

Report on Local Authority Food Law Enforcement Activity in the UK

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Section 1: Introduction

This report reviews the work carried out by Local Authorities (LAs) across the UK and marks the Agency's first year of work in this area. The report covers the period 1 January 2000 to 31 March 2001.

Scope of Report

This report, the first of what is intended to be an annual series, is based on the monitoring data made available to the Agency by LAs and draws attention to the range of initiatives which are under way to help raise standards in food enforcement. It briefly reviews the work undertaken by the Agency on LA food law enforcement, summarises and comments on LA food law enforcement activity levels in key areas and highlights some issues for future consideration.

This report does not cover LA enforcement of animal feed law. Neither does it cover findings of Agency audits of LA food law enforcement services. The audit programme was launched in April 2001 and the audits which have so far been conducted are outside the period of this report.

Section 2: Background

In 1997, the Government's White Paper "*Food Standards Agency – A Force for Change*" was published. The White Paper recognised the need to improve food standards and suggested that this would best be achieved if the responsibility for food enforcement work was shared between a central body (later to become the Food Standards Agency) and LAs. It also identified the need for this body to be active in food enforcement policy and support functions, with LAs continuing in the frontline as the primary food law enforcement body at a local level.

The Food Standards Act 1999 provides the Agency with a package of statutory powers to strengthen its influence over enforcement activity, and to help delivery of national priorities and objectives. The Act gives the Agency powers to:

- set standards of performance in relation to enforcement of food law;
- monitor and audit the performance of enforcement authorities;
- require information from LAs relating to food law enforcement and inspect any records;
- enter local authority premises, to inspect records and take samples;
- publish information on the performance of enforcement authorities;
- make reports to individual authorities, including guidance on improving performance;
- require enforcement authorities to publish these reports, and state what action they propose in response.

Local Authority Enforcement

Local authority monitoring returns for the period of this report indicated that there were over 600,000 food businesses in the UK of which:

- 372,000 (62%) were caterers;
- 186,000 (31%) were retailers; and
- 18,000 (3%) were food manufacturers.

The enforcement of food legislation in the UK is mainly carried out by Environmental Health and Trading Standards Services in 499 LAs. In addition there are a number of other bodies responsible for ensuring standards are maintained for specific foodstuffs. These include: the Meat Hygiene Service, responsible for enforcing legislation in slaughterhouses and cutting plants; the Horticultural Marketing Inspectorate, responsible for checking the quality of fruit and vegetables sold in the UK; the Dairy Hygiene Inspectorate, responsible for checking standards at milk production holdings; the Egg Marketing Inspectorate, responsible for checking standards in egg production, packing and distribution centres; and the Wine Standards Board, responsible for monitoring standards in wine making.

In Northern Ireland enforcement of legislation relating to slaughterhouses, cutting plants, horticultural standards and dairy hygiene is carried out by the Department of Agriculture and Rural Development (DARD).

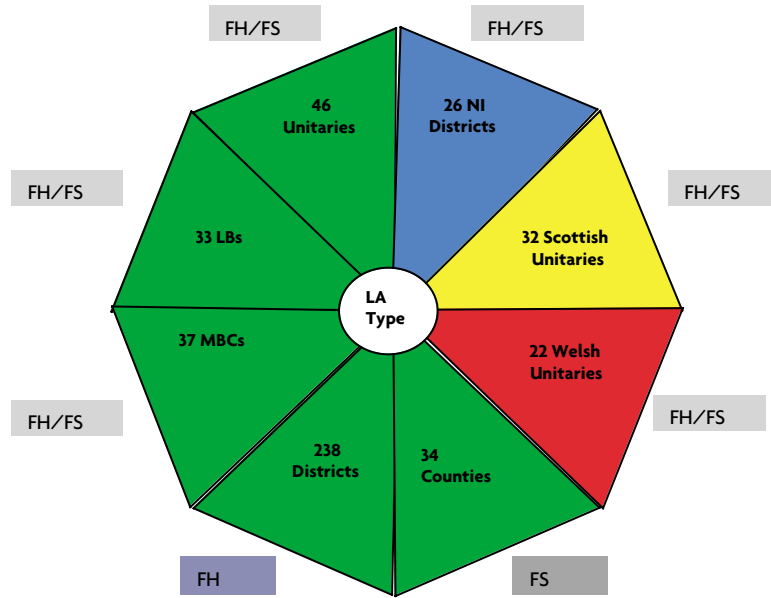
Port Health Authorities and Border Inspection Posts are responsible for checking food imports and products of animal origin can only enter the UK through authorised Border Inspection Posts.

The food enforcement duties each local authority carries out vary depending on the type of local authority (see Diagram 1). For example, English County Councils are only responsible for enforcing food standards (e.g. checking food composition, labelling, claims and presentation matters) and others (principally English District Councils) are only responsible for enforcing food hygiene controls (e.g. staff hygiene, hygiene of structures and equipment, level of hygiene and HACCP training, temperature controls etc). Unitary Authorities, London Boroughs, Northern Irish Districts and most Metropolitan Borough Councils are responsible for enforcing both food hygiene and food standards.

Guidance on the approach to food enforcement is provided in Statutory Codes of Practice issued under the Food Safety Act 1990. These aim to ensure a degree of enforcement consistency. Parallel legislation exists in Northern Ireland and Scotland. Within this guidance local food enforcement services can be provided in a variety of ways which are appropriate and suited to local circumstances.

Diagram 1

Representation of Local Food Enforcement in the UK



FH = Food Hygiene work carried out by Environmental Health Services

FS = Food Standards work carried out by Trading Standards Services

FH/FS = Food Hygiene and Food Standards work which is carried out by Environmental Health and /or Trading Standards Services. In Northern Ireland and Scotland food standards work is carried out by Environmental Health Officers.

LA Types:

English County Council (County)	England
English District Council (District)	
English Unitary Council (Unitary)	
London Borough Councils (LB)	
Metropolitan Borough Councils (MBC)	
Scottish Unitary	Scotland
Welsh Unitary	Wales
Northern Irish District	Northern Ireland

Raising Food Standards – A Shared Objective

The Agency's strategic plan for 2001-06¹ acknowledges that the effectiveness of food law depends on how well it is enforced. Local authority enforcement officers have a crucial role to play to help protect consumers and a key role for the Agency is to work with LAs to ensure the effectiveness of UK food law enforcement. To this end the Agency aims to:

- Provide guidance and support for local enforcement officers;
- Ensure proportionate and more consistent enforcement;
- Provide more information about standards of food safety;
- Improve the transparency of enforcement arrangements for stakeholders;
- Promote the wider implementation of risk-based systems for improving safety standards across the food chain.

One key area of the Agency's work has been to strengthen links with LAs. To help achieve this a Framework Agreement on Local Authority Food Law Enforcement was developed within a joint Government/local authority group (the Local Authority Enforcement Liaison Group). The Framework Agreement includes the standards and arrangements through which the Agency sets, monitors and audits local enforcement services. This information will, in future years, be supplemented by information from the Agency's enforcement research programme.

Initially, research is being carried out to identify the most effective communication methods and enforcement approaches for small and medium sized enterprises (SMEs). A research project is also examining the management issues in food businesses which are likely to significantly increase the risk of failures of food management controls.

¹ Food Standards Agency Strategic Plan 2001 – 2006 Putting consumers first

Recent Agency Enforcement Activities include:

- Launching the Framework Agreement;
- Publishing data collected under the Official Control of Foodstuff Directive (89/397/EEC) for 1999;
- Development of the Agency's local authority audit programme;
- Specialist Training for enforcement officers;
- Ongoing review of the enforcement Codes of Practice;
- Discussions on developing a system for business hygiene scoring and award schemes;
- A programme of up-date seminars hosted by the Agency and LACOTS across the UK on food enforcement related matters;
- 13 seminars held across the UK to make local authorities aware of the future monitoring requirements arising from the Framework Agreement;
- Development of improved electronic links with local authorities;
- Development of a food enforcement research programme;
- Regular meetings with LACOTS, local authorities, consumer, industry and retail representatives;
- Extensive scrutiny of the monitoring returns and investigative follow up work.

Section 3: Monitoring and Evaluating Food Law Enforcement

Monitoring the performance and consistency of LA food law enforcement forms an important part of the Agency's arrangements to improve consumer protection and confidence in relation to food.

The Agency is required to provide an annual report on enforcement activity to the European Commission (EC). The statistics required by the EC and collected under Article 14 of the *Official Control of Foodstuffs Directive 89/397* (OCD), cover basic information relating to the enforcement work carried out by food authorities (e.g. numbers of businesses, numbers of inspections of premises, formal enforcement action and sampling activity). It excludes work reported elsewhere on:

- meat hygiene inspections carried out under EC veterinary legislation;
- milk hygiene inspections of production holdings;
- inspections carried out by the Wine Standards Board under EC wine legislation;
- inspections of Marketing (Grading) Standards in the fisheries and horticultural areas;
- pesticide residues sampling for which a separate return is required under Directive 90/642;
- food surveillance work carried out by Central Government e.g. radioactive contamination monitoring;
- activity at ports on imported food covered by the Products of Animal Origin (Import and Export) Regulations 1996 as amended.

The EC returns also exclude the reactive work that LAs carry out such as that on consumer complaints, imported food work concerning non-animal origin products, and animal feedingstuffs controls (since April 2001 data on animal feed checks have started to be collected by the Agency as required under EC Directive 95/53/EC). Nevertheless, the returns provide a valuable source of data and form the central plank on which the enhanced monitoring arrangements implemented as part of the Framework Agreement have been built.

In addition to the OCD returns, data is also submitted by LAs on inspections of establishments carried out against a programme set on the basis of risk. This is explained in more detail in Part 4.

Collectively, this information, together with other information from the Agency's audit programme of LAs, provides an on-going picture of individual LA activity and performance. This intelligence is fundamental to Agency action to raise enforcement standards.

Publication of Data

The OCD returns for 1999 were the first set of data on LA food law enforcement considered by the Agency and were reported on in papers to the Agency Board. These papers:

- (i) compared OCD data since 1997 and included the UK's return for 1999 to the EC Commission, (discussed at July 2000 Board meeting)
- (ii) discussed the results of follow-up action resulting from analysis of information contained in the 1999 return (discussed at December 2000 Board meeting)
- (iii) reported on the follow-up action taken in respect of the 18 LAs identified in the December 2000 Board paper (information note for May 2001 Board meeting)

In line with the Agency's core values of openness and transparency, these Board papers and, for the first time, individual local authority enforcement returns made under Article 14 of the Official Control of Foodstuff Directive (89/397/EEC), have been made available on the Agency's website.²

The OCD data for 2000 has now been compiled and the UK's return to the EC Commission submitted. As last year, a copy of the return and individual local authority enforcement returns have also been made available on the Agency's website. Further data on risk-based inspection work by each local authority is also being placed on the website, to provide a more complete picture of enforcement work carried out.

Extra Demands on Local Authority Food Enforcement

During the period covered by this report, LAs were asked to deal with a number of additional enforcement related duties (e.g. butcher's licensing) and some which could not be anticipated at the beginning of the year (extra checks in relation to the Over Thirty Month (OTM) legislation which was introduced to prevent BSE diseased animals entering the food chain). This will have had some impact on resources

Over 6,000 checks were carried out on meat to ensure that the OTM legislation was being enforced. In England and Scotland over 9,000 butchers' premises were individually licensed by local authorities, some of which required significant assistance to meet the enhanced conditions required by the license.

available to LAs to undertake the routine enforcement work which the monitoring data captures. During the last six weeks of the report period, many LAs were involved in dealing with the start of Foot and Mouth

² (www.food.gov.uk.htm).

Disease outbreak. Therefore, some account needs to be taken of these factors when comparing the enforcement data for 2000 with that for the previous year.

Completeness of Local Authority Returns

The monitoring information used to compile this report is based on two data sets: OCD data for 2000 (100% return rate and a 4% increase compared to 1999) and risk-based premises inspection data for April 2000 to March 2001 (89% return rate). 100 LAs had failed to supply the latter data and a further 38 authorities only sent partial or incomplete returns by 31 July 2001. However, by 15 December, when this report was finalised, every local authority had either submitted a complete return or had provided an explanation as to why they were unable to do so. The principal reason for the delay in providing returns, or ongoing inability to do so, was difficulty in extracting accurate historical information from LA databases. In many cases LAs had used the opportunity of the introduction of the Framework Agreement to change or upgrade their data systems. In a number of cases an unfortunate consequence was the loss of some data for past periods. In addition, a number of unitary type authorities routinely carried out food standards work as part of the inspections due under their food hygiene programme and were unable to provide details of a separate food standards programme. Table 1 below shows the return rates (at 31 July) for risk based inspection data for each LA type.

Table 1 Numbers of LAs which had provided complete risk-based inspection returns for 2000/2001 by 31 July 2001

LA Type	Complete Risk Based Inspection Return Supplied	Partial or Incomplete Risk Based Inspection Return for Food Standards	Partial or Incomplete Risk Based Inspection Return for Food Hygiene
County (34)	22 (65%)	None	Not applicable
District (238)	189 (79%)	Not applicable	2 (1%)
Unitary (46)	34 (74%)	4 (9%)	2 (4%)
LB (33)	23 (67%)	7 (21%)	1 (3%)
MBC (37)	31 (84%)	7 (19%)	None
Welsh Unitary (22)	15 (68%)	4 (18%)	None
Scottish Unitary (32)	26 (81%)	19 (59%)	None
NI District (26)	26 (100%)	None	None

In its current form, and despite the virtually complete nature of the returns by the date of completion of this report, the monitoring data is still insufficient to accurately assess individual Local Authority performance. Despite this limitation, though, the data provides useful information about the level of food enforcement across the UK in some key areas.

What Does the Data Show?

Key findings from LA returns are:

Key findings

- There were 603,328 UK food premises, a decline of approximately 1% from 1999;
- LAs carried out a total of 544,840 inspections and visits to premises across the UK, an increase of 3%;
- A total of 64% of premises were inspected at least once during 2000 – almost 2% more than in 1999;
- Some LAs show an apparent imbalance in programmed inspection work (with a greater proportion of inspections being carried out in the lowest risk premises than in the highest);
- The proportion of businesses identified as committing infringements has declined by 2% to 45%;
- 95% of all infringements were dealt with by written warnings (the first level of enforcement action);
- Numbers of prosecutions/Home Office formal cautions have fallen by over 30% – from 1,087 in 1999 to 753 in 2000;
- Sampling activity continues to decline – 9% less samples taken than in 1999.

Standards in Food Businesses

Premises are inspected for food hygiene and food standards purposes, according to minimum inspection frequencies laid down in relevant statutory Codes of Practice.

Some 64% of UK food premises were inspected at least once during 2000, almost 2% more than 1999, of which 45% (174,417) were found to have breached some food regulations in some way – a 2% drop from 1999. The total number of food hygiene and food standards inspections carried out across the UK increased by over 2% compared to 1999 (from 532,452 to 544,840). As in 1999, a lower proportion of premises were inspected and visited for food standards purposes compared to food hygiene, although there was a 2% increase in food standards inspections from 1999. Overall, the proportion of premises inspected and visited for food hygiene purposes across the UK remained the same as in 1999.

Of the 385,507 food premises inspected by local food enforcement officers (some of which were inspected more than once in the year), 174,417 (45%) had failed to comply with food law in some way. This represents a 2% decline in the level of businesses with infringements³ compared to 1999. The total includes 235,969 restaurants and catering establishments inspected, of which 50% were found to have infringed food law in some way.⁴ Again, this represents a small drop (2%) in the number of premises with infringements. In the vast majority (95%) of cases where infringements were found these were dealt with by written warnings, suggesting that the breaches were of a relatively minor nature and presented no immediate or serious risks to food safety.

3 The term infringement is defined by the European Commission (EC) and includes all formal action by enforcement officers in response to incidents of non-compliance with food law. Examples include written warnings (except where these are purely advisory); demands to come into line by a set date; confiscation, seizure or destruction of food; withdrawal of approval; total or partial closure of the business; service of legal notices; and formal cautions as well as prosecutions.

4 Thursday 19th July 2001, Press release – Food Standards Agency to Tackle Poor Hygiene in Catering.

Section 4: Local Authority Food Enforcement: Comparative Data

The following section discusses in more detail the main findings from the data, together with further analysis to provide more comparative information identifying highest, lowest and average levels of key enforcement activity by authority type. **This data cannot be used to make an overall assessment about what is “good” or “bad” performance. However, it does highlight some interesting trends which might better inform LAs about their activities in relation to other, similar, authorities.**

Inspection Programmes

The Statutory Codes of Practice issued under section 40 of the *Food Safety Act 1990*⁵ lay down minimum inspection frequencies for premises according to their risk rating. LAs should aim to carry out 100% of the inspections due in each of the premises risk categories.

Minimum frequencies for programmed food hygiene inspections laid down in the Statutory Codes of Practice for Food Hygiene are:

- Category A – at least every 6 months
- Category B – at least every year
- Category C – at least every 18 months
- Category D – at least every 2 years
- Category E – at least every 3 years
- Category F – at least every 5 years

Minimum frequencies for programmed food standards inspections laid down in the Statutory Codes of Practice for Food Standards are:

- High Risk – at least once every year
- Medium Risk – at least once every two years
- Low Risk – at least once every five years

Inspections of the highest risk-rated premises

The following analysis is based on a virtually complete set of returns for food hygiene work (99%) and a more limited set for food standards (89%).

⁵ Codes of Practice No 8: Food Standards Inspections – for England, Scotland and Wales
Codes of Practice No 9: Food Hygiene Inspections – for England, Scotland and Wales
Codes of Practice No 7: Food Standards Inspections – for Northern Ireland
Codes of Practice No 8: Food Standards Inspections – for Northern Ireland

The data on inspection programmes provides details on inspection rates against those planned at 1 April 2000, the beginning of the inspection programme year. In-year changes to the programme will, in many cases, have a significant effect on local programmes and on the Agency's end of year comparison of actual inspections against those planned. Examples of in-year changes to inspection programmes include:

- some premises that were due a programmed inspection may cease trading before an inspection can be carried out;
- some category A food hygiene premises (highest risk) originally due two inspections in one year may, after the first inspection, be reassessed as being of lower risk, and therefore not due another programmed inspection that year;
- some medium or low risk premises, which are to be inspected once a year or less frequently, may on inspection be reassessed as being of higher risk, and therefore due an inspection over and above that programmed for that year;
- new premises and premises "unrated" at the start of the year may be added to the programme during the year.

These factors need to be taken into account when assessing inspection statistics – and help explain the differences between LA achievement as reported to the Agency and Audit Commission Best Value Indicators. However, they still provide a useful data set for comparative purposes.

Overall, the data available to the Agency indicates that there is considerable variation in inspection levels across the UK. Tables 2a and 2b below set out the number of LAs (by LA type) which carried out all programmed inspections of their highest risk premises.

Table 2a Number of LAs (by LA type) that reported achieving at least 100% of programmed inspections for Premises Risk Rated as Category A for food hygiene purposes

LA Type	At least 100% Food Hygiene Inspections to Category A Risk premises
County (34)	Not applicable
District (238)	49 (20%)
Unitary (46)	8 (17%)
LB (33)	4 (12%)
MBC (37)	6 (16%)
Welsh Unitary (22)	1 (5%)
Scottish Unitary (32)	0 (0%)
NI District (26)	2 (8%)
Overall	70 (15%)

Note: Based on returns from 433 of 434 relevant local authorities

Table 2b Number of LAs (by LA type) that reported achieving at least 100% inspections for Premises Risk Rated as High Risk for Food Standards Purposes

LA Type	At least 100% Food Standards Inspections to High Risk premises
County (34)	12 (35%)
District (238)	Not applicable
Unitary (46)	17 (37%)
LB (33)	8 (24%)
MBC (33)	10 (30%)
Welsh Unitary (22)	9 (41%)
Scottish Unitary (32)	8 (25%)
NI District (26)	6 (23%)
Overall	70 (11%)

Note: Figures are based on incomplete set of returns (89% overall, only 60% for Scotland⁶)

The data also indicates that a small number of LAs across the UK carried out less than 50% of their of their programmed inspections of premises rated as High Risk for food standards and/or Category A and B for food hygiene purposes. These authorities were the subject of a separate paper to the Agency Board at its December 2001 meeting.

Overall inspection levels

The Agency has also used the OCD data for 2000 to assess the overall level of visits and/or inspections carried out by each local authority relative to the total number of food premises in each authority's area. This assessment indicates that: **10 English Districts** carried out food hygiene inspections to less than 30% of overall premises; **9 English Counties** carried out food standards inspections to less than 20% of overall premises; and **1 Scottish Unitary** carried out inspections to less than 30% of overall food premises. Although the relative risk rating of premises (with the bulk falling within category C or D for food hygiene and Medium or Low for food standards) means that the majority will not require an inspection every year, the assessment nonetheless helps provide a broad indication as to whether or not an authority is on target to inspect all its food businesses within the five-year inspection programme set out in the Codes of Practice.

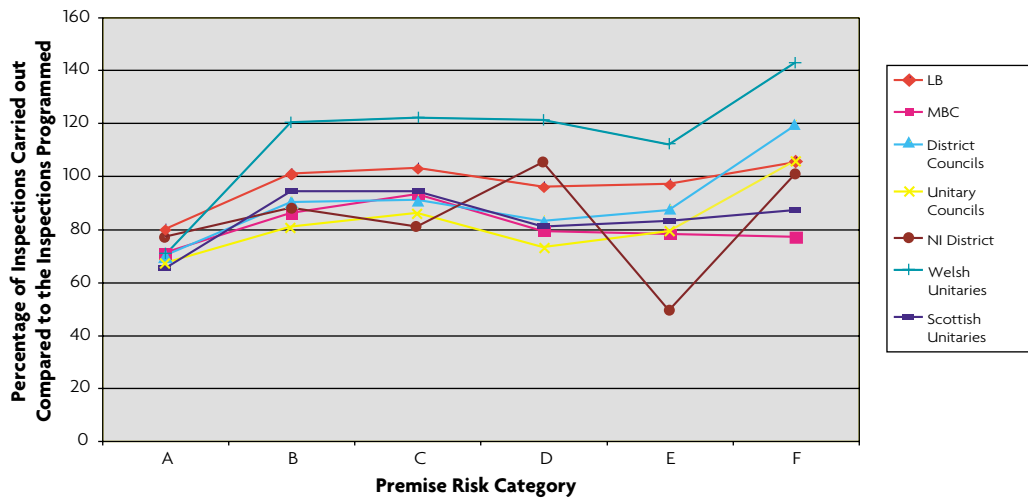
⁶ Due to combining of food standards work with their food hygiene inspection programme, some LAs, especially in Scotland, were unable to provide separate details of food standards inspections. See also page 10.

Inspections carried out across all risk-rated premises

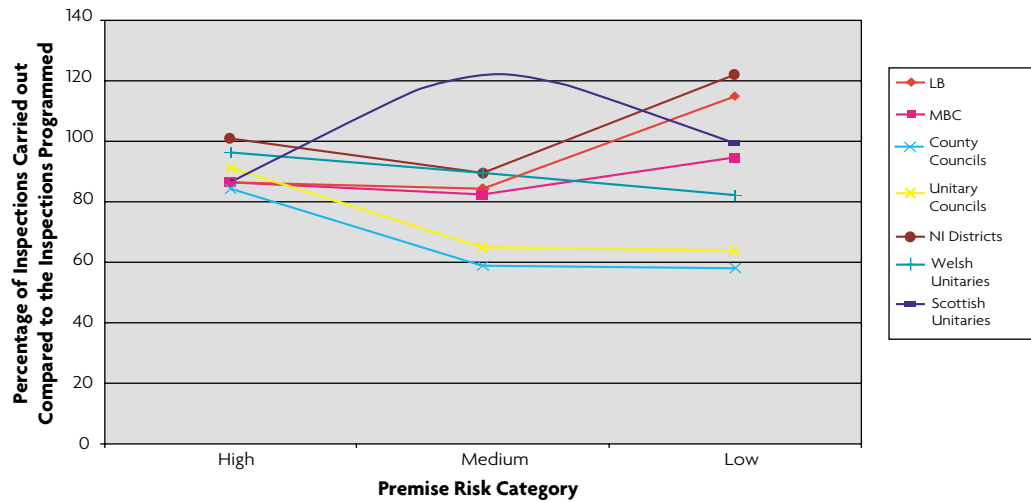
The data presented in **Graphs 1A** and **1B** below indicates the level of inspections carried out in each of the premises risk categories for each of the LA types. It should be noted that premises allocated to a specific risk category can be inspected at any point within the timeframe set out in the Codes of Practice and as such may not always be inspected at even intervals during this timeframe. For example, category F premises require one inspection every 5 years but this does not necessarily mean that 20% of all such premises will be inspected each year.

The graphs represent the average proportion of inspections carried out for each premises risk category in each LA type against the programme (at 1 April) for each premises risk category. The graphs indicate that, for some types of authority, there is a higher apparent rate of inspection activity across lower risk rated premises. Whilst this trend cannot be taken as applying to all LAs within a particular type on an individual basis, it is of concern and will need to be investigated further in order to determine whether it is an accurate reflection of LA performance. One possible explanation for the pattern might be that a number of LAs focused, for whatever reason, on low risk inspections and this has skewed the overall figures. However, as a national statistic it is of concern.

Graph 1A Average Food Hygiene Inspection Rates By LA Type (2000/2001) – Based on Data Provided by 99+% of UK LAs



Graph 1B Average Food Standards Inspection Rates By LA Type (2000/2001) – Based on Data Provided by 89% of UK LAs



Note: Port Health Authorities have been excluded from the graphs because their returns do not include data on inspections of fixed land-based premises.

Agency follow-up action

The Agency has contacted all LAs for which the initial data provided indicated an inspection rate for the highest risk premises of less than 50%, as there was a clear need to determine whether these inspection levels were an accurate reflection of local authority activity and, if so, the reasons for this. The follow-up action revealed considerable problems with the accuracy of data supplied by some local authorities, with many examples of past over-risk rating, failure to re-categorise premises following inspections, or inappropriate inclusion of premises in the inspection programme. An example of the latter was the inclusion of premises rated as High Risk for other aspects of trading standards work, where the food risk was, in reality, low. In addition, a significant degree of in-year movement from higher- to lower-risk categories was apparent. As a result of the exercise, the number of LAs confirmed as inspecting less than 50% of the highest risk premises has fallen to just 6, detailed in a paper to the December 2001 meeting of the Agency Board.

The issue of local risk-based inspection programmes is currently being considered as part of the Agency review of the Statutory Codes of Practice on local authority food law enforcement.

Formal Action

Of the food premises inspected in the UK during 2000, 45% committed infringements leading to some level of formal enforcement action being taken. This compared with 47% in 1999. Formal action includes a range of

measures (written warnings, improvement notices, formal cautions, prohibition orders, emergency prohibition notices, emergency prohibition orders which may lead to premise closures and food seizures, surrenders or detentions) which are intended to provide maximum public protection. It should be noted that the range of formal actions available for trading standards offences is restricted to formal cautions, prosecutions and written warnings. Guidance on what level of action to take and when is laid down in the Statutory Codes of Practice.⁷ Note these Codes are currently under review.

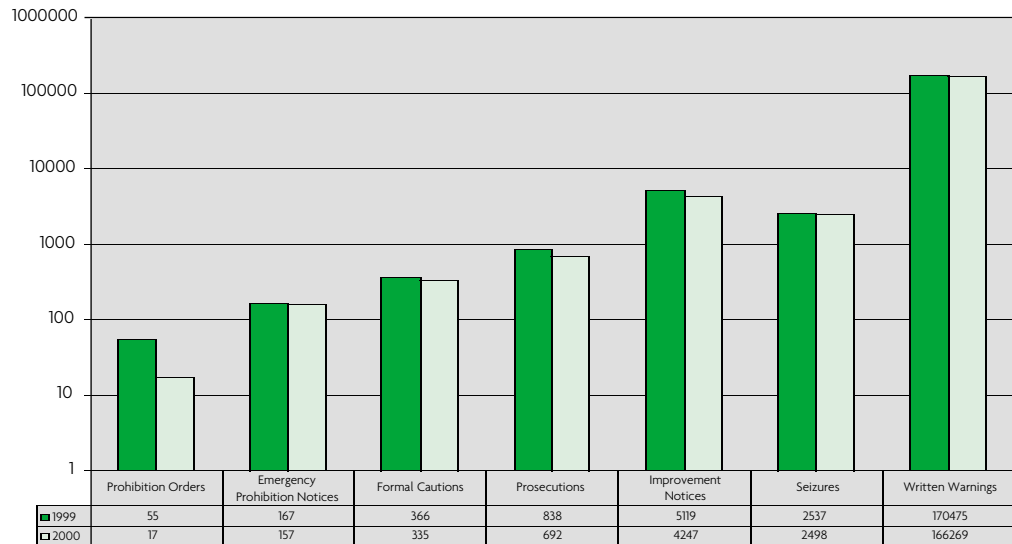
Of the infringements found, more than 95% were dealt with by written warnings, 2.3% by improvement notices and about 0.4% by prosecutions (including Home Office Formal Cautions). Overall, the level of written warnings, improvement notices, seizures, prohibition orders and emergency prohibition notices remained the same as last year, when calculated relative to the total number of premises in the UK – see **Graph 3** below. However, it is apparent that some LAs under reported written warnings, either because their IT software did not allow them to fully extract this data or because of misinterpretation of central guidance on this issue.

Notwithstanding this, the data suggests that there is a high level of variability in the overall level of formal action taken by different LAs, with Metropolitan Borough Councils (MBCs) being the most active and District Councils on average the least active in this area. There is equally a large degree of variability in the levels of action taken between authorities in the same local authority type, with the authority taking the most formal action in each LA type reporting between almost 2 and 5 times the level of activity of the average authority in their type. There could be a number of valid reasons for this, such as the local enforcement policy and the standards of businesses within a particular area. Lower rates of formal enforcement action may also reflect general Government advice on enforcement, and that LAs are successfully using advice and training as a way to deal with problems. However, the wide variability is an issue which requires further investigation as is an approach which sees low levels of enforcement action in the context of the high numbers of infringements generally.

⁷ Code of Practice No 4: Inspection, Detention and Seizure of Suspect Food
Code of Practice No 5: The Use of Improvement Notices – this Code includes advice on written warnings as well as Improvement Notices
Code of Practice No 6: Prohibition Procedures – this Code includes advice on prohibition orders, emergency prohibition notices/orders which can be used in relation to premises, persons, processes or equipment and closure of premises
Code for Crown Prosecutions – issued by the Home Office.

NOTE – Bar chart is logarithmic for ease of reading and is based on data from 499 LAs.

Graph 3 Infringements Reported By 499 Local Authorities Across The UK During 1999 & 2000



Note: Data relates to numbers of establishments with infringements: establishments may have committed more than one infringement in the period.

From the data, and preliminary discussions with some LAs in England with low rates of formal action and revisits, there is some indication that these low rates reflect the emphasis LAs have given to primary inspection work, for which the Audit Commission had set specific performance indicators. The new Best Value Performance Indicator for 2001/2 has a wider remit and is aimed at preventing this sort of bias. In Scotland, enforcement activity is also heavily inspection based as a result of a similar approach by Audit Scotland in this area. The Agency will be giving further consideration to ways of encouraging LAs to ensure they provide the appropriate balance between inspections and other enforcement actions to ensure effective enforcement takes place.

Prosecutions (including Home Office Formal Cautions)

Alongside the wide variation in action taken is a significant (over 30%) drop in the overall number of prosecutions/Home Office (HO) formal cautions taken in 2000. From 1,087 in 1999 to 753 in 2000, with 272 (55%) of all authorities, including Port Health Authorities, not taking any such action during 2000.

This, with the small drop in the percentage of establishments committing infringements *may* indicate some improvement in the standards in food businesses, but could equally indicate less willingness or ability on the part of LAs to take such formal action. Some LAs have indicated that decisions on whether or not to prosecute were often constrained by the lack of guidance on the relative importance of risks associated with legal contraventions. Whilst LAs are responsible for determining whether prosecutions should be taken, it has been suggested that, for cases of national importance, further help and guidance from the Agency would be helpful in taking prosecutions forward. These are matters to which the Agency is giving some consideration.

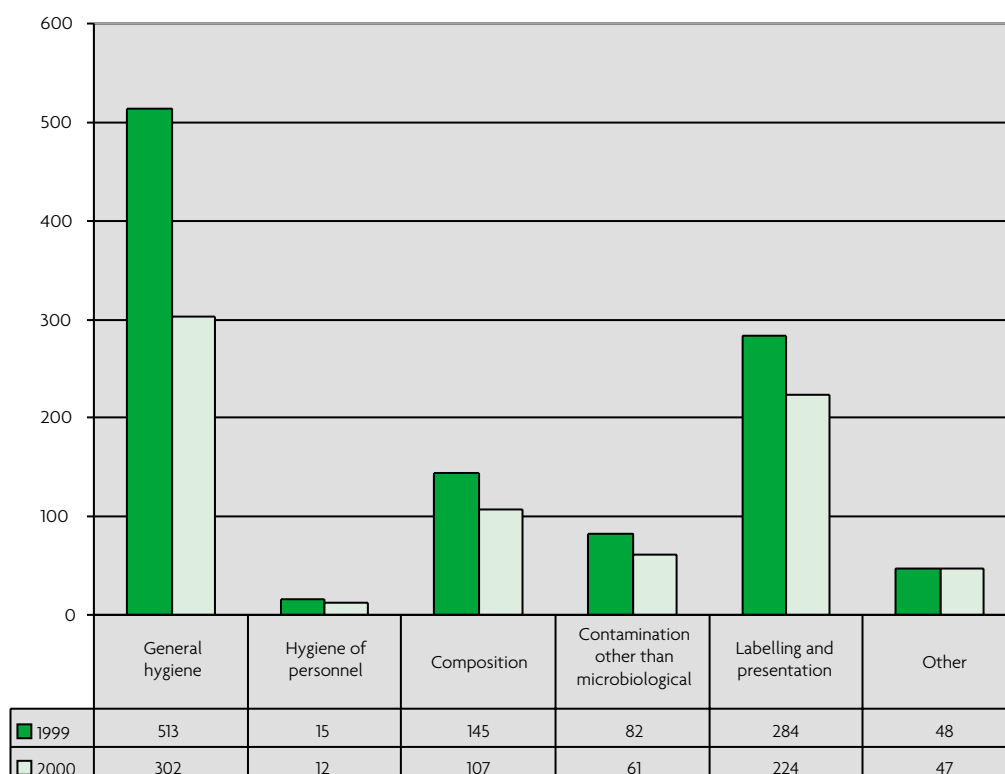
Table 3 below sets out the highest, average and lowest levels of prosecutions and Home Office formal cautions issued by LA type during 2000.

Table 3 Levels of Prosecutions taken and Home Office Formal Cautions Issued – by LA Type during 2000

LA Type	Level of Prosecutions/ Home Office Formal Cautions		
	Highest	Average	Lowest
County (34)	19 (1/34)	3.97	0 (10/34)
District (238)	5 (1/238)	0.39	0 (180/238)
Unitary (46)	22 (1/46)	1.93	0 (16/46)
LB (33)	8 (1/33)	2.03	0 (8/33)
MBC (37)	64 (1/37)	5.70	0 (11/37)
Welsh Unitary (22)	11 (1/22)	2.09	0 (8/22)
Scottish Unitary (32)	6 (1/32)	1.06	0 (19/32)
NI District (26)	3 (2/26)	0.62	0 (17/26)

Note: Based on returns from 499 LAs. In addition 3 Port Health Authorities did not take any prosecutions or issue Home Office formal cautions.

Graph 4 Total Prosecutions and Home Office Formal Cautions Reported By 499 LAs Across The UK For 1999-2000



The top three areas of non compliance dealt with by prosecutions/HO formal cautions were general hygiene (36% in 2000, compared to 43% in 1999), labelling and presentation (27% in 2000 compared to 24% in 1999) and composition (13% compared to 12% in 1999).

As in 1999 the highest level of prosecutions/HO formal cautions were taken against restaurants (45% in 2000, compared to 49% in 1999), retailers (43% in 2000 compared to 37% in 1999), followed by manufacturers (7% in 2000 compared to 10% in 1999) and producers (1% in 2000 and 1999).

Restaurants and caterers were in the main prosecuted or issued with HO formal cautions for food hygiene reasons (53% in 2000 compared to 62% in 1999). Retailers were mainly prosecuted for labelling and presentation reasons (44% of cases in 2000 and 1999). Manufacturers were mainly prosecuted for a mixture of these reasons.

In considering prosecution rates it should be noted that prosecution/HO formal cautions may not always be the most effective way of dealing with legal infringements. They are often used as a last resort when other enforcement actions have failed to ensure corrective action is taken, an approach which is consistent with that advocated by the enforcement concordat.

Sampling Activity

The relevant Statutory Code of Practice requires LAs to put in place a sampling policy. However, there is no statutory target or central guidance applicable to sampling levels (other than in Northern Ireland). Sampling by LAs supports enforcement action generally and provides important surveillance information on the current chemical, microbiological and compositional status of foods.

A significant level of routine food sampling was carried out by LAs in 2000 with around 178,000 samples being taken. However, the amount of both formal and informal food sampling continues to decline (in 1999, over 190,000 total samples were taken). Samples taken across the UK, as a percentage of the number of premises, have decreased to approximately 7% for formal samples (a drop of almost 20% in the actual number of samples taken), and to 23% for informal samples (a 2% drop in samples taken). The data indicates that the decline in formal and informal samples occurred in England only. In Scotland, Wales and Northern Ireland the level of formal samples decreased while informal samples increased.

There is strong anecdotal evidence, confirmed by official visits to some LAs in England, that resources allocated to food enforcement work have been cut in recent years. This will have impacted on sampling work generally and may have impacted most on formal sampling levels because such samples can be relatively more expensive to take and have analysed.

Given its importance as part of effective enforcement activity, the drop in sampling is of some concern and will require further attention. A number of LAs in England have indicated that, in addition to addressing budgetary problems, further central guidance would be helpful on a number of issues, including sampling levels and the overall approach taken to sampling as an enforcement tool.

Analytical Results of Samples Taken

Of the 41,089 formal samples taken in 2000, 30%, as in 1999, were found to be unsatisfactory when analysed. Of these, 247 (2% of the samples) were used for legal proceedings, a drop of 50% compared to 1999. Most of the samples found to be unsatisfactory related to non-microbiological contamination (11% in 2000 and 1999), followed by microbiological contamination (9% in 2000 and 9.5% in 1999), then labelling and presentation (7% in 2000 and 6% in 1999) and finally composition (6% in 2000 and 5% in 1999).

Of the 137,349 informal samples taken, 15% in 2000 and 16% in 1999 were found to be unsatisfactory when analysed. The majority of the informal samples taken were for microbiological (55% in 2000 and 56% in 1999), compositional (38% in 2000 and 36% in 1999), labelling and presentation (21% in 2000 compared to 19% in 1999) or non-microbiological

contamination (4% in 2000 compared to 6% in 1999) reasons. Of these samples the analysis found the following levels unsatisfactory: microbiological (15% in 2000 compared to 17% in 1999), non-microbiological contamination (12% in 2000 compared to 10% in 1999), composition (8% in 2000 compared to 9% in 1999) and for labelling and presentation (19% in 2000 and 1999).

This data is not sufficiently detailed to identify whether or not informal sampling is being used as a tool to provide additional information to help support food law enforcement or that formal sampling is being targeted appropriately.

Sampling Rates

Total sampling rates (i.e. for both formal and informal samples) vary enormously and seem to bear no relation to premise type. Overall, and excluding Port Health, whose position is not directly comparable, those authorities with a sampling rate in the top 10% for 2000 took between 1.26 samples per 100 premises and 0.58 samples per 100 premises.

Table 4 below gives the highest, average and lowest sampling rates (per 100 premises) by authority type.

Table 4 Sampling Rates by LA Type during 2000

LA Type	Highest Sampling Rate (no of samples per 100 premises)	Average Sampling Rate (no of samples per 100 premises)	Lowest Sampling Rate (no of samples per 100 premises)
County (34)	47	17	1 (1/34)
District (238)	77	15	<1 (6/238)
Unitary (46)	76	27	5 (1/46)
LB (33)	32	10	1 (1/33)
MBC (37)	65	26	6 (1/37)
NI District (26)	126	74	19 (1/26)
Scottish Unitary (32)	122	52	19 (2/32)
Welsh Unitary (22)	107	40	12 (1/22)

Note: Based on returns from 499 LAs

The table shows that there is a large variation in the sampling rates across the country, between local authority types and within local authority types, with the lowest level in London Boroughs. In the case of English Districts, the local authority with the highest sampling rate carried out more than 5.5 times the average for that authority type. The greatest level of consistency in sampling rates was found across Scottish and Northern

Irish authorities. In the case of Northern Ireland, where the enforcement programme is sampling and inspection focused, the greater consistency is almost certainly because central guidance on sampling, including sampling rates, has been issued there.

In 2000 a total of 18 authorities, compared to 22 last year, initially appeared to have carried out no sampling work. Further investigation with the authorities concerned clarified that all but one had submitted inaccurate returns and had, in fact, taken some samples during the period.

During the course of official follow-up visits to some LAs, it became apparent that there was a tendency for authorities to give much higher status and priority to food premises inspection work compared to food sampling. This may be partly due to inspection work being included as an Audit Commission performance indicator, whereas sampling activity has not.

Section 5: Resource Issues

Some authorities have indicated that reductions in funding made available by their LA for food work have led to a lack of skills/experience, qualifications or competence to carry out important enforcement work, e.g. prosecutions, formal sampling, inspections of high risk premises. In some cases, staffing shortages have resulted from the local authority's inability to recruit or replace staff, either because of budgetary constraints or due to a lack of suitable applicants. Changes to Code of Practice 19⁸, in relation to appropriate qualifications, have placed restrictions on the type of enforcement activity that some officers are able to carry out. This has led to problems in identifying sufficient numbers of suitably qualified staff. This situation is likely to be exacerbated by the new requirements for Trading Standards Officers. (From October 2001, only officers with additional training *and* demonstrated competence on audit of quality assurance systems will be able to carry out inspections to premises rated as High Risk for food standards: from September 2002, the requirement applies to *all* food standards enforcement work).

The issue of appropriate qualifications for enforcement work will need to be considered if ongoing shortages of qualified staff continue to impact on local authorities' ability to secure sufficient staff to carry out their enforcement duties.

In addition, several LAs have continued to experience IT problems during 2000 which has made it difficult for them to fully extract the monitoring data required. Measures have been taken by many LAs to resolve the latter issue so that this should not be an ongoing problem.

8 Code of Practice No 19: Qualifications and Experience of Authorised Officers (Revised October 2000)

Section 6: Conclusion

Enforcement Action

The wide variation in the levels of enforcement activity reported for the period of the report indicates that some authorities are being more active - and, possibly, more effective – than others in enforcing standards in food premises. This represents a continuing challenge for the Agency to work with LAs to achieve more effective and consistent enforcement at a local level.

The Agency will investigate further the reasons behind, and the implications of, the key findings in this report. This is being taken forward through discussions with individual LAs about their individual monitoring data and will involve wider discussions with local authority associations and other stakeholders.

Enhancing the Monitoring Data

Current monitoring data does not reflect the full range of enforcement work carried out by LAs and, in particular, does not capture data on advice, education or training given to business, which can be an effective means of helping ensure compliance with food legislation. Work will therefore be taken forward to devise ways of capturing data relating to these issues to ensure that account is taken of a wider range of the work undertaken by enforcement officers to ensure compliance with food law. Also, from next year the Framework Agreement will provide additional information, including details of consumer complaints about food businesses and an assessment by LAs of standards in high and medium risk food businesses.

Developing Benchmarking Data

This report starts the process of providing benchmarking data for LAs. The report contains a range of comparative data on local authority inspections, formal enforcement action and sampling rates. This data will enable authorities, the Agency and others to compare and contrast performance between like authorities and, as necessary, strive for greater consistency. In addition, the Agency will use the benchmarking data as a starting point for the development of more effective indicators of local authority food law enforcement.

Developing and Using Other Sources of Information about Local Authority Performance

To help raise standards in enforcement, the Agency will continue to publish the results of its audit programme and work with individual LAs to improve enforcement services. As it develops, the audit programme will also identify trends in enforcement work which require action at a national level. The audit programme will provide examples of good enforcement practice which the Agency will disseminate to all authorities to help ensure that a climate of continuous improvement is maintained.

The Agency has commissioned research to identify the most effective communication methods and enforcement approaches for small and medium sized enterprises (SMEs), as well as identifying and evaluating management issues in food businesses which are likely to significantly increase the risk of failures of food management controls.

This research will contribute to the Agency's priority of ensuring:

- more effective and consistent enforcement of food law;
- raising standards in food businesses; and
- helping to raise levels of consumer protection

Findings from this research will be used to underpin and develop the Agency's future policy decisions in an area where the role of local authority enforcement is seen to be important and new evidence based thinking is required.

Section 7: Acknowledgements

The broad content of this report has been considered by the Local Authority Enforcement Liaison Group (now the Enforcement Liaison Group) and the Framework Agreement Sub-group and comments received from members of these groups on the draft report have been taken into account by the authors. The Agency is grateful for the contributions these groups have made towards the development of this report and to Claire Boville and Paul Boyle from its Local Authority Enforcement Monitoring and Strategy Branch for the analysis and drafting.

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Section 8: Further Information

All monitoring data information published on the website (www.food.gov.uk) is also available from the Libraries of the House of Commons and the House of Lords. In Scotland, this information will be held in the Scottish Executive Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 1XD.

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