

A review supported by the
Better Regulation Executive
and National Audit Office

Effective inspection and enforcement:

implementing the Hampton vision in the Food Standards Agency

Foreword

Philip Hampton's report: *Reducing administrative burdens: effective inspection and enforcement*, published in 2005, is one of the cornerstones of the Government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

The first five regulators assessed under the process of 'Hampton Implementation Reviews' are amongst the most significant in this country. The Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and Office of Fair Trading regulate millions of businesses, covering some key areas of economic activity, whilst protecting the interests of us all. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide-ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams, supported by staff from the Better Regulation Executive and the National Audit Office, have reached the findings and conclusions set out in this report. The final reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who contributed to making these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews.

Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project. We hope that, like us, they found it valuable and rewarding.



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Summary and conclusions

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive, the National Audit Office (NAO), the Health & Safety Executive and the Better Regulation Commission supported by staff from the Better Regulation Executive and NAO (see Appendix 1 for review team membership).

The Hampton report¹, published in 2005, is one of the cornerstones of the Government's better regulation agenda and regulators have been working since to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

The review team concluded that, in many respects, the Food Standards Agency regulates in accordance with the Hampton principles and Macrory characteristics. The review team rated it highly on adopting innovative alternatives to classic regulation and on having an evidence-based culture. Many positive initiatives are being taken forward in FSA, such as improving its risk assessment system. Areas to develop further include developing more of a strategic partnership with local authorities and providing better advice and guidance to small businesses. Overall, the FSA is continuing to improve, in terms of its performance against better regulation principles, from a strong base.

What we found

- **FSA adopts innovative approaches as alternatives to 'traditional' regulation and enforcement** – The FSA has taken forward several initiatives that use non legislative approaches to influence consumer demand or make use of existing market incentives. This includes the campaign to reduce salt intake, front of pack labelling and reliance on accreditation schemes such as 'Red Tractor'.
- **FSA has embedded in its culture an evidence-based approach to its work and its science is generally well respected both in the UK and the EU.** Such evidence is made public and is easily accessible.
- **FSA generally uses its evidence to develop a risk-based approach to regulation.** Whilst this approach is embedded in more recent initiatives it is less evident in one inspectorate which it runs directly – the Meat Hygiene Service. Following a recent independent review of the Meat Hygiene Service, the Agency is endeavouring to address these issues.
- **FSA is effective at negotiating at the European level** – The FSA is technically very good at negotiating on individual dossiers. It could increase its influence further by building on its successes in order to develop a more strategic approach to its engagement with Europe. The Agency reported that it will be seeking to do this through the development of its new EU and International Strategy.

¹ Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

- **FSA is a transparent and accountable organisation –** – it ensures its decisions are transparent. Its board meetings are open to the public, filmed and can be viewed on its website. The openness increases pressure on staff to present thorough, evidence-based papers for consideration by the Board. Transparency is a key strength of the FSA.
- **The relationship between the FSA and enforcement staff in local authorities is improving –** however staff in local authorities had mixed views of the FSA. The

FSA should seek to communicate its priorities to local authorities more clearly and seek to engage with them more as partners rather than agents. The work of FSA's regional teams appeared to be successful and popular amongst local authority staff and may be an appropriate vehicle for improving leadership and direction.

Issues for follow-up

The following table sets out the key issues that the review team believes the FSA needs to address to meet the Hampton criteria more

fully, measured against some of the symptoms² we were looking for to provide evidence of Hampton compliance.

Issue to be addressed	Hampton symptom
<p>Engagement with businesses</p> <p>The review team felt that the FSA needs to better understand the needs of business. Within the organisation, there appear to be few examples of staff visiting or shadowing business or of staff who have worked in business. The FSA could improve its understanding of business – either through more visits to business, secondments, or research. A better understanding of business should help the FSA to achieve its objectives.</p> <p>The FSA has a clear statutory role to <i>“protect public health from the risks which may arise from the consumption of food and otherwise to protect the interests of consumers in relation to food”</i>. The review team felt that the FSA has taken this further and in some circumstances presents itself more as <i>“championing”</i> the consumer interest as distinct from <i>“protecting”</i> those interests. In order to implement its duty, the Agency has a clear role in influencing industry. However, this pro-consumer stance, we believe, can complicate the Agency’s engagement with and understanding of business. The FSA needs to develop an overarching strategy for dealing with business, which sets out more clearly how the FSA will seek to engage with and influence business, including Small and Medium-sized Enterprises (SMEs), on a more consistent basis.</p> <p>It is a huge strength that the objectives of the industry and of the Agency are presently aligned around healthy eating but the FSA should have a more considered and nuanced strategy for maintaining that alignment. It also needs to be seen to represent all its stakeholders in EU negotiations.</p>	<ul style="list-style-type: none"> • Regulators should recognise that a key element of their activity will be to allow and even encourage an element of economic progress • There is dialogue between the regulator and business • The purpose of regulatory activities is understood by stakeholders

² From Hampton Implementation Reviews: Guidance for Review Teams. National Audit Office and Better Regulation Executive, May 2007. The guidance sets out many Hampton Symptoms. Only those symptoms where an issue emerged during the course of the review are cited in the above box.

Issue to be addressed	Hampton symptom
<p>Providing tailored advice and guidance</p> <p>Beyond “Safer Food, Better Business” which is itself an excellent initiative, the FSA does not have a strategic, effective and business-focused mechanism for providing advice to business, particularly SMEs. The FSA’s regulatory base is vast (around 600,000 diverse businesses and 150,000 primary production businesses) and Safer Food, Better Business (whose focus is to give advice to small food business operators) is not enough to cover the scale of that challenge. The FSA should make more use of advice and guidance as a regulatory tool where it has the power to do so.</p> <p>Written advice is of a good standard and is available on the website. However, little is known about the extent to which businesses use this guidance. Businesses asking for advice will frequently be referred to their local authority enforcement officers. Furthermore, the FSA frequently looks to LACORS (the Local Authorities Coordinators of Regulatory Services)³ and others to produce written guidance for business.</p> <p>There is also a lack of clarity within the FSA on how it should handle queries from businesses. The FSA should seek to understand more about how businesses access advice and how best to target advice and guidance on food regulation to business.</p>	<ul style="list-style-type: none"> • The majority of businesses benefit from advice and guidance • Advice and guidance are accessible and accessed • The regulator is aware of businesses’ preferred information sources and a strategy for disseminating/marketing guidance which takes into account these preferences is in place
<p>Risk-based inspection</p> <p>The approach taken by the Meat Hygiene Service (MHS) is not currently risk-based. The FSA has realised the MHS is not Hampton-like and its inspection regime is not risk-based. The review team welcomes the Board’s response to the recommendations set out in the recent Tierney report, commissioned by the FSA and has seen evidence that the reforms proposed will be effective in achieving more of a risk-based system.</p> <p>The FSA and MHS should continue to implement the recommendations in the Tierney Report where they fall within domestic legislation, and consider how best to take forward those recommendations that require changes to regulations. The FSA should continue to monitor progress in delivering the recommendations of the Tierney report.</p>	<ul style="list-style-type: none"> • The regulator focuses its greatest inspection effort on businesses where risk assessment shows that both: <ul style="list-style-type: none"> – There is a likelihood of non-compliance by business; and – The potential impact of non-compliance is high • Inspections are targeted on high-risk areas of operation

³ LACORS is the local government central body responsible for overseeing local authority regulatory and related services in the UK

Issue to be addressed	Hampton symptom
<p>Providing strategic direction to local authorities</p> <p>The FSA has developed a good working relationship with local authorities and the co-ordinating bodies LACORS and the Association of Port Health Authorities (APHA). However, the review team felt that the FSA could provide greater strategic direction, in terms of the priorities for food law regulation.</p> <p>There is currently little clear link between specific issues that the FSA is dealing with and its work with Local Authorities, for example the FSA’s target to reduce food borne illnesses and the rising figures reported for listeria by local authorities. The FSA does not generally help steer local authority inspectors to focus their enforcement actions in a way that delivers the FSA’s goals in relation to Food Hygiene and Food Standards.</p> <p>Local Authorities are keen to establish a more effective approach to partnership working with the FSA. The FSA’s initiative to set up regional teams has shown promise and has been well received by local authorities. We believe there are real opportunities to improve efficiency and impact in this way.</p>	<ul style="list-style-type: none"> • Regulatory activity can be linked to the achievement of outcomes • The regulator has clear outcome-focused objectives and targets which are understood and relate to its statutory objectives. • Outcome measures are communicated throughout the organisation, including to front line enforcers

Issue to be addressed	Hampton symptom
<p>Progress on the <i>Changes to Local Authority Enforcement project (CLAE)</i></p> <p>The FSA has embarked on a project to change the way local authorities administer and enforce food law and make the guidance to enforcement officers more risk-based and less dependent on the number of inspections.</p> <p>The new Local Authority Code of Practice should recognise the use of a range of interventions by enforcement officers, beyond traditional inspection. The FSA should ensure that the new Code of Practice and the new monitoring approach encourages enforcement officers to focus on highest risk issues and to work towards the achievement of the FSA’s strategic priorities.</p> <p>The new Code of Practice must do more to help enforcement officers to share best practice.</p>	<ul style="list-style-type: none"> • The Regulator uses a mix of output and outcome measures, as appropriate. • Regulatory activity can be linked to the achievement of outcomes • Non traditional approaches to enforcement are considered and adopted where appropriate • The Regulator’s targets and guidance incentivise local authorities to deliver effective outputs

Introduction

- 1 This review of the Food Standards Agency (FSA) aims to provide a structured check on performance against the principles and characteristics set out in the Hampton⁴ and Macrory⁵ reports (see Appendix 2). The team reviewed the FSA against a performance framework⁶ developed by the NAO and the Better Regulation Executive which provided a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are based on a combination of evidence and judgement. A brief description of the scope of the review and methods employed is at Appendix 3.
- 2 The Food Standards Agency was established in response to issues such as BSE, Salmonella and E. Coli infections, genetically modified foods, and nutrition – although nutrition was a relatively small part of the Agency's work at the beginning. Its establishment was recommended in a report by Professor Philip James of the Rowett Research Institute, Aberdeen. The Government subsequently accepted the report's recommendations and the Food Standards Act received Royal Assent in November 1999, with the Agency becoming operational in April 2000.
- 3 The Food Standards Agency is the UK's food safety and quality authority. Its objective, defined in law, is to protect public health from risks which may arise in connection with the consumption of food – including feed for food producing animals – and drink (including the risks caused by the way in which food, feed and drink is produced or supplied) and otherwise to protect the interests of consumers in relation to food. Its vision is 'safe food and healthy eating for all'. It works with:
 - Business from farm to fork to help them keep consumers safe;
 - Local authorities and other food law enforcement bodies to help them take proportionate, timely and resolute action; and
 - Consumers to provide reliable and up to date information to help them make healthy choices about food.
- 4 The FSA has a resource budget of around £145m (£143.8m in 2007/08) covering England (£166m including FSA Wales, FSA Scotland and FSA Northern Ireland), and has objectives to improve food safety, healthy eating and consumer choice.
- 5 Aside from the work carried out by the Meat Hygiene Service and the work FSA carries out on wine standards⁶, the Agency does not directly undertake enforcement and inspections relating to food law. Most food law is enforced on behalf of the FSA by local authorities in Great Britain and DARDNI⁷ in Northern Ireland and by port health authorities in their capacity as food authorities: they are responsible for the regulation of around 600,000 food premises and 150,000 primary production businesses. Food enforcement can be broken down into three areas:

⁴ Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007

⁵ Regulatory Justice: making sanctions effective, Final report, Professor Richard B Macrory, November 2006

⁶ The Wine Standards Board ceased to exist after it was transferred to the FSA in July 2006

⁷ Department of Agriculture and Rural Development Northern Ireland

- *Food Safety* – covering issues such as hygiene. This is usually enforced by Environmental Health Officers (EHOs) in local authorities.
 - *Food Standards* – covering issues such as information and labelling and enforced by local Trading Standards Officers (TSOs).
 - *Feed safety* – covering hygiene and the composition and labelling of animal feed and enforced by local Trading Standards Officers.
- 6** The Meat Hygiene Service (MHS) enforces food law in about 2000 slaughterhouses, cutting plants and related premises and the FSA's wine standards inspectors enforce regulations in vineyards and importer and trader premises.
- 7** The sections that follow set out the review team's findings against the different elements of the performance framework: design of regulations; advice and guidance; data requests; inspections; sanctions; and focus on outcomes and the Hampton vision.

The Hampton vision

- 8** Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be *risk-based and proportionate* in their decision-making, *transparent and accountable* for their actions and should recognise their role in encouraging *economic progress*.
- 11** Whilst the frequency of inspection of businesses is clearly assessed on the basis of risk, more should be done to understand the extent to which inspections are addressing key areas of risk, and whether there are alternative strategies which local authorities can deploy to greater effect. The FSA is seeking to increase the flexibility for local authorities to deploy alternative enforcement strategies as part of the Changes to Local Authority Enforcement (CLAE) project.

Risk-based

- 9** The FSA is an organisation that has identified its key high level outcomes and which seeks to focus its resources on achieving those outcomes. In doing so, the organisation makes good use of research and evidence to identify the key issues that pose a significant risk to those outcomes. This has led to the FSA's educational campaigns on salt reduction and saturated fat intake, and to the *Safer Food, Better Business* approach to the implementation of HACCP (Hazard Analysis and Critical Control Points) for small businesses.
- 10** The frequency of local authority inspections is driven by the use of a risk assessment model which is set out by the FSA in the Local Authority Codes of Practice. The risk rating system assesses food establishments on a range of issues including the type of food being dealt with, the processes used, the consumers affected, current levels of compliance and overall confidence in the management of risks by the business. This determines the frequency of inspection, which can be between every six months to every three years for food hygiene and between every one year and every five years for food standards. The FSA audits the performance of local authorities and expects them to inspect all food premises that are due for an inspection that year.
- 12** We found that more could be done to link the work of local authorities to the FSA's key strategic outcomes, thereby helping to focus inspectors' interventions more clearly on the issues that pose the greatest risk to the achievement of those outcomes.
- 13** The FSA is least risk-based in the area of meat hygiene, where official inspection is prescribed in European legislation in addition to audit of operators' controls. As a result of these inspection tasks and the permanent presence of officials they require in abattoirs there is a lack of clarity over who is responsible for food safety. There is a key role for FSA to continue to influence Europe towards a more risk-based approach in this area.

What we found

- **Good use of evidence to assess the issues that the FSA should be focusing on;**
- **A risk-based system for determining the frequency of inspections;**
- **For local authorities, a need for greater flexibility to deploy a range of interventions and a need for clearer strategic direction from the FSA towards the issues of highest risk.**

Transparency and accountability

- 14 Transparency is a key strength of the FSA. The organisation publishes and provides access to most of its information on research, evidence and its decision-making. Its board meetings are open to the public and available for download on its website. As a result, stakeholders are aware of what is said at board meetings and how decisions have been arrived at. The review team considered that this level of transparency helps ensure that proposals put before the board are suitably evidence-based and robust.
- 15 The FSA also consults with stakeholders as it develops its policies and strategies. In terms of transparency, most stakeholders we spoke to considered the FSA to consult effectively.
- 16 The FSA is a non-ministerial government department, established by the Food Standards Act 1999. As with other government departments, it is accountable to the public through Parliamentary scrutiny both in Westminster and the devolved administrations. It is required to publish a statement of general objectives it intends to pursue, and general practices it intends to adopt, in carrying out its functions. This statement is subject to the approval of Ministers and the devolved administrations. An annual report is published following the end of each financial year and provides a report to Parliament and the devolved administrations on the main activities performed during the period.

Overall, we concluded that the FSA is a very transparent and accountable regulator.

Encouraging economic progress

- 17 The Hampton Report stated that “regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection”⁸. This requires regulations and their enforcement to be proportionate to the potential for harm and that regulators should be aware of their influence on economic progress.
- 18 The FSA sees itself primarily as an organisation that represents the interests of the consumer, in line with its statutory duty. As such, many in the FSA do not explicitly recognise that the organisation has a role in allowing or encouraging economic progress. They see a role in shaping the market through promoting demand for healthier food and so are happy to use the market in support of their aims. However, whilst it is necessary, at times, for the FSA to intervene in a way which may adversely affect a business, encouraging economic progress is not necessarily at odds with the achievement of regulatory outcomes. The FSA could do more to recognise that the incentives for business are frequently aligned with the interests of the consumer. Some environmental health teams we interviewed saw part of their function in inspecting small businesses as encouraging economic regeneration in deprived areas.
- 19 The FSA clearly accepts the need to be risk-based and proportionate in its approach to regulation and considers the impact of its regulation on businesses and others. Interestingly, the FSA has increasingly worked with consumers to successfully influence the behaviour of business, for

⁸ From Hampton principles of inspection and enforcement, Box E2, pg 7

example, towards the production of healthier food. Furthermore, by helping increase the levels of information available to consumers and by its use of evidence, in practice, the FSA can and does help the market to function. Conversely, the FSA has the power to undermine consumer confidence and affect the market detrimentally. Business stakeholders, in particular, were very aware of how FSA's communications can affect the market in both positive and negative ways.

- 20** In the course of the review, several business stakeholders expressed the view that the FSA's understanding of business could be better. This could be improved, for example, by a programme of secondments and visits to businesses.

- 21** When acting in Europe, however, the FSA is acting not for the consumer but for the UK and its negotiating line is subject to co-ordination with other government departments. The review team found that its line does represent all its stakeholders, including business.

Overall, we found that the FSA has been innovative in how it works to influence the food market and that it generally considers the impact of its actions on business. However, it could seek to understand businesses more, both to increase its influence over business's behaviour and to understand the impact that its actions, in particular its communications, can have on businesses.

Design of regulations

Hampton principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.”

“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”

Key findings

- FSA has made imaginative use of alternatives to ‘traditional’ regulation and enforcement
- FSA has clear objectives in Europe, and recognises the importance of working closely with a range of stakeholders to deliver them
- FSA is often constrained by European legislation on food hygiene issues. It should continue to push for changes that enable the UK to take a more risk-based and principles-based approach
- FSA policy teams consult well with stakeholders, particularly consumer groups but it needs a more co-ordinated approach to consultation
- FSA has developed effective processes for carrying out impact assessments. However, it does not systematically undertake reviews of the effectiveness of regulations

Background

- 22** Over 90% of the legislation for which the FSA is responsible stems from the EU. This legislation covers almost all of the areas of the Agency’s responsibilities, including food hygiene, food standards, food labelling and imported food and feed. The principal organisations with which the Agency deals are the European Commission’s Directorate-General for Health and Consumer Protection (‘DG SANCO’), its Food and Veterinary Office (FVO) which audits member states to ensure they have applied EC law correctly and have adequate official controls, and the European Food Safety Agency (EFSA) which carries out scientific assessments of food safety.
- 23** The Agency represents the United Kingdom in Council negotiations on new European laws, helps influence the European Parliament and is subject to Whitehall

co-ordination of the UK negotiating position. Following the publication of a European Commission White Paper on Food Safety in 2000, there has been a steady stream of instruments revising and consolidating European food law. This process is now almost complete and the Agency foresees relatively little change in regulation over the next few years. However, EU regulations will continue to be revised in the light of technical progress committees and other developments.

- 24** Most food law increasingly consists of directly applicable Regulations so the Agency has comparatively little scope to decide how to implement them. Domestic regulations in each of the four countries of the United Kingdom make provision for enforcement of European food law by the Agency and local or other authorities, set out the procedures by which enforcement shall occur, and determine the penalties for offences.

- 25** It is the responsibility of the Agency as the UK's 'central competent authority' to ensure that the UK discharges its Treaty obligations. It must have a system of 'official controls' to ensure that food imported to or produced in the UK meets EU-wide agreed standards. The Agency does this, as far as local food authorities are concerned, through its four food Codes of Practice: one for each country of the UK, and its Feed Law Enforcement Code of Practice in Great Britain. For meat hygiene, it has a 'manual of official controls', setting out what the MHS must do.
- 26** The Commission's Food and Veterinary Office audits member states' official controls. The UK receives up to 8-10 such 'missions' each year. They may be in any area of the law and the Agency receives little notice of what the auditors will wish to inspect or where. A perceived failure to implement or enforce European food law adequately may result in an adverse report and may lead to the Commission taking infraction proceedings against the UK.
- 28** Examples of where the FSA has taken this approach include its campaign on raising awareness around the intake of salt and its work on front of pack labelling, where the Agency has undertaken consumer research and worked closely with industry to develop a 'traffic light' system to inform consumers clearly about key nutrients.
- 29** The FSA has also shown a willingness to take account of industry-led initiatives. For example, it places reliance on the 'Red Tractor' scheme – a scheme which sets out and manages the assurance standards in a number of food sectors. This scheme is managed by Assured Food Standards, a body owned by the food chain.

FSA has clear objectives in Europe, and recognises the importance of working closely with a range of stakeholders to deliver them

Review Findings

FSA has made imaginative use of alternatives to 'traditional' regulation and enforcement

- 27** The FSA has adopted a range of approaches, beyond classic inspection and enforcement, to furthering its objectives. In particular, it has sought to inform consumers in order to influence the food market. This helps create the right incentives for business to comply with regulation and to work in a way which is aligned with the FSA's objectives. Its success in extending its approach beyond its strict regulatory base is effective and often appears seamless, with similar approaches being taken in its public statements, whether they relate to a mandatory regulatory base or the FSA's own policy.
- 30** Overall, the review team found that the FSA is generally effective in negotiating at the European level. The Agency is aware of how to influence the Commission effectively and is respected for its levels of knowledge, evidence and expertise. It consults stakeholders during the negotiating process, and encourages stakeholders to make their own representation where this may be effective.
- 31** In Europe, the FSA is viewed as being a regulator which advocates and undertakes a risk-based approach to regulation. The FSA is also respected in Europe for its transparency and other processes, such as consultation and its approach to Impact Assessments.
- FSA is often constrained by European legislation on food hygiene issues. It should continue to push for changes that enable the UK to take a more risk-based and principles-based approach**
- 32** In many areas, European food hygiene regulations are prescriptive. As such, the

FSA is frequently constrained in the approaches it can take. For example, on regulations relating to meat hygiene, the FSA would like to see more flexibility and is beginning to work with industry to influence Europe with the aim of moving towards a more risk-based approach. It recognises that this is a particularly conservative and risk-averse part of the EU legislative machinery and change may take a long time.

- 33** The FSA has (on behalf of the UK) also sought to influence Europe to take a more risk-based approach to hygiene regulations. A recent simplification proposal from the Commission sought to exempt food businesses employing fewer than ten people from the requirement to apply food safety management procedures based on HACCP principles (see box below). This was resisted by the FSA because business size was not an adequate indicator of risk to public health. Furthermore, the legal requirement is capable of being applied flexibly by food businesses.

FSA policy teams consult well with stakeholders, particularly consumer groups but it needs a more co-ordinated approach to consultation

- 34** In developing policy, the FSA regularly consults with consumers, and other groups, including business. Many stakeholders cited the organisation as one which is transparent and which engages stakeholders well in the policy development process. However, the FSA's approach to consultation could be more co-ordinated. For example, some stakeholders referred to 'consultation overload' and talked of a flurry of consultations occurring during a similar time period. Greater co-ordination would reduce the burdens on business and other stakeholders who have to prepare multiple responses.
- 35** We felt that local authority inspectors are not always adequately consulted during the policy development stage. Local authorities have 'on the ground' experience and awareness of business needs so it would

Good Practice **– Safer Food, Better Business**

The EU introduced Hazard Analysis of Critical Control Points (HACCP) legislation in 2004. By 1 January 2006 all food businesses had to have a documented food safety management procedure based on the principles of HACCP looking at the points in the production of food where there might be risks to food safety. The FSA took an active and engaged approach to the implementation of this legislation in the UK. It designed

the Safer Food, Better Business toolkit, which provided advice and support to small businesses in complying with the regulation. The FSA has spent around £12m supporting business as they adapt to the new regulations. Feedback from businesses suggests it has helped them to understand their responsibilities under the regulations, to reduce waste (through less food being made unsafe) and improve their planning.

be useful for them to be able to feed into the policy development stage. There needs to be an effective feedback loop from local authority inspectors to policy officials in the FSA.

FSA has developed effective processes for carrying out impact assessments. However, it does not systematically undertake reviews of the effectiveness of regulations

- 36** The FSA undertakes Impact Assessments on its activities that affect businesses. This includes FSA advice, 'classic' legislation and other FSA initiatives. In doing so, the FSA seeks to consult with consumers, trade associations, Local Authorities' Co-ordinators of Regulatory Services (LACORS) and other interested parties.

- 37** The Better Regulation team at the FSA stress the importance of Impact Assessments as a policy making tool. As a result, policy teams within the FSA are getting better at involving internal Impact Assessment experts sooner. When FSA staff are negotiating in Europe, they liaise effectively with policy teams for information on costs and benefits.

- 38** In addition, the FSA reviews the effectiveness of many of its non-legislative initiatives, such as those on nutrition and food labelling (see box below).

- 39** However, the review team did not find evidence to suggest that the FSA systematically reviews the effect of regulations in order to consider the appropriateness of its interventions or to influence Europe.

Good Practice
– Front of pack labelling

There are currently several different systems for front of pack labelling of nutritional information in the UK.

These include the traffic light approach (which the FSA developed), monochrome schemes which give information on the percentage guideline daily amounts (GDAs) that the product contains and some 'hybrid' schemes which combine elements from the traffic light and GDA approaches.

The FSA has commissioned independent research into which approach is the

most effective, according to a set of criteria agreed with industry stakeholders.

The research is overseen by an independent Project Management Panel, and has been developed in consultation with the Nutrition Strategy Steering Group and an advisory panel including representatives from the major supermarkets and food manufacturers in the UK. By commissioning research in partnership with the industry, the FSA can demonstrate the rigour of its evidence-based approach to policy making, and ensure that the criteria used to assess the different schemes take account of business' concerns.

Advice and guidance

Hampton principle

“Regulators should provide authoritative, accessible advice easily and cheaply.”

Key findings

- FSA is not clear about its role in the provision of advice and guidance to business
- FSA is capable of producing good advice and guidance where it has thought about the target audience and sought to make best use of the relationship between business and enforcement officers
- Regional seminars are one effective way of giving advice and guidance to local authorities and the FSA should continue with them
- FSA needs to be more aware of the commercial impact of its public statements

Background

Provision of advice to local authorities

- 40** Under the Food Standards Act (1999) section 6 (1) *‘The Agency has the function of – ... providing advice, information or assistance in respect of [matters connected with food safety or other interests of consumers in relation to food] to any public authority’*. This includes advice on food safety and food hygiene law to local authorities.
- 41** The FSA has to date not provided a one-stop contact point for local authorities seeking advice on food law. Instead, enquiries are dealt with by the relevant policy officer, depending on the sector affected. For example, questions on labelling law would be dealt with by the labelling team at the FSA. However, FSA is currently considering whether a ‘one-stop shop’ approach – i.e. single phone number – could be an effective way of dealing with questions from all its stakeholders.
- 42** The FSA recently established a regional presence unit to facilitate better working with local authorities. As part of this, the team has begun to roll out a programme of

workshops around the country for local authority enforcement officers. Advice to local authorities is also provided by LACORS (Local Authorities Co-ordinators of Regulatory Services), and during the course of the review it became clear that LACORS are the first port of call for most enforcement officers seeking guidance.

Provision of advice to business

- 43** The FSA makes advice and guidance available to businesses via:
- the website
 - the Business Link website
 - Local Authority enforcement officers
 - Industry guides
 - Imported food helpline.
- 44** The FSA recently commissioned BOMEL Limited to undertake a review of its guidance to business. The findings of the review were published in December 2007 . The review selected and examined 20 pieces of FSA guidance deemed to be representative of the different types of guidance that the FSA publishes. The review found that the stakeholders consulted considered that, generally, guidance was easy to obtain and understand.

- 45** Some of the common strengths of FSA guidance that the project identified were that the guidance simplified regulations, was easy to follow and helped consolidate information. Weaknesses included issues such as guidance being too long, inadequate referencing and information gaps.
- 46** As part of the report, the review developed 'model guidance' to be used by FSA officials in the development of new guidance.
- 47** As part of its simplification programme the FSA has undertaken a Sector Specific Review, an in-depth study of issues facing small-scale butchers and craft bakery businesses. The review produced a number of findings, including ones relating to the provision of advice and guidance. As a result, FSA has reported it is committed to:
- initiate a review of all aspects of the food hygiene approval requirements, with the aim of producing detailed guidance for industry and enforcers;
 - undertake a review of previous work to provide a route map to food regulation and a source of integrated advice on food law to business;
 - initiate a review of FSA's effectiveness in providing advice to business.
- 49** Clearly communicating the type of advice available from the FSA would save businesses time in accessing the right information, and reduce the risk of businesses getting conflicting advice from different sources. The FSA should do more to ensure that businesses know what advice and guidance they will provide, and how to access it.
- 50** The FSA should have it in mind that businesses who call for advice may have an urgent need for a response, with major financial implications. Some stakeholders complained that it could take weeks for anyone to get back to them with a response. They reported that they got a more prompt response from their local enforcement officers. We feel that there should be a communication strategy which should be clear on customer service standards - how staff should react to business enquiries, and what businesses should be entitled to expect.
- 51** We welcome the FSA's consideration of a one-stop shop for queries from all stakeholders. Such an approach could help provide a better and more consistent advice service for those businesses that seek advice – either directly from the FSA or from their local Trading Standards Officers (TSOs) and Environmental Health Officers (EHOs).

Review Findings

FSA is not clear about its role in the provision of advice and guidance to business

- 48** Many of the smaller businesses we spoke to were not clear about where they should go for advice and guidance on complying with food law. The FSA does not have a clear strategy on the nature of advice and guidance it can provide to businesses, including what would be better provided by local authority enforcement officers, trade bodies, or consultants.

FSA is capable of producing good advice and guidance where it has thought about the target audience and sought to make best use of the relationship between business and enforcement officers

- 52** Safer Food, Better Business is an excellent tool to provide guidance to businesses on how to comply with food law.
- 53** In other areas, however, the FSA appears to have placed much less emphasis on the use of guidance as a tool for increasing compliance. The FSA should do more to

understand the ‘reach’ and ‘influence’ of its advice and guidance. For example, few of the businesses we spoke to used the FSA website to access advice and guidance as they were not clear on what the site could provide. We welcome BOMEL Limited’s recommendation that the accessibility of guidance on the FSA website should be reviewed.

- 54 The FSA does not monitor the market penetration of its guidance to understand who uses FSA guidance and whether it is effective. This would help FSA develop a clear strategy on advice and guidance, including which business sectors should be targeted by guidance and which channels would be most effective in doing so.

Regional seminars are one effective way of giving advice and guidance to local authorities and the FSA should continue with them

- 55 The FSA has rolled out a programme of regional events for local authority enforcement officers. These events give TSOs and EHOs the opportunity to get to know each other, compare notes on best practice, and get advice from the FSA and

LACORS. This is one effective means for improving communication between the FSA and local authority enforcement officers, and for facilitating a more consistent approach to enforcement across different local authorities. These events also give the FSA a platform to communicate their national priorities. This should lead to a more effective co-ordination role for the FSA in the roll out of national programmes.

- 56 Regional seminars are one way for EHOs and TSOs to feed into FSA policy development, and ensure it reflects the experiences of those ‘on the ground’. The FSA should continue to develop its communication with local authorities, directly and through LACORS, to ensure that inspection policies can be delivered by local authorities.
- 57 The FSA should monitor the effect of its regional teams and continue to develop its channels of communication, in particular to ensure that feedback from local authorities is captured in good time to feed into development of new guidance and policies.

Good Practice
– Safer Food, Better Business

The FSA working closely with local authorities produced a guidance pack called Safer Food, Better Business to help food businesses comply with EU legislation on Hazard Analysis and Critical Control Points. It has developed two versions of the pack, one for catering businesses and one for retail.

The packs explain the requirements of the legislation and suggest ways businesses can comply and helpful materials including a diary that can be used for recording the regular checks

required by the legislation. The FSA launched an interactive DVD to support the Safer Food, Better Business programme in February this year, and has also launched tailored editions for Chinese, Indian, Pakistani, Bangladeshi and Sri Lankan cuisines.

The guidance was developed in consultation with small businesses and their representatives. This has been a very successful project which has been welcomed by a wide range of stakeholders across the business and enforcement communities.

FSA needs to be more aware of the commercial impact of its public statements

- 58** The FSA has a very powerful voice with consumers which it has carefully developed. This gives it the power to influence markets but also carries the responsibility to be aware when it may unintentionally cause commercial detriment.

Data requests

Hampton principle

“Businesses should not have to give unnecessary information or give the same piece of information twice.”

Key findings

- FSA makes few direct requests for data from the majority of businesses
- FSA is undertaking a review of its forms

FSA makes few direct requests for data from the majority of businesses

59 The FSA makes few direct requests for data from businesses. All businesses are legally obliged to submit the registration form which is completed and sent to local authorities when a food business initially commences operation. The registration form itself is simple and places little burden on businesses. As part of the revision of the new Food Law Code of Practice, the form has recently been revised to make it simpler, requiring even less information from business.

FSA is undertaking a review of its forms

60 The FSA has 24 forms which are for completion by certain food businesses, covering different sectors of the food market, including vineyards and meat producers. The FSA is currently undertaking a review of its forms, focusing primarily on the 16 forms which are mandatory for businesses to complete.

61 Examples of where forms have been improved are detailed in the FSA’s simplification plan and include the Medical Food Notification form which has been simplified and which will be able to be completed electronically. The online Incident Report Form has also been improved to enable data to be submitted in spreadsheets, documents and images. This should make it easier for business to handle and collate information¹⁰.

62 As part of the forms review project, an internal panel has been established. The panel is producing guidance for FSA staff on best practice and form layout in line with the Hampton Report recommendations. In addition, the panel reports its findings to FSA’s Better Regulation Advisory Group (a group of key stakeholders which provides external challenge to all FSA’s better regulation initiatives).

¹⁰ FSA simplification plan, December 2007

Inspections

Hampton principle

“No inspection should take place without a reason.”

Key findings

- **Partnership working between the FSA and local authorities is improving**
- **The current performance measurement system for local authorities does not encourage them to adopt alternatives to ‘traditional’ inspection**
- **The Meat Hygiene Service inspection regime, in many respects, is not in line with the Hampton principles**
- **The wine standards inspection system is still settling in but is beginning to take a more risk-based approach**

Background

- 63** Aside from the Meat Hygiene Service and the FSA’s work on wine standards, the FSA does not carry out inspections itself. Instead, the regulations for which it is responsible are largely enforced by local authorities with EHOs covering food safety and TSOs covering food standards and feed enforcement.
- 64** Codes of Practice issued by the FSA provide guidance to authorities on the frequency and nature of inspections of food businesses. All authorities are obliged to comply with the Codes of Practice. The performance of local authorities is monitored and audited by the FSA. As part of this, the FSA publishes reports on the performance of local authorities with regard to the regulation of food business premises.

being somewhat remote from local authorities. Past initiatives, such as the ‘naming and shaming’ of poor performing local authorities (i.e. those undertaking low numbers of inspections) and the FSA’s burdensome monitoring arrangements, have caused tensions between local authorities and the FSA. However, it was clear that many staff in local authorities feel that the relationship between the FSA and local authorities has improved considerably in recent years. This appears to be as a result of a number of factors, including a greater emphasis on partnership working by the FSA and increased engagement between the FSA and local authority staff. However, we found that “naming and shaming” had not been abandoned; there had just not been a need to use it recently. The FSA should be aware of the negative effect of using this approach again.

Review Findings

Partnership working between the FSA and local authorities is improving

- 65** The FSA has been viewed, in the past, as

- 66** The review team welcomes the introduction of regional teams as a way of helping relations and improving co-ordination between the FSA and local authorities.

The current performance measurement system for local authorities does not encourage them to adopt alternatives to 'traditional' inspection

- 67** The FSA collects a considerable amount of data from local authorities in order to assess their performance. However, performance information is based almost entirely around activities such as the number of inspections undertaken or number of food samples taken. As such, the system does not encourage local authority regulatory services to think innovatively about how to achieve better regulatory outcomes. With local outcomes not being measured (e.g. no assessment of levels of food borne illness) local authority performance is primarily judged on the number of inspections performed (within certain risk categories).
- 68** The risk rating system, which is set out in the Codes of Practice, is used to rate food/feed establishments and determine frequency of inspection – ranging from six months to five years¹¹. The FSA expects food authorities to inspect all food premises that are due for an inspection that year. However, alternative (non-inspection) enforcement strategies are permitted for the lowest risk premises. Alternative enforcement strategies may include the use of questionnaires, with a sample of businesses receiving a follow-up visit to verify the information provided.
- 69** Stakeholders we spoke to feel that the FSA's approach to enforcement is unnecessarily prescriptive and directive. However, the FSA is currently undergoing a change in its local authority enforcement strategy, with a view to affording local authorities greater flexibility.
- 70** Furthermore, as part of the development of the Government's new performance framework for local authorities, FSA has negotiated the inclusion of an indicator covering food hygiene. This will be a measure of food establishments which are broadly compliant with food hygiene law.
- 71** Overall, the FSA should ensure that the outputs from the CLAE project (see box overleaf) and the existence of the new indicator allow and encourage local authorities to be more innovative in their approach to regulation of food premises and to be more focussed on outcomes rather than inputs.
- ### The Meat Hygiene Service inspection regime, in many respects, is not in line with the Hampton principles
- 72** The Meat Hygiene Service (MHS) is an Executive Agency of the FSA. It is responsible for the protection of public health and animal health and welfare in Great Britain through enforcement of legislation and meat inspection in approved fresh meat premises such as slaughterhouses, cutting plants, game facilities and meat products premises. The MHS has a statutory duty to provide these services on demand, 24 hours a day, 365 days a year, throughout England, Scotland and Wales.
- 73** Overall, the regime overseen by the MHS is not very risk-based and very prescriptive. For example, abattoirs must have a permanent inspection presence during their operations, regardless of the quality of their systems and past performance, with multiple layers of inspection in addition. However, the regime is in place as a result of European regulations and easing the excess will be difficult.
- 74** The FSA commissioned a review to examine the practices of the MHS, looking at how it could be made more efficient and risk-based. The review team welcomes the decisions of the FSA Board in July 2007 to

¹¹ From six months to three years for food hygiene, from once a year to once every five years for food standards, and from once a year to every five years for animal feed inspections.

accept the recommendations of the Tierney report¹² and welcomes his view that to be more risk-based, the FSA will need to “secure the necessary changes to EU regulations”. A full list of recommendations is at Appendix 4.

- 75** We saw that the recommendations are being put into practice and we encourage the FSA to remain committed to this. It has taken the FSA a long time to get to grips with the problem and it is hoped that they will now see it through.

The wine standards inspection system is still settling in but is beginning to take a more risk-based approach

- 76** The FSA took over responsibility for enforcement of wine standards in July 2006 from the Wine Standards Board, following a recommendation from the Hampton Report. It is one of the two areas where the FSA is directly responsible for inspection and enforcement. The Wine Standards Board was partly funded by industry and part funded by Defra so had a

Good Practice

– Changes to Local Authority Enforcement (CLAE) Initiative

The CLAE initiative aims to introduce more flexibility to food law enforcement in food premises, for both food hygiene and food standards. This is strongly welcomed by many inspectors who believe that their inspections ought to be a matter of assisting the small business operator improve their food management systems and reduce risks of harm to both their customers and, therefore, their business.

One of the aims of the project is to give local authorities greater flexibility to choose the appropriate intervention for each premises. A new emphasis will be placed on working with food businesses to achieve compliance.

The FSA and stakeholders are reviewing:

- the enforcement policy – to introduce proportionate interventions;
- the Code of Practice – with a greater emphasis being placed upon the enforcer’s confidence in management and the effectiveness of business’s food safety management systems. The

objective is to amend policy, within the parameters of European regulation, to enable fewer inspections and to replace them with a range of proportionate interventions;

- the local authority monitoring system;
- FSA’s local authority audit arrangements; and
- the Local Authority Framework Agreement – the document sets out how food law should be enforced locally, including enforcement standards for local authorities.

The review of the monitoring systems will be particularly significant in terms of influencing local authority behaviour. As part of this, the FSA intends to introduce a new measure of performance – the ‘proportion of businesses that are broadly compliant’ – broad compliance being a proxy for ‘safe food’.

The review of audit arrangements is exploring the possibility of devolving monitoring to the local authorities, potentially relieving those local authorities from the burden of a central audit.

¹² <http://www.food.gov.uk/multimedia/pdfs/fsa070706.pdf>

different approach to enforcement of the regulations. The FSA has applied its normal disciplines to this area and there has been a marked contrast with the previous regime. It is a highly complex area of regulation and comes under the Common Agricultural Policy's commodities regime. The FSA is currently working with Defra on the response to the review of the EU wine regime. Whilst there is logic to the inclusion of this within the FSA, consideration is being given as to whether the function could be transferred to local authorities.

Sanctions

Hampton & Macrory principles

“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”

“Regulators should be transparent in the way in which they apply and determine administrative penalties.”

“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”

“Regulators should follow-up enforcement actions where appropriate.”

Key findings

- **FSA encourages a consistent approach to enforcement through its Codes of Practice and associated processes**
- **Business generally views enforcement as fair**
- **Penalties are adequate and may be amplified by action taken by the large retailers against their suppliers**

Background

77 The framework within which local authority inspectors operate is set out in a number of documents. The key document is the statutory code of practice for the country in which the local authority is situated. Alongside this is ‘practice guidance’ which describes in more detail how inspection and enforcement should be carried out and the framework agreement with local authorities. Regard must also be had to the Enforcement Concordat and, in England and Wales, because failure to comply with food law may result in criminal sanctions, the Code for Crown Prosecutors. Local authorities’ performance is monitored and audited by the Agency.

78 If a local authority fails to follow the code, the FSA can direct them to remedy the matter. The Codes of Practice require food

authorities to have an up to date enforcement policy and to ensure that enforcement action taken by their officers is reasonable, proportionate and consistent with good practice. Authorised officers are required to take account of the full range of enforcement options. This includes:

- educating food business operators
- giving advice
- written warnings
- sampling food (for example, to test for contaminants)
- detaining and seizing food to have it condemned by a Magistrate
- serving improvement notices
- following prohibition and prosecution procedures.

79 Except where circumstances indicate a significant risk, officers are required to

operate a graduated and educative approach starting at the bottom of the pyramid i.e. advice/education and informal action and only move to more formal action where the informal does not achieve the desired effect. In deciding the type of enforcement action to take, an authorised officer is required to have regard to the nature of the breach and the history of compliance of the food business operator or, in the case of new businesses, an assessment of the food business operator's willingness to undertake the work identified by the officer.

- 80** There has been a downward trend over a number of years in the number of registered premises, inspections and enforcement actions by local authorities (see Figure 1). The FSA and LACORS have studied the trend and ascribe it to 'Local Authorities ... doing more to focus their resources and actions on areas of greatest needs, in line with the Hampton agenda'. As a proportion of the total enforcement activity, formal enforcement has remained fairly steady. By far, the greatest number of enforcement actions are written warnings, accounting for 96% of all enforcement activity. Improvement notices account for 2.5% of the total of enforcement actions, formal cautions 0.3% and prosecutions 0.5%.
- 81** In addition to these formal sanctions, there are two other types of measures that have the character of sanctions:
- Establishments dealing with high risk foods such as meat have to be approved by the local authority
 - Food businesses are required to withdraw or recall food that is unsafe. The operator must also inform the local authority if he has reason to believe that a food he has placed on the market may be injurious to health. The FSA coordinates all such food incidents through its incidents branch.

Review Findings

FSA encourages a consistent approach to enforcement through its Codes of Practice and associated processes

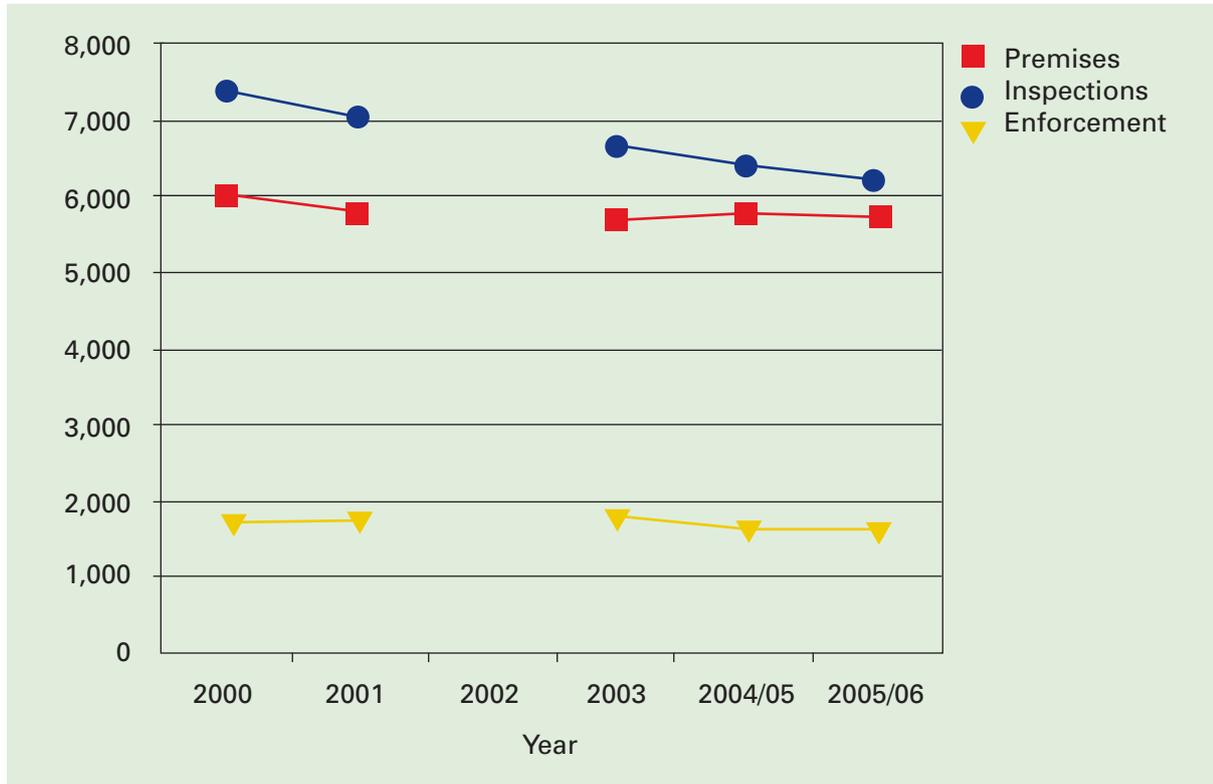
- 82** The Codes of Practice and associated guidance set out the general principles and approach that the Agency expects local authorities to follow. They are publicly available and are being reviewed this year.
- 83** We found that local authorities generally thought that the Codes were useful and the practice guidance helpful to ensure a reasonable degree of consistency within and between authorities. Some businesses thought that there were inconsistencies between local authorities, but we were impressed at the degree of coordination of local authority activity carried out by 'home' authorities¹³ for large food businesses. We understood that for the largest businesses there may be as frequent as daily contact between the business and their home food authority (where there is a unitary authority) or authorities (in two-tier authority areas).
- 84** We concluded that, within the limits of a system that seeks to coordinate more than 450 distinct local authorities with their own political and resource pressures, the Agency's approach has led to a reasonable degree of consistency.

Business generally views enforcement as fair

- 85** Business stakeholders took the view that, in the main, enforcement activity was taken where it was appropriate. Pragmatic approaches undertaken by local enforcement officers were cited during the course of the review. For example, where a firm's food labels require changing, Trading Standards Officers frequently allow small businesses to use up their existing stock of labels before requiring a change (where the changes required are minor). Some

¹³ In order to improve consistency of enforcement, some large multi-site businesses are assigned a 'home authority' – a local authority which will play a co-ordinating role for regulatory enforcement across the country for that business.

Figure 1: Inspection and enforcement activity by local authorities 2000-2006¹⁴



suggested that some inspectors were more likely to target large, well-known businesses because of the favourable publicity it would attract and the increase in their personal reputation. However we found no evidence to support this. Conversely local authorities explained that carrying out formal enforcement against such businesses was not straightforward as such businesses were, understandably, very sensitive to the reputational implications of any convictions.

Penalties are adequate and may be amplified by action taken by the large retailers against their suppliers

86 We found no evidence that local authorities needed more enforcement powers and the

general feeling amongst enforcement staff was that existing penalties are an adequate deterrent. The withdrawal or recall of food (or in the case of imported food, a refusal to allow it to be landed) often causes far greater monetary loss than a fine. Our attention was drawn to the case of Cadbury, which was convicted of a food law offence relating to the contamination of chocolate by Salmonella and fined £1m. Consequent losses arising from damage to the firm’s reputation were thought greatly to exceed this sum.

87 The market has its own sanctions which can be far more severe than any imposed by the FSA. Damage to reputation or loss of consumer confidence in a product as a result of FSA statements or decisions may

¹⁴ Source <http://www.food.gov.uk/multimedia/pdfs/info070203.pdf>

be greater than more formal penalties. In addition, the major retailers have considerable leverage on their suppliers and there can be instances where greater damage is suffered by a supplier at the hands of the retailer than as a direct application of an FSA sanction.

Focus on Outcomes

Hampton principle

“Regulators should measure outcomes and not just outputs.”

Key findings

- **The FSA has a clear sense of purpose regarding its statutory objective of protecting the interests of consumers in relation to food and makes good use of non-regulatory tools to achieve these aims**
- **The linkages between the achievement of the FSA’s strategic outcomes and local authority inspection activity are not clear. It is not clear whether inspection activity is being focused on areas of greatest risk to the achievement of the FSA’s strategic outcomes**
- **The FSA could improve further by providing greater strategic direction to local authorities**

Background

88 The FSA has two corporate level documents to give direction in the organisation to its activities. The Strategic Plan highlights the main issues that concern the FSA within the scope of its regulatory remit, and goes on to identify actions to be taken by the FSA towards tackling the issues. The FSA has broken down its areas of focus into five key themes as follows:

- to continue to reduce food borne illness;
- to reduce further the risks to consumers from chemical contamination of food;
- to make it easier for all consumers to choose a healthy diet, and thereby improve quality of life by reducing diet-related disease;
- to enable consumers to make informed choices.

89 Beneath the five year strategic plans sits a three year corporate plan which outlines more specific targets and indicators and the means by which these will be achieved.

90 The performance of the FSA against targets set out in the corporate documents is assessed on a quarterly basis in a

Management Information report that is presented to the board in its business session. In a similar way to a balanced scorecard, there is a traffic light system used to determine the extent to which each objective is being met. Areas with causes for concern (red) are discussed.

91 The FSA continues to think about how it evaluates its performance. It is beginning to develop a set of criteria for achieving excellence in regulation, which it refers to as its “Criteria for Being a World Class Regulator”. However, this work is at an early stage.

Review Findings

FSA has a clear sense of purpose regarding its statutory objective of protecting the interests of consumers in relation to food and it makes good use of non-regulatory tools to achieve these aims

92 The FSA uses a combination of legislative and non legislative activities in working towards the achievement of objectives. The FSA’s more traditional activities (i.e.

primarily inspection and enforcement) are focused on the Food Hygiene and Food Standard and feedingstuffs areas of operation, whilst in relation to consumer health and nutrition it tends to use different influencing techniques (i.e. promotion and marketing and communications). There is a clear sense of purpose in the outcomes that need to be achieved, particularly in the consumer health and nutrition area.

- 93** The FSA is very good at designing and developing marketing campaigns to communicate key messages to consumers, and has developed a range of innovative initiatives, as alternatives to conventional regulation. These work towards achieving its desired outputs and outcomes.
- 94** The FSA's work on consumer education regarding nutrition and the salt campaign, in particular, is a good example of modern regulation focusing on the achievement of outcomes. The FSA's approach here is at three levels: to increase awareness of healthy eating and nutrition issues, to encourage industry to seek ways to reformulate their products and provide clear information to consumers. This approach aims to influence consumer demand, which in turn leads to businesses responding to that demand.
- 95** The FSA's more traditional regulatory activities help provide a framework for the supply side which can be used to assist its non-mandatory shaping of the demand side. At present, industry already anticipates some of the growing demand side focus on healthy eating and so FSA's regulatory levers are not being tested as rigorously as in some other regulated markets. A more nuanced approach by the FSA to its relationship with the industry and its contribution to economic progress might help ensure that the current alignment continues, without greater recourse to regulatory levers becoming necessary.

The linkages between the achievement of FSA's strategic outcomes and local authority inspection activity are not clear. It is not clear whether inspection activity is being focused on the issues which pose greatest risk to the achievement of FSA's strategic outcomes

- 96** The FSA's strategic targets currently cover food safety, healthy eating and choice. However, it is not clear how the work of Environmental Health Officers and Trading Standards Officers contributes to the achievement of these objectives.

For example, the targets relating to food borne illness are as follows:

- *We will work with industry to achieve a 50% reduction in the incidence of UK-produced chickens which test positive for Campylobacter by the end of December 2010;*
- *We will work with industry to achieve a 50% reduction in the incidence of pigs which test positive for Salmonella at slaughter by the end of December 2010;*
- *We will develop a measure of slaughter house hygiene and secure improvements by the end of December 2010;*
- *Working with stakeholders, we will provide guidance and support to help small retail and catering businesses. By the end of December 2010, all food businesses are actively working to achieve compliance with food safety management requirements with at least 75% fully compliant.*

- 97** For Environmental Health Officers, who spend much of their time inspecting local restaurants and food production businesses, the above targets are of little relevance. The final target, which addresses the compliance of food businesses, is of greatest relevance. However, the success of the target is not assessed using any of the performance

data collected as part of the FSA's monitoring of local authority performance. As such, local authority activity is not primarily driven by the FSA's strategic objectives. In this way, local authority inspection activity could be more risk-based – i.e. if it were to focus on the areas which pose greatest risk to the achievement of the FSA's regulatory outcomes.

FSA could improve further by providing greater strategic direction to local authorities

- 98** The FSA works closely with LACORS (the Local Authorities' Co-ordinator of Regulatory Services). However, the review team felt that, at times, the FSA could play a stronger role in providing co-ordination and guidance to local authorities on food related issues. In particular, the FSA could make better use of qualitative information from local enforcement officers in order to understand and communicate enforcement issues.

- 99** For example, the FSA could have played a stronger role in the development of local authorities' "Scores on the Doors" initiatives. Local authorities developed a range of initiatives with the aim of giving consumers information about the hygiene performance of food businesses. Under the schemes, food outlets such as restaurants may display the results of their last food hygiene inspection on the door or window, supported by information on a website. However, initiatives have developed in an uncoordinated manner, with different areas using different rating systems (i.e. different numbers of star ratings, or other representations of performance such as grades A, B, C etc). With the systems now becoming embedded, it may be very difficult for the FSA to introduce a model to be used consistently throughout the country.

Appendix 1: Review team membership

Jeanie Cruickshank

Dr Jeanie Cruickshank is Director of Energy Innovation in the Department for Business, Enterprise and Regulatory Reform (BERR). Until February 2008 she was Director of Environment and Communities in the Better Regulation Executive. Her previous roles have included leading the Chemicals Policy Division in HSE; heading up the Better Regulation Task Force support team in Cabinet Office; and, during an 18-month secondment to O2, working on domestic and EU regulatory affairs in the field of telecoms.

Peter Gray

Peter is a Director at the National Audit Office. Since 2005 he has been responsible for conducting value for money studies into the work of the Department for Business, Enterprise and Regulatory Reform and its related bodies (previously the DTI). He has previously held a range of posts at the National Audit Office, including responsibility for scrutinising the performance of the immigration and criminal justice systems.

Donald Macrae

Donald was a member of the Better Regulation Commission, now the Risk and Regulation Advisory Council, and is Chair of the Policy Reform Group, a Whitehall think tank. He was formerly one of the top lawyers in government and latterly Director General for Law and Regulation in Defra. He is now a freelance consultant on regulation and corporate services.

Kevin Myers

Kevin Myers is a Factory Inspector by background joining the Health and Safety Executive (HSE) in 1976. In his career he has held a range of operational regulatory posts in HSE as a front line Inspector, team leader and senior manager regulating a broad range of industries as well as various policy and strategy postings. He was seconded to DG XI (as was) in the European Commission in Brussels in the early nineties.

In 1998 he was appointed as HSE's 'Home Counties' Regional Director. From 2000-2005 he was HSE's Chief Inspector of Construction. Since May 2005 he has been Director of HSE's Hazardous Installations Directorate and an HSE Board Member. His current job is to oversee HSE's regulation of various 'major hazard' sectors including the onshore chemical industry, offshore oil and gas, high pressure gas storage and distribution, explosives, mining and biological agents.

Appendix 2: Conclusions of the Hampton and Macrory reviews

Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton Report, Box E2 page 7

Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

Appendix 3: Review scope and methodology

Our methods included:

- interviews with a wide range of FSA staff including senior managers;
- interviews with other stakeholders including the Health and Safety Commission, trade bodies in the financial services sector and business representative groups;
- focus groups of FSA supervisors and small businesses;
- observational visits including supervision and the Firm Contact Centre; and
- document review.

The review process is described in Hampton Implementation Reviews: Guidance for Review Teams document (May 2007). It is not the same as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are both evidence- and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above.

Judgements have not been based on evidence from a single source – the review team has

sought evidence from a number of different businesses or organisations, and from FSA front-line staff, policy officials and senior managers. The organisations that we spoke to included:

- Asda
- Association of Port Health Authorities (APHA)
- British Hospitality Association
- Chartered Institute of Environmental Health (CIEH)
- Federation of Small Businesses
- Food and Drink Federation
- Forum of Private Business
- Haringey Council
- LACORS
- Lincolnshire County Council
- South Holland District Council
- Daventry District Council
- Greater Manchester Chamber of Commerce
- National Consumer Council (NCC)
- Sustain
- Tesco
- Trading Standards Institute (TSI)
- Various small businesses
- Which?

Appendix 4: List of recommendations from the Tierney report

- 1 That the FSA agree, wherever appropriate, to adopt a more risk and evidence-based approach to the regulation of meat hygiene, meat inspection activities and enforcement.
- 2 That there should be more incentives for Food Business Operators to take responsibility, with rewards and greater levels of earned autonomy for those that do and stronger, more effective sanctions against those guilty of persistent or high-risk non-compliance.
- 3 That the FSA should lead research, with European and international partners, into different ways to deliver safer meat, including the cost-effectiveness of the current approach and alternatives to it.
- 4 That the FSA develop and implement a strategy to secure the necessary changes to EU regulations to allow the adoption of a more risk-based, proportionate and targeted approach to meat regulation.
- 5 That the Meat Hygiene Service should continue to be responsible for the delivery of Official Controls in England, Scotland and Wales and that it should transform to deliver the targets set out elsewhere, to include:
 - Significant and sustainable reductions in the total costs of its operations (measured by total annual operating costs);
 - Improvements in productivity (measured by continuous reductions in the average cost per livestock unit);
 - Adopting charging and cost-sharing policies that reduce the net cost of its operations to the FSA;
- Putting integrated teams of OV's and Meat Inspectors into plants and making full use of the potential of working with its contractors;
- Introducing greater contestability into the market.
- 6 That the FSA should review the governance arrangements for the TMHS to ensure that they adequately reflect the new responsibilities. The Board should include one member with first hand experience as an FBO being regulated and one member to reflect the views of consumers.
- 7 That the FSA redesign its Meat Hygiene and Veterinary Division and establish a network of regionally based Veterinary Managers.
- 8 That the FSA and TMHS set up a forum to identify and resolve issues concerning the design of policies and their ease of delivery.
- 9 That the FSA continue its scoping work on the Delivery Partner model, including preparing a plan to pilot this approach with groups of plants.
- 10 That there should be consultation during summer 2007 on increasing hygiene throughput rates.
- 11 That the TMHS, in consultation with stakeholders, should develop a new charging system for introduction in 2009/10 that would:
 - Reflect the new arrangements for delivering Official Controls;
 - Allow a progressive move towards full cost recovery;

- Introduce appropriate charges for SRM control;
 - Permit the more effective targeting of any subsidy;
 - Provide financial incentives to FBOs to comply and to make efficient use of TMHS services.
- 12 That policy responsibility for charging transfer from FSA to the TMHS.
 - 13 That the FSA and TMHS should work with the poultry industry to remove the barriers to the greater use of Poultry Inspection Assistants (PIAs).
 - 14 That the FSA open up the opportunity for local authorities to deliver Official Controls in low throughput premises where there is a sound business case for doing so.
 - 15 That TMHS and FBOs should review the delivery of Official Controls at low throughput plants and ensure that it is as effective and efficient as possible and makes best use of the flexibilities available under EU regulations.
 - 16 By end 2007, the FSA should change UK guidance and propose national measures to the European Commission to put in place proportionate, risk-based and cost-effective controls in low throughput plants.
 - 17 That the FSA work jointly with Animal Health, Defra and the Agriculture Departments and other partners to identify ways to improve joint working to promote meat safety and animal health and welfare across the food chain.
 - 18 That immediately following consideration of this report, the FSA set up an Advisory Body for the Delivery of Official Controls to include FSA, TMHS, Agriculture Departments and representatives of FBOs, consumers and contractors.

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