gov.uk/foodindustry/meat/haccpmeatplants/>

¹² <http://www.food.gov.uk/multimedia/pdfs/FSAregrframework.pdf>

LEGAL POWERS

1. UK enforcement powers and sanctions

In domestic UK law, there is a wide variety of enforcement powers and sanctions available to satisfy Articles 54 and 55 of Regulation (EC) 882/2004.

- **Remedial Action Notices (RANs)** – (Regulation 9 of the Food Hygiene Regulations 2006)

RANs are used in establishments subject to approval under Regulation (EC) 853/2004. They may be served by an authorised officer of the enforcement authority with an immediate effect, to:-

- prohibit the use of any equipment or any part of the establishment specified in the notice
- impose conditions upon or prohibit the carrying out of any process
- require the rate of operation to be reduced to such extent as is specified in the notice or to be stopped completely

It is an offence to fail to comply with a RAN.

- **Detention Notices** – (Regulation 9 of the Food Hygiene Regulations 2006)

At an establishment subject to approval under Regulation (EC) 853/2004, an authorised officer of the enforcement authority may also require the detention of any animal or food for the purposes of examination or sampling. It is an offence to fail to comply with a detention notice.

- **Hygiene Improvement Notices (HINs)**- (Regulation 6 of the Food Hygiene Regulations 2006)

HINs require defects to be remedied within a specified time. They deal with situations where there have been breaches of the Hygiene Regulations that are not sufficiently serious to justify emergency action but are too immediate in their impact to await a prosecution. It is an offence to fail to comply with a HIN.

- **Hygiene Prohibition Orders (HPOs)** – (Regulation 7 of the Food Hygiene Regulations 2006)

Where a food business operator is convicted of an offence under the Food Hygiene Regulations 2006 and the court is satisfied that certain factors at the food business involve a risk of injury to health, the court may by order impose prohibitions, such as prohibitions on the use of processes, equipment or premises for the purposes of the business.

Where a food business operator is convicted of an offence under the Food Hygiene Regulations 2006, the court may by order prohibit him from participating in the management of a food business.

It is an offence knowingly to fail to comply with a hygiene prohibition order.

- **Hygiene Emergency Prohibition Notices and Orders** – (Regulation 8 of the Food Hygiene Regulations 2006)

If an authorised officer is satisfied that certain factors at a food business - such as the use of processes or equipment, the construction of premises or the state or condition of equipment - involve an imminent risk of injury to health, he may serve an emergency prohibition notice to impose prohibitions on certain activities, such as the use of processes, equipment or premises.

Any person who knowingly contravenes the notice is guilty of an offence.

An emergency prohibition notice ceases to have effect if within 3 days of the date the notice was served no application has been made to a court of summary jurisdiction for a hygiene emergency prohibition order.

If the court is satisfied on the application of an authorised officer that the hygiene emergency prohibition notice was properly served it will issue a hygiene emergency prohibition order confirming the prohibition imposed by the hygiene emergency prohibition notice. Any person who knowingly contravenes the order is guilty of an offence.

2. Approvals / Review of Approvals - Article 31 of Regulation (EC) 882/2004

Establishments handling products of animal origin such as fresh meat, meat products, fishery products and dairy products must be approved.

Generally, local authorities are responsible for granting approvals but slaughterhouses, cutting plants and game handling establishments must be approved by the Agency as they are subject to specified levels of veterinary control (by MHS in GB and DARD in NI).

The FSA (MHS in Great Britain from 1 October 2009) reviews the approval of these establishments with a view to withdrawal or suspension when the enforcement body considers that there is a chronic failure in application of food business operator's (FBO's) controls and there is preliminary evidence that the criteria¹³ for withdrawal of approval are fulfilled.

The review process includes an unannounced site visit to assess the physical status of the establishment and the FBO's controls (the enforcement history and record of compliance for the establishment are taken into account).

Review of an establishment's approval would also occur where an acute serious deficiency arises that may or may not have been due to the actions/inactions of the FBO. Suspension of approval may be the most appropriate action until the deficiency is resolved.

In addition, the Agency will initiate a proactive programme of approval reviews where establishments will be selected on criteria such as age of approval, history of compliance and type of establishment.

¹³ serious deficiency or repeated stoppage of production - as specified in Article 31 of Regulation (EC) No 882/2004

3. Maximum Penalties for Breaches of the Hygiene Regulations

In addition to the specific offences consisting of failing to comply with notices and orders issued under the Food Hygiene Regulations 2006 that are described above, the Food Hygiene Regulations 2006 also make it an offence to fail to comply with specified provisions of the EU Hygiene Regulations ("specified Community provisions").

If the conviction occurs in a court of summary jurisdiction in England, Wales or Northern Ireland the maximum punishment for the offence is a fine of up to £5000 and if the conviction occurs in a court of summary jurisdiction in Scotland the maximum punishment for the offence is a fine of up to £10000. This difference was created by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

If the conviction occurs in the Crown Court or Scottish equivalent, the maximum punishment for the offence is imprisonment for a term of up to 2 years, an unlimited fine or both.

4. Corporate Manslaughter and Corporate Homicide

Following the coming into force of the Corporate Manslaughter and Corporate Homicide Act 2007 in April 2008, businesses (including partnerships who are employers) can now be prosecuted for the offence of corporate manslaughter (in Scotland, corporate homicide) if the way in which their activities are managed or organised by senior management causes a death and this constitutes a gross breach of a duty of care to the deceased. A substantial part of the breach must have been in the way that activities were managed or organised by senior management. The new offence of corporate manslaughter/corporate homicide applies to organisations only and organisations who are convicted of the new offence face an unlimited fine. Individual managers can still be prosecuted for the common law offence of manslaughter (or culpable homicide in Scotland) by gross negligence.

5. Alternative (Macrory) Civil Sanctions (England & Wales)

Under the Regulatory Enforcement and Sanctions Act 2008, new civil sanctions will be available to regulators such as the Food Standards Agency and local authorities. One of the available sanctions is a Stop Notice. This prevents a business from carrying on an activity described in the notice until it has taken steps to comply. A stop notice is served when a business is carrying on or is likely to carry on an activity that may present a significant risk of harm to human health, the environment, consumers' financial interests or the commission of an offence. A business that fails to comply with a stop notice will be guilty of an offence. There is a right of appeal against a stop notice to a statutory tribunal, and the business may not operate pending the appeal.

The power to impose the new civil sanctions will not be given automatically to regulators. The sanctioning powers are given by a Minister, who must decide following consultation that the regulator will use the new powers in a way that is compliant with the principles of good regulation. For local authorities, the

Government will decide if in a particular regulatory field, e.g. food hygiene or food standards, local authorities in general are able to use the powers in a way that is compliant with the principles of good regulation. These powers will not be rolled out to local authorities one by one.

6. Human Rights Considerations

Article 1 of the First Protocol to the European Convention on Human Rights (right to property) says that -

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law ...".

The rights protected by Article 1 of the First Protocol include property, the right to exercise a trade or profession and the economic interests connected with running a business. Taking enforcement action that affects a food business operator's ability to run his business engages Article 1 of the First Protocol.

The Human Rights Act 1998 says that public authorities such as local authorities and the Agency may not act in a way that is incompatible with the Convention. The various safeguards described above that impact on the competent authority's ability to deal with non-compliant food businesses are part of the legal justification that is necessary if a food business operator's rights under Article 1 of the First Protocol are to be infringed."