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Stapler



Centre for Agricultural Strategy

Management of regulation in the food chain - balancing costs, benefits and effects

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12 Enforcement of food standards legislation

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INTRODUCTION

The implementation and enforcement of food standards legislation is an important part of the responsibilities of local authorities. These bodies, working at the local level with food businesses, research institutes and consumers, also have much to contribute to the policies and to the formulation of the regulatory measures they have to operate. Local government has gone through a series of major reorganisations during recent years and so also have the local authority associations under a scheme that on 1 April 1997, brings together the Association of County Councils (ACC), the Association of District Councils (ADC) and the Association of Metropolitan Authorities (AMA) into one body to be called the Local Government Association (LGA). The main development in the context of this paper on food standards law and its enforcement, is the establishment of a Public Protection Committee (PPC) with a policy agenda of direct relevance to the subject matter of this conference. The key themes that will be addressed by the PPC are prescribed in its Policy Agenda as follows:

- close links between environmental health and wider *sustainable development*/environmental protection/Local Agenda 21 agendas;
- changing role of *regulation and enforcement* in public protection services and deregulation challenge:
 - (i) issues of consistency of enforcement; reduction in 'red-tape'; and business-friendly approach
 - (ii) Local Authorities Coordinating Body on Food and Trading Standards (LACOTS); 'one-stop shops'; home authority principle; development team approach

- powers: threat of further centralisation
- resources.

Against the background of these organisational changes and issues, it is helpful to have some appreciation of the myths and misunderstandings relating to assertions of over-zealous enforcement before turning to the question of deregulation (which should perhaps be more helpfully and constructively described as 'sensible legislation'), the European and United Kingdom (UK) dimensions of food law, and the approaches of the Government, the opposition political parties, the European Food Law Association of the United Kingdom (EFLA/UK) and the Institute of Trading Standards Associations (ITSA) to the future structure of food-law organisation and administration.

ENFORCEMENT MYTHS

In November 1994, LACOTS published its findings having investigated 74 published allegations of so-called unprofessional practices. Of the 74, twenty related to food control; seven to trading standards and sixteen to environmental health, a total of 43. Of these, five were found to have some substance. Some typical examples are as follows:

- Allegation that a particular District Authority informed a naval base that under food law it must discontinue the centuries-old tradition of stirring Christmas pudding with wooden oars.
The named District Council does not exist and all environmental health authorities in the region deny ever considering, or offering, such advice.
- Allegation that a County Council took wrongful and excessive action in prosecuting for 20 unpriced items. Seventeen were allegedly marked. Fined £600.
Authority claims action was result of proprietor(s) repeatedly ignoring oral and written warnings. Photographs show total absence of price information on the retail premises. Press Commission found the journalist should take greater care to ensure accuracy.
- Allegation that a London authority was blessed with commonsense in overruling another authority which had insisted on packages carrying lower case metric markings.
Authority notes the compliment and records it only did what 99% of colleague authorities would have done.

- Plant nursery uses disused quarry on their land to deposit leaves and old compost. Alleged County Council said this was controlled waste and legal action would be considered to prevent dumping. Only when local MP was involved did Council retract and issue apology.

Case involved County Council, District Council and National Rivers Authority who were concerned for the safety of the environment. Extensive dumping of compost, vegetable matter etc constitutes a danger to ground water due to contamination with leachate and risk of explosion due to landfill gas migration. Decision reversed following legal opinion that the waste could be classified as agricultural waste; therefore existing material need not be removed, nor continued dumping prohibited.

LOCAL BUSINESS PARTNERSHIPS

In order to deal with the changing role of regulation and enforcement, the need for consistency of enforcement and the reduction of 'red-tape' eg, the relaxation of the Sunday Trading laws, a constructive approach developed in East Sussex has been the launch since 1993 of seven Local Business Partnerships, one for each of the seven districts and boroughs in the county. A 'Next Steps Seminar' will shortly be organised to provide an opportunity for all the relevant agencies, ie, environmental health, trading standards and chambers of commerce, to meet and discuss how to make a reality of a 'One Stop Shop' concept for businesses via Business Link Sussex. (Business Links are promoted by the Government to provide help to businesses for training, investment, import/export problems etc.) Unfortunately, it is not possible for this forum to deal with resource problems such as the reduced budgets likely to be available when the present countywide East Sussex trading standards service is split into two parts under the forthcoming local government reorganisation.

EUROPEAN LEGISLATION

The European Community Inspection Service as set up under Directives 89/391/EEC and 93/99/EEC has had difficulty with resources, particularly staff, and so, to date, it has only visited/inspected twelve Member States. Inspections are planned for Austria, Spain and Portugal later this year. The Directive 89/391/EEC resulted in a Commission report to the European Parliament in 1994, describing how the service had been established and the Additional Measures Directive (93/99/EEC) required a report to Parliament in 1996 describing the implementation programme. It has not yet been published. Neither has the Green Paper on the future of food law in the community, but it is expected to be launched in The Hague next May.

The Temporary Committee of Inquiry into Bovine Spongiform Encephalopathy (BSE) set up by the European Parliament recommended in its draft report that the Community institutions should be strengthened; President Santer in commenting on the report to the European Parliament on 17 January 1997 indicated his wish for a new European Food Safety Agency.

UK FOOD LEGISLATION

Whilst the food industry and the enforcement authorities are concerned that action is needed to simplify and reduce the volume of food legislation and are cooperating in the deregulation initiative and in other relevant exercises, the series of food safety incidents and public anxieties have focused attention on the effectiveness of the organisational arrangements for the making, administration and enforcement of food law.

The Government has recently announced that to regain the confidence of consumers in the safety of food, they intend to set up a Food Safety Council, chaired by an independent Food Safety Adviser, to advise Ministers on matters relating to the safety, quality, labelling and authenticity of food. The Chairman of the Council will have a duty to communicate information relating to the work of the Food Safety Council to Parliament, the media and the general public.

For the Opposition parties, the Labour Party has made a clear commitment to setting up an independent food standards agency. The function of the agency will be consumer protection and its overriding priority will be the safety and quality of food; and the Liberal Democrat party proposes a completely independent authoritative stand-alone Food Commission, accountable to Parliament like the Audit Commission.

In a thoughtful, knowledgeable and constructive article in the *British Food Journal* in November 1996, Mr Charles Cockbill, the Chairman of EFLA/UK expressed the following personal views:

- the responsibility to make the necessary food safety law has to remain with Parliament and the Government
- the Government will always be concerned to ensure the economic health of the agriculture and food industries
- the present structure and content of UK food law is in order and does not need radical revision
- there have been complaints of over-enthusiastic enforcement but these have been no more than a few localised 'hotspots'

- cooperation and coordination of enforcement through LACOTS works effectively
- officials in the Ministry of Agriculture, Fisheries and Food (MAFF) and the Department of Health monitor developments, assisted by independent experts and report to Ministers
- most issues have to be decided on the balance of probabilities and it is therefore easy for decisions to be disagreed with
- the result is often confusion in the consumer's mind
- this seems to be the nub of the dissatisfaction with the present system
- it could therefore be sensible to invest in a separate food agency (separate that is from existing government departments) to undertake the monitoring and surveillance roles and the tendering of advice for action to Ministers.

The main functions of such an agency would thus be the ongoing assessment of scientific and medical developments, control of food surveillance programmes, responsibility for the expert committees, the commissioning of its own research, the submission of reports and advice to Ministers, and publication of those reports.

The Institute of Trading Standards would go further and incorporate food within a wider consumer affairs and consumer protection Government Department or Agency. That body would clearly have an input into food policy and would also ensure that all those involved in regulation were coordinated effectively. It should also be required to set down standards of enforcement and ensure the appropriate allocation of resources for the enforcement of consumer protection legislation. There should be a Cabinet Minister with a consumer affairs portfolio (as there was in 1974) and, as far as possible, regulatory responsibilities should be discharged at local level by local authorities which should have the resources to be able to do so.

CONCLUSION

Developments in the field of food safety are moving rapidly in the run-up to the General Election on 1 May 1997. The Government's acceptance of all the recommendations of the Pennington Report (Pennington Group, 1997) and the announcements of food policy proposals by the Opposition parties, mean that food safety issues will be a priority for any new Government.

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