

LGiU Briefing: Local Authorities and Food Safety

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Issues Covered

- effects of Better Regulation agenda
- recent developments
- reduced spending on inspection

Categories

[Health](#), [public health](#), [adult social care](#), [Service Delivery and transformation](#)

Summary

- Food safety enforcement in the UK operates at the local level through local authorities, overseen by the Food Standards Authority
- Food safety legislation has developed steadily over the last fifty years and been strengthened significantly over the last twenty-five years
- Environmental Health Practitioners have a range of duties and powers to deal with non-compliance and employ a mixture of education and enforcement to secure these aims
- In the last ten years level of expenditure and resources devoted to food safety both nationally and locally at the local authority level have reduced; this has had a significant impact on inspection rates and enforcement
- There are claims that the regulatory regime has been undermining adequate enforcement by private sector involvement within the regime and through outsourcing
- Food poisoning statistics, although not definitive, indicate worrying levels and trends associated with food borne illnesses
- Growing concerns about food borne illnesses and the need for new approaches has stimulated a radical blueprint by the Food Standards Agency
- The blueprint constitutes a fundamental rethink on the approach to food safety enforcement
- Local authorities and Environmental Health Practitioners should embrace this new agenda and its challenges.

- There is a note in the comment about the potential implications of brexit on this agenda.

Briefing in Full

Background and Legislation

Food safety can be described as the handling, preparation, storage and treatment of food in ways that promote health and prevent illness.

In the 1850's, Thomas Wakley, a surgeon and MP, and physician Arthur Hill Hassall conducted extensive work on samples of food and drink. They concluded that food adulteration was a lot more common than was believed and that many of the adulterated foods were actually poisonous. This information, coupled with pressure from industry on the Government, due to the effects of food borne illness on their workforces, led to the development of the first food legislation. Later, as the link between gastric illness and organisms became apparent and as deadlier infections retreated, food poisoning became an increasing concern of local and national health authorities, who sought both to raise public awareness of the condition as illness, and to regulate and improve food handling practices.

Steady changes in food legislation took place in the twentieth century, particularly during the second half. A major change came with the introduction of the Food Act 1984 although it came under fire rapidly because it failed to impose satisfactory standards within the food industry and was seen as not being sufficiently thorough. Key words associated with the control of safe food were left out of the Act including both 'hazard' and 'safety'. After extensive redrafting by the Government and associated bodies, the Food Safety Act 1990 was passed.

The Food Safety Act 1990 provides the framework within which all food legislation in the UK is written, and although amendments have been made, the majority of the framework still applies. The main responsibilities for all food businesses under the Act are:

- to ensure you do not include anything in food, remove anything from food or treat food in any way which means it would be damaging to the health of people eating it;
- to ensure that the food served or sold is of the nature, substance or quality which consumers would expect
- to ensure that the food is labelled, advertised and presented in a way that is not false or misleading.

UK food hygiene legislation has been consolidated over the last 15 years. Much of this legislation has influenced, and been influenced by, wider European legislative changes. Currently, in broad terms, and notwithstanding some national differences, the main pieces of UK and European general food legislation are:

- The Food Safety Act 1990;
- The Food Law Regulation (EC) No 178/2002, which creates general principles and requirements of food law across Europe.
- The Food Hygiene Regulations 2013, which provide for the enforcement, including penalties of certain provisions of Regulation (EC) No 178/2002.

In the last 15 years, there have been some significant changes and developments. For example, since 2006, if you own or run a food business in the UK, you must have a documented Food Safety Management System, which is based on the principles of Hazard Analysis Critical Control Point (HACCP). HACCP focuses specifically on identifying the critical points in a process whereby food safety problems or hazards could possibly arise and putting steps in place to prevent any of these hazards occurring and anything going wrong.

The legislation has sweeping enforcement powers, including the power to seize food, serve notices and orders. Most food business is required to contact their local authority to register their business. In addition, businesses that produce: meat and meat products; eggs; milk and dairy products; and fish and fish products have to be approved by the local authority.

Regulatory Regime

In response to concerns about food poisoning, intensive farming methods and Bovine Spongiform Encephalopathy (BSE) or “mad cow disease” the FSA was set up in 2000 to protect the public’s health and consumer interests. It is an independent government agency responsible for enforcement support and advice.

The FSA was sorely tested by the horsemeat scandal. [A report](#) commissioned from Queen’s University Belfast professor and food security expert Chris Elliot was produced. As a result, the FSA created a new Food Crime Unit to strengthen consumer confidence. The FSA ceased operating in Scotland on 1 April 2015 and its responsibilities were transferred to Food Standards Scotland, a new body of the Scottish government.

The FSA operates within an international framework as the majority of food law derives from EU legislation. Much of the FSA’s inspection and enforcement regime is dependent upon delivery partners, principally local authorities. FSA also audit enforcement activity with respect to local authority food and safety standard controls.

Local functions are divided between Environmental Health Practitioners (EHPs) and Trading Standards Officers. Food EHPs oversee food safety and food hygiene, enforcing law across all forms of retail food business organisations (restaurant, takeaways, shops) as well as food processing and food manufacturing outlets. Trading Standards Officers have responsibilities relating to food labelling and trading standards.

EHPs are usually drawn from the ranks of Environmental Health Officers (EHOs). EHOs often hold at least an undergraduate (or postgraduate) qualification recognised by (in England, Wales and Northern Ireland) the Environmental Health Registration Board. Similar provisions exist in Scotland, where the profession is regulated by The Royal Environmental Health Institute of Scotland.

The main duties of the EHPs in the enforcement of food safety law within local authorities include:

- Implementing and maintaining a documented programme of food hygiene and food standards inspections. Premises posing a 'high risk' to the consumer are inspected more frequently than those posing a 'low risk'.
- Implementing a microbiological and chemical food sampling programme. Priority is given to sampling food produced locally.
- Investigating complaints about food including complaints about the hygiene of premises.
- Investigating cases of food poisoning.

They use a range of tools and interventions in order to secure improvements and gain compliance. They make judgements about the most appropriate interventions from education and encouragement through to warnings and the service of enforcement notices. These compel improvements within a certain period and/or prohibit all or some aspects of the business. In exceptional cases legal proceedings can be instituted and fines or imprisonment imposed.

When inspecting food premises, EHPs will normally consider: the food safety management system; food safety training; cleaning standards in the premises; the condition of the structure and equipment; source of food and ingredients; storage conditions and temperature control; and the personal hygiene of staff.

EHPs have been the driving force in developing hygiene ratings and encouraging food businesses to openly display them. In 2013, Wales became the first country in the UK to introduce a mandatory scheme requiring food businesses to openly display their hygiene rating. This resulted in consumers being provided with more information about where they eat or buy food helping to drive up businesses' food hygiene standards. A national discretionary scheme operates in the rest of the UK.

Better regulation and austerity

The development of this legislation might imply that the regulatory regime is very powerful. However, Professor Steve Tombs, Professor of Social Policy and Criminology at The Open University, would take issue with that. He argues in a recent report '[Better Regulation, Better for Whom?](#)', that 'Better

Regulation', begun in 2004 by Labour Chancellor of Exchequer, Gordon Brown, has proved to be a retrograde step. It began as an initiative to target inspection resources upon the businesses that were either in high risk areas or were not compliant (in response to claims by businesses of overregulation and inconsistent enforcement procedures by councils). This perspective has had attractions for successive governments particularly at a time of austerity and public funding cutbacks because it presents a business friendly image while providing an opportunity to withdraw resources and reduce expenditure.

Professor Tombs argues that regulation has now become a 'dirty word'. A drive to cut red tape, combined with austerity measures has severely reduced the effectiveness of the agencies designed to protect the public. He argues that reductions in the numbers of EHOs had resulted in a loss of specialist expertise and a move towards generalists. However, the latter trend was being hampered with a lack of available vocational training to support this move.

In other parts of his report, Professor Tombs refers to the growing influence of the private sector in regulatory mechanisms as a regrettable development. For example;

- the overhaul of EHO degree courses to make them less inspection focused and more private sector friendly;
- the Primary Authority Scheme, set up by the Better Regulation Delivery Office (BRDO) to allow businesses to be involved in their own regulation – Supermarkets can reach an agreement with one local authority to regulate all of its sites enabling them to pick and choose their regulator and generally strengthening their negotiating position;
- outsourcing – wholesale shifts from public to private provision of regulatory services, confounding accountability and transparency, creating conflicts of interests and weakening professional independence.

Professor Tombs provides evidence to support his arguments. He cites Inspection and Enforcement Trends between 2003/04 to 2012/13 which showed EHOs enforcing food safety and hygiene law undertook: 12% fewer food hygiene inspections; 34% fewer food standards inspections; and 28% fewer prosecutions.

He interviewed 35 EHOs across Merseyside during 2014/5, and established that the strongest most consistent theme was 'staffing' cuts across a range of environmental health functions, including food safety and hygiene. EHOs felt that these resource constraints were having knock on effect in terms of loss of expertise and deskilling, a lack of training, and increased obstacles to enforcement.

Professor Tombs concludes that LA food EHO enforcement had been radically transformed to the extent that EHOs are now either unable to perform their statutory duties or now perform protection for, rather than from, businesses.

His conclusions have some resonance in recent national discussions and publicity about local authority food hygiene and food safety services. For example,

- [In January 2014, Which? reported on food safety enforcement.](#) Which? interviews with senior EHOs revealed that funding cuts had reduced staffing levels and that further cuts would affect the ability of food teams to keep up with inspections;
- In October 2014, Jenny Morris, Chief Policy Advisor to CIEH raised doubts about the ability of local authorities (LA) to maintain food safety during a time of increased government budget cuts;
- In February 2015, [Which? named and shamed the local councils](#) with the poorest food safety enforcement records for the foodservice sector;
- In January 2016, FSA voiced '[growing concern](#)' over the ability of cash-strapped local authorities to tackle food crimes and keep consumers safe – Enforcement data for 2014/15 showed seven councils carrying out fewer than 80% of the required interventions for the highest risk A-rated food businesses, such as poorly managed takeaways.
- In the last financial year, Barnet, Burnley, Cheshire West and Chester Council, North Tyneside Councils have all outsourced their environmental health functions or developed joint ventures with private sector organisations;
- Government funding cuts and/or wider budget challenges were highlighted by Brighton, Blackpool, Dudley and Southampton councils in

November and December 2015 as likely to lead to shedding of environmental health jobs within their authorities.

Food borne Illnesses and Food Poisoning

According to a report from the Chief Scientist in 2012, FSA's best estimates suggest that there are around a million cases of food-borne illnesses in the UK every year, resulting in 20,000 hospital admissions and 500 deaths.

In June 2014, FSA [published research](#) which suggests that the official figures for food poisoning seriously under-estimate how many people suffer from food poisoning. Many people who experience food poisoning do not report their illness to their GPs as they recover quickly from the symptoms. Also, the numbers of food poisoning cases can be obscured because causes of deaths, injuries, and illnesses are often difficult to pin down precisely or are linked to a range of factors.

Statistics that emerged from their study include the following facts:

- Known pathogens are the cause of more than 500,000 cases of food poisoning each year;
- The most common foodborne pathogen is Campylobacter which results in some 280,000 cases every year;
- Clostridium perfringens causes 80,000 cases, and norovirus was third with an estimated 74,000 cases;
- Salmonella is the causes of the most hospital admissions, some 2,500 each year;
- Poultry meat is estimated to cause 244, 000 cases of food poisoning cases each year.

As well as identifying about half a million cases of food poisoning attributable to 13 specific pathogens researchers believe that 10 million incidents of infectious intestinal disease (IID) a year are not yet attributed to a specific pathogen.

In February 2015, [FSA announced](#) that every home-cooked chicken poses a food poisoning risk because supermarkets are acting too slowly to eradicate a dangerous bug. Tests over the previous nine months found 73 per cent of chickens in supermarkets contained campylobacter.

Almost one in five birds was highly dangerous. In almost 7 per cent of cases, the bacteria were present on the outside packaging of fresh whole chickens.

The infections data was published as the European Food Safety Authority warned that campylobacter was becoming resistant to antibiotics. These findings are worrying although they have stimulated some actions by supermarkets which have resulted in some improvement in respect of the [Campylobacter contamination rates](#).

Notwithstanding the above, it is difficult to establish a clear link between increased risk of food borne illness and poisoning to a decline in the amount of enforcement activity although it would seem to be common sense to assume that the prospect of regular checks and the threat of punitive enforcement is likely to keep food hygiene and safety in the minds of food business proprietors.

Radio 5 Live recently broadcast an interview with Debbie, a woman in Kirby, whose 10-year-old daughter was hospitalised with salmonella poisoning. She was one of over 50 people in the area who contracted the illness after eating food from a takeaway. Contrary to FSA guidance, the business had not been formally inspected for two years.

The link appears fairly clear in the public mind. The Which? On-line survey of 2019 adults in November 2013 found that nine out of 10 respondents (91 per cent) expressed concern if cuts to their local council resulted in some food businesses no longer being inspected.

Recent Developments

National Government – The 'Better Regulation' Agenda has maintained its momentum, albeit through a range of differing, successive bodies and initiatives described in different ways but broadly with much the same purpose. The latest includes the "One in Three Out (OITO) rule. This policy requires Government departments to remove regulations worth twice the cost to business of any new regulation they introduce. There is little evidence that this agenda, which may have wider benefits, is likely to change in the short term.

FSA – The FSA faces a difficult situation with resource cuts at a time when there is a clear need for leadership and impact. In November 2015, Chancellor George Osborne announced the FSA would receive £85.4m a year from 2015/16 until 2020. In 2014/15 the FSA's budget was £108m.

FSA appears to have reacted quickly. In January 2016, FSA indicated it was pressing ahead with plans to recover the cost of regulation from food businesses. In May 2016, it announced plans to redesign a more fit for purpose regulatory regime within 3 years and published [a radical blueprint for change to food regulation \(PDF document\)](#) with pilots starting later this year. In its briefing document attached to the blueprint the FSA states it is seeking a 'fundamental rethink' impacting on local authorities and business alike rather than opting for incremental change. Pilots are planned between July and December of this year with an operating model in place by mid-2017 ready for roll out by mid-2019 to be completed by 2021.

The objective is to define and then deliver a new regulatory blueprint for a food industry unrecognisable from the one that existed when the current system was designed. Under the proposals a different approach is being outlined for big business and SMEs. The FSA has been looking to the New Zealand approach to food safety as a potential model.

The changes follow concerns that the existing one-size-fits-all approach is no longer fit for purpose. The FSA also hopes they will help environmental health departments' deal with dwindling resources as local authorities face severe funding pressures that are set to get even worse.

FSA believes this change signals their intention to pursue other sources of data on food and food businesses as well as physical inspections. The new proposals focus on the greater use of food auditors, a more sophisticated and segmented approach to risk ratings and the naming and shaming of offending businesses. The new plans also leave the door wide open for greater private sector and trade body involvement in food safety assurance.

FSA plans for big business include a far greater reliance on standard setting bodies such as the British Retail Consortium as well as certification bodies and auditors. The emphasis in the future is likely to be on regulators carrying out random checks on auditors rather than businesses.

The use of open data and greater transparency will be a key tool driving positive change from business. The FSA has already adopted this approach by publishing campylobacter rates for fresh chicken for each major retailer in February 2015. Sanctions will be both reputational as well as financial involving both random and targeted interventions. It is exploring new approaches to regulation such as the naming of retailers in the publication of quarterly survey results to create competition between supermarkets in an effort to reduce the incidence of campylobacter bacteria in chicken.

The proposals explore the use of compliance incentives including lower insurance premiums. Trade associations and private business as well as local authorities could be responsible for ensuring checks on pre-trading conditions as well as being involved in ensuring food safety standards once trading. A much more sophisticated risk matrix is also being proposed with a change of owner, a food incident or consumer complaint triggering a risk review. A strategic reference group comprised of FSA board members and the chief executive will be overseeing the changes supported by an expert advisory panel made up of business, consumers, an accreditation body, government and local authority representation.

Chartered Institute of Environmental Health (CIEH) – CIEH, the professional body of EHPs has focused much of its efforts over the last three or four years to responding to this government's regulatory agenda. It maintains that regulatory policies may impose burdens on business initially, but designed properly, the burden of regulation can be minimised and regulation limited to those that are necessary and proportionate to the policy objectives they are designed to achieve. They cite a good example as smoke free legislation, which the Better Regulation Executive itself has cited a case study of effective regulation, and which was considered by over 80% of business decision makers to be a 'good idea', led to significant improvements in air quality in pubs and bars, and achieved compliance rates over 95% from the outset.

CIEH have sought to work with Better Regulation Delivery Office (BRDO) by arguing for closer coordination between national and local regulators to improve efficiency and greater emphasis on education and advice, rather than enforcement. They take particular issue with the [latest OITO rule](#) which they perceive as an unreasonable hurdle because it only takes account of costs to

businesses and not of the benefits to wider society and the public, an inconsistent approach not applied in respect of tobacco control, for example.

CIEH has had to respond fairly rapidly to the [emerging FSA agenda](#). 'All options are on the table here so it is critical that the profession does not hide from this,' said Jenny Morris head of [The Institute of Food Safety and Integrity and Protection](#) (TiFSiP). 'The truth is we need radical change and environmental health needs to be part of shaping that change. The time for tinkering has gone and so we need to be looking at how we can help provide safe food into the future.'

'The CIEH is very keen to be working very closely with the FSA on these proposals as we have a large number of members working in regulation and we want to tap into their knowledge and expertise in getting this right,' said Ms Morris.

Comment

Local authorities and EHPs have a long standing and well established local role in food safety work within their local communities. Over the years, this work has been sustained and developed by the strengthening of food safety legislation and underpinned by a sound platform of professional expertise and experience. However, some of this appears to have been undermined in recent years due to austerity, budget cutbacks, and changes to the regulatory regime.

These changes have been challenged but the pressures are unlikely to significantly alter, particularly in the short term. However, necessity breeds invention. The FSA have responded by proposing a radical new blueprint for the future, involving innovative new approaches that challenge existing ways of working.

Collectively, food EHPs have little alternative but to embrace this new development, with its potential opportunities and threats. The CIEH, the representative body of EHPs, to its credit, has been quick to respond, and signal its intentions to play a full part in the development of the new blueprint. Local authorities and EHPs will need to consider what role they can and should play. EHPs will want to know what status their professional skills and

qualifications might have in this new world. What additional training may they need? They need to play a full role in these developments.

Since this briefing was written the EU referendum vote has taken place. Clearly brexit will have very significant implications for food safety. This briefing does not cover these but we thought it would be useful to provide links to sources of information if readers want to consider this issue further at this stage.

- [Food, the UK and Brexit](#)
- [What might brexit mean for food control \(PDF document\)](#)
- [Chaos ahead after Brexit vote \(The Guardian\)](#)

Related Publications

- [Food Security: demand, consumption and waste: Environment, Food and Rural Affairs Committee Report – March 2015 \(PDF document\)](#)
- [Deregulation Act 2015 – July 2015 \(PDF document\)](#)
- [Hunger and Food Poverty: all party parliamentary group inquiry January 2015 \(PDF document\)](#)
- [Deregulation Bill – June 2014 \(PDF document\)](#)
- [Household Food Security – Final Report for DEFRA – February 2014 \(PDF document\)](#)

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