



Chartered
Institute of
Environmental
Health

Review into the Integrity and Assurance of Food Supply Networks Call for Evidence

Response to the Defra consultation

August 2013

About the Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish guidance notes and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,000 members across England, Wales, Northern Ireland and Scotland

Our members work in a variety of employment roles. In the context of this response it is important to note that the profession provides the principal food safety and standards expertise in Port Health authorities, Local authorities and retail and manufacturing businesses.

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Question 1: What measures need to be taken by the UK food industry and government to increase consumers trust in the integrity of the food supply systems?

1.1 The horsemeat incident has dented consumer confidence in the food supply. To restore trust information about food and checks to ensure it is safe and is what it says on the label must be made widely available. Such information needs to be provided by the retailers or caterers and the regulators. There is a need to demonstrate that whilst regulators will work with the food industry they remain independent with a focus on consumer protection.

1.2 This will require a number of things to happen including:

- Full recognition by Government of the importance and value of safe and properly described food for consumers and for the economy. This should be underpinned by adequate resource commitment for necessary changes in regulatory focus and practice (nationally, regionally and locally)
- A clear statement of intent to tackle food fraud, from both regulators and the food industry. As part of this consumers should be encouraged to provide information to the regulator and where appropriate employees to "whistleblow"
- A clear definition of the roles and responsibilities of the different regulators. As part of this, consideration should be given to the impact of the Machinery of Government changes that removed responsibilities from the Food Standards Agency and gave them to the Department for Environment, Food and Rural Affairs (Defra) and the Department of Health. The horsemeat incident showed confusion about responsibilities at the outset, demonstrating that fragmentation of responsibilities allows gaps to open up. For reasons of efficiency the separation of responsibilities for labelling should be reconsidered and returned to the FSA.
- Open and transparent reporting of food sampling from both business and regulators. A review of sampling planning and effective targeting will need to underpin this.
- A review of the legislative provisions and guidance to ensure that there are no unnecessary barriers to effective regulation. This should consider the implications of restrictions imposed by Inspection plans developed under Primary Authority relationships. An example of this might be directing enforcing authorities away from test purchasing and sampling. The horse meat scandal highlighted the fact that even businesses with the resources of the large supermarket chains can get caught out.
- A review of the powers of food regulators (central and local) to ensure they have the appropriate tools to tackle food fraud
- A review of the competencies and skills of local food regulators and their focus to ensure that they are able to address both food safety and food standards during interventions
- Development of a permanent Food Fraud unit, with appropriately skilled specialist investigators, located within the FSA, to address major fraud incidents and support local interventions

Question 2: The Terms of Reference for the Review require an approach that is proportionate to the risks involved to the consumer. What does this mean in practice?

2.1 *Following the horsemeat scandal how appropriate is the current approach to assessing risk and ensuring adequate risk management by industry and regulators?*

2.1.1 The horsemeat scandal has identified flaws within the current approach and clearly improvements need to be made. The focus of the following paragraphs is on regulators' risk management.

The Risk based regulatory approach

2.1.2 Risk based regulation is a legislative requirement and checks are expected to follow National Guidance e.g. the Food Law Code of Practice (FLCoP), which is constructed around a risk based approach. Such Guidance determines what checks are made and how they are prioritised. Reductions in budgets at the local authority level and wider demands means that compliance monitoring activities may be further locally prioritised, to consider their relevance to the needs of the community. Within Environmental Health Services this can lead to reductions in activities that are perceived as focused on areas of lower risk (even though required by National Guidance). The sharp reduction in sampling for analysis, down some 20% in the last three years, is an example of this issue.

2.1.3 Given the increasing drive toward risk based regulation the inherent weaknesses within the approach need to be recognised. A risk based system will anticipate some level of failure i.e. systems are not usually seeking to deliver zero risk but rather are focused on reducing high levels of risk. This inherent acceptance of some degree of failure is not likely to be understood by consumers who often expect effective regulation to mean zero risk.

2.1.4 Risk based regulation is generally based on knowledge of the past to predict matters that are reasonably foreseeable. Inclusion of factors that indicate change, through use of horizon scanning and intelligence tends to be limited. Good intelligence is essential to inform good risk assessment but moves to reduce burdens on business have reduced the capacity of regulators to gather data, horizon scan and undertake surveillance, limiting good intelligence generation.

2.1.5 In any risk based regulation system there will be a need to weight different risk factors appropriately. The horsemeat incident has shown that currently the greatest weighting is placed on matters of food safety rather than quality/adulteration. This raises the question about appropriate weighting for the future as this will drive focus and prioritisation of activities.

2.1.6 However risk based approaches are used, there are likely to be some unpredicted risks that emerge e.g. as a result of inaccurate or missing information. The ability to deal with these rapidly and effectively needs to be a part of the regulatory system i.e. there must be strong resilience mechanisms in place that are regularly tested. Conversely poor information may lead to over regulation of small risks.

- 2.1.7 In summary this suggests that the rapid expansion of risk based regulation needs detailed examination to ensure that it is “fit for purpose” and that the tension in the drive to reduce burdens on business whilst maintaining consumer protection is fully explored and transparently explained.
- 2.1.8 It would seem sensible that any such review also considers the impact of risk based approaches in other countries, as only around 51% of the United Kingdom (UK) food supply is produced domestically.
- 2.1.9 In the UK there are two main approaches to risk assessment, one focuses on the inherent risk of the food and leads to specific risk management activities, the other takes a premises based approach, using a generic “risk assessment” tool i.e. the framework for determining the date of the next inspection within the FLCoP.

Food based risk assessment

- 2.1.10 Food risk assessment is carried out centrally and is usually supported by sound science, providing the evidence on which to base risk management decisions. This however is costly and needs to be reviewed regularly as things can change. Such a focus tends to be on a main component and is frequently aimed at microbiological risk e.g. poultry and Campylobacter risk.
- 2.1.11 Food based risk assessment remains essential for major issues, not least for identifying evidence based proportionate regulatory responses but it faces challenges in the processed food sector, where products are often extremely complex. An illustration of complexity can be seen in a recent analysis of the components of a pizza, carried out for the Food Safety Authority Ireland. This showed that the pizza was made from 35 different ingredients that came from 60 countries, on five different continents. Current approaches do not fully address such complexity.

Premises level “risk assessment” and beyond

- 2.1.12 Premises based “risk assessment” is more subjective and based on past knowledge and behaviours. Premises “Risk assessment” is carried out by use of a generic template within the FLCoP that determines the Frequency of Inspection. Such local risk assessment of procedures and practices is extremely important as at a national level the risks posed by small and medium enterprises (SMEs) may appear small individually but cumulatively it can be massive, as SMEs make up the majority of food businesses in the UK.
- 2.1.13 There has also been some criticism of this template as its aim should be the reduction of food borne illness, yet there appears to have been little consideration of whether or not it can be a predictor of outbreaks.
- 2.1.14 A separate generic template exists for food standards activities and this contains consideration of opportunities for fraud, unlike the food hygiene one. In the horsemeat incident the issues were identified as fraud, though it is unlikely that a standard inspection approach would be able to pick up such criminality.

- 2.1.15 Examination of the two inspection frameworks raises questions about the relative weighting of standards and hygiene monitoring activities.
- 2.1.16 In particular the minimum visit frequency built into the two frameworks differs i.e. the minimum inspection frequency for the highest risk food hygiene premises is six months, yet for food standards it is 12 months. It may be worth reviewing this in terms of impact not only on health but also for economic detriment.
- 2.1.17 Beyond this, whilst the FLCoP is aimed at delivering a consistent focus and proportionate activities, budget cuts have already led to variations in practice, generally resulting in reductions in activity but also to the curtailment of some areas of work e.g. sampling.
- 2.1.18 Whilst the focus on premises will need to continue, perhaps with amendments to the risk based approach, the horse meat incident has shown the importance of looking in detail at supply chains. This needs to be built into regulatory checks and tools to assist such work developed.

Food chain assurance

- 2.1.19 The main tool for food safety assurance is the use of the Hazard Analysis and Critical Control Point (HACCP) system. The HACCP focus is predominantly on food safety and it is a well established system that delivers effective results. The Food Business Operator (FBO) is responsible for developing and operating an effective HACCP system, regulatory checks are focused on reviewing suitability and implementation. Local authority EHPs spend significant amounts of time with FBOs assisting them to develop good systems. However current guidance does not appear to provide sufficient focus on supply systems and appropriate checks. Indeed it may be argued that supply system checks including ingredients, provenance, safety and quality are outside the HACCP process i.e. they sit within traceability and pre-requisite requirements or elsewhere. There needs to be consideration as to how best to tackle supply chain assurance and the extent to which checks need to be focused on this area.

Food Fraud

- 2.1.20 Food fraud is a significant challenge that will not be addressed by standard inspection led checks. Food fraud is usually opportunistic and can vary in scale. Larger, organized frauds are becoming ever more sophisticated. The horsemeat incident has highlighted the impact that fraud can have on consumer confidence and the food industry. Currently, at the local level, there appears to be a limited focus on food fraud detection; most activity seems to be focused on reactive measures when fraud has been detected, often through national intelligence. Investment in developing better intelligence is likely to be a key to effective systems of consumer protection.

Intelligence

- 2.1.21 Good intelligence must be a major factor in focusing checks. It will assist in risk assessment, sampling and fraud detection. Currently central systems collect intelligence but the horsemeat incident suggests that more needs to be done.

Information flows to the centre may well be improved resulting in improved intelligence but in addition the use of that intelligence needs review. Given that at the local level there appears to be some uncertainty about what needs to be done perhaps central intelligence might be more widely used to guide local activities. Post the horsemeat incident it has been suggested that there was some 'chatter' and concerns about meat substitutes but none of this had been followed through by investigation or sampling.

2.2 *What does the meat substitution uncovered tell us about the effectiveness of control regimes at that time?*

2.2.1 Meat substitution was so widespread that it is clear that control regimes at that time were ineffective. In retrospect a number of reasons for this can be identified including:

- The main regulatory focus was on food safety not fraud. Regimes to detect and control fraud are different from those designed to address food safety.
- The "reducing burdens on industry" drive requires regulators to take a risk based and proportionate approach. The horsemeat incident shows that the views on this can change rapidly. This is important as control systems are planned around this understanding.
- Large food industries often invest considerable sums in food safety control e.g. through use of third party assurance schemes. To a large extent this has been successful in terms of food safety but a number of large businesses, with sophisticated control systems, were affected by the horsemeat incident. The reliance on existing systems was clearly insufficient and additional controls on the supply system need to be introduced by the food industry. Associated with this, is the need to consider food importers and clarify expectations on the checks they should make on their imports. Reliance on paper systems alone may be insufficient.
- Regulators are required to recognise third party assurance schemes during their "risk assessment" of a business and this often results in a lower frequency of planned intervention. Such schemes are not designed to address matters of fraud. This will become a matter of even greater importance if such schemes are to be used as a means to gain "Earned recognition".
- Intelligence on the potential for fraud was lacking. Intelligence needs to be better shared across EU borders if food fraud is to be properly tackled.
- Interventions are required, more and more, to be based on intelligence. Horizon scanning is required to identify potential opportunities for fraud e.g. opportunities may well have been increased by the relentless pressure to drive down supplier costs.
- The likelihood of detection and the potential penalties did not deter the fraudsters. This leads to the conclusion that an increase in penalties and

strengthened enforcement are necessary to make it less desirable to break the law.

- The complexity of food manufacturing networks worldwide was not well understood and controls were not suited to address the degree of complexity.

2.2.2 Whilst it is accepted that the majority of food businesses seek to achieve high standards of food safety, they are commercial enterprises and as such decision making about food controls will always involve considerations of the impacts on the "bottom line".

2.2.3 Local authority cuts have had an impact on the extent of food controls carried out. In particular this has impacted on food sampling rates, which are extremely important in the development of good intelligence.

2.3 *Should the limit of our toleration of food fraud i.e. adulteration and substitution be anything other than zero? If so, when?*

2.3.1 Deliberate fraud or adulteration should never be tolerated. However it must be recognised that there is a difference between food fraud and inadvertent or adventitious cross-contamination.

2.3.2 Whilst there should be zero tolerance, the definition of zero needs to be considered in terms of adventitious cross contamination. If abattoirs and processing plants are to continue to handle different meats, as the level of scientific and forensic knowledge increases, the level of microscopic or genetic contamination will be perceived to increase, although it will be no more than has ever been. Any threshold level needs to consider the best industry cleaning standard. There will be a need for separate consideration of the requirements of faith groups, for whom any level of cross contamination is unlikely to be acceptable.

Question 3: How can government, food businesses and regulators better identify new and emerging forms of food fraud?

3.1 Critical intelligence is required and businesses can assist in its development. Much will depend on good working relationships between business and regulators but if these become too close objective decision making can be compromised.

3.2 Whilst food control is apparently tightly managed, corporately knowledge has been lost in some areas. Often workers in retail don't know what they are selling and purveyors don't know their customers. If better levels of understanding can be provided this would widen opportunities to spot issues at an early stage.

3.3 *Can food fraud detected on a global basis be used as a means of determining risks to the UK food supply chain? What role should industry have, and how should government support it?*

3.3.1 Given that the food supply is global it will be important to use global intelligence to assist in determining risks to the UK food supply. The RASFF system operates across the European Union and provides information on compliance failures. Subject to the use of suitable analytical tools this might

assist in supporting good risk assessment. Beyond this, the principle of rigorous audits of the food supply system, together with a duty to notify cases of fraud should be adopted by the European Union.

- 3.3.2 The food industry carries out multiple checks on its food production and supply. Sharing such information should enhance consumer protection but it will need to be carried out in a “blame free” environment that also addresses concerns about commercial sensitivity. High standards of food safety should not be seen as a competitive matter amongst large retailers and producers. An incentive for businesses that are actively involved in such collaborative work might be fast tracking to “Earned recognition” status i.e. less frequent regulatory interventions. There are examples of regulators working closely with industry, to mutual and consumer benefit, in Primary Authority partnerships (PAP). However, this approach should not be regarded as the panacea as it may also create barriers to effective enforcement. In particular there needs to be consideration of the impact of PAP Inspection plans that restrict enforcing authority activity. Whilst an Inspection Plan is designed to focus on areas identified for improvement, restricting other activities such as sampling may be counter productive by impacting on intelligence gathering. In all business regulator relationships there must be good, transparent mechanisms in place to ensure that there is no “regulatory” capture and that regulatory independence can be maintained.
- 3.3.3 Whilst the majority of the food industry is reputable there are elements that are not. Even in reputable companies problems can occur as shown by the horsemeat incident and previously in the Salmonella contamination of Cadbury’s chocolate. As a consequence whistle blowing should be encouraged, both by reputable parts of the industry and by employees. Information received in this way will need to be carefully analysed and the providers given appropriate protections.
- 3.3.4 Whilst there are clear benefits from collaborative working, Government must continue to provide appropriate resources to enable the necessary independent regulatory checks on food businesses to be carried out. The current and ongoing budget cuts, particularly at LA level severely threaten the ability of the local regulator to carry out necessary checks. One such example can be seen in Torbay where the council has stated that it will no longer be able to carry out all the checks required by the FSA.¹

3.4 *Are any particular consumers disproportionately affected by food fraud?*

- 3.4.1 The horsemeat scandal and other incidents have shown that all consumers can be affected by fraud. The potential for fraud is likely to be greater where food is highly processed, as products are complex e.g. ready meals. Those on low incomes may be disproportionately affected, as in the horsemeat incident, when value range products are involved. By their nature “value” products tend to be of lower quality, which can increase the risks of substitution and fraud. However, there are also risks with “premium” products, where consumers are prepared to pay for brand names/quality logos etc. In such cases the potential

¹ <http://www.thisissouthdevon.co.uk/Cuts-hit-Torbay-food-safety-team-s-health-checks/story-19593963-detail/story.html#axzz2b5GXlghx>

for criminal profit can be considerable. Similar opportunities for fraud can occur in specialist food areas e.g. food required to meet religious requirements.

3.5 *How important is it to monitor price fluctuations nationally and internationally for food commodities to ascertain potential risk of adulteration?*

3.5.1 Such monitoring is likely to provide useful intelligence on the potential for fraud to occur. However this should only be one of a range of measures to identify fraud, not least because the time delay required to introduce adulterated foods is likely to be too long to maximise returns from the price fluctuations. The difference between the prices of good quality compared to poor quality food is already sufficiently great for this to be attractive to criminals.

3.6 *Is there any correlation between the incidence of VAT frauds, EU subsidy and export refund frauds, and substitution/adulteration frauds within food supply networks?*

3.6.1 Correlations are likely as these are other examples of criminal activity. Customs may provide some information though this may not be easy to access. OLAF monitors EU subsidy activity and has information that it might share. Beyond this CIEH do not have information on this matter.

3.7 *Do those involved in looking for different types of fraud share information appropriately? How can information sharing be improved?*

3.7.1 There appears to be limited sharing of information, some of which may be due to "sensitivity" or as a result of legislative constraints. This is certainly the case with information obtained by Her Majesty's Customs and Revenue. It is also apparent when looking at some EU organisations. Some are "judicial" others are "civil" which can create information barriers.

3.7.2 However within the UK it is likely that greater information sharing can be achieved.

3.7.3 Discussion suggests that currently enforcement officers focus on food fraud issues that concern their particular remit – rather than all agencies acting as 'eyes and ears' and reporting issues to the relevant enforcing authorities. Cutbacks mean staff are more focussed on what they need to do rather than taking a holistic approach to food fraud issues. Improvements can be made by clarifying the importance of food fraud work and giving enforcement officers tools to assist them. Communication with and feedback to all those involved in enforcing and detecting food fraud will be important, although sensitivities will need to be managed. A single information portal could assist in information sharing.

3.7.4 Sampling information can be an important indicator of systems out of control and of potentially fraudulent activities. All relevant sampling bodies e.g. LAs, Public Health England etc need to link to the UK Food Sampling System rapidly to allow national analysis of sampling findings. The inclusion of food industry sampling results would greatly enhance the knowledge base and should be encouraged. Findings should be used to target further action.

3.8 *How can food inspection and sampling (by food businesses and local authorities) be best targeted to pick up new and emerging risks?*

3.8.1 The focus for sampling activities has tended to be on microbiological examination for assessment of the safety of food rather than on chemical analysis or animal speciation. Perceived risk has been one factor for this focus but another significant factor has been the central allocation of free microbiological testing, by the Health Protection Agency (now Public Health England and equivalents). Analytical testing has been funded by local authorities and has been an easy target for cost saving in times of austerity. Whilst the budgets and resources to carry out the sampling continue to be restricted or even reduced, the facility to identify the risks will be minimal. Sampling budgets need to be ring fenced

3.8.2 As a result of the horsemeat incident a review of risk based sampling is taking place. This will need to recognise that widespread sampling is not an effective regulatory measure. Rather it needs to be used as a tool to verify that controls within food supply networks are working effectively. Sampling should be intelligence led in the main but there should also be some co-ordinated market place sampling that aims to identify unpredicted problems. All relevant sampling bodies e.g. LAs, Public Health England etc need to link to the UK Food Sampling System rapidly to allow national analysis of sampling findings. Findings should be used to target further action.

3.9 *What sources of information do food businesses use to work out what types of fraud or adulteration they need to be looking for? How could such information be improved?*

The CIEH does not have knowledge of how businesses source their information on food fraud.

3.10 *How good are existing controls? How well are they used? How well does England control fraud compared to other administrations across the world and what are the common issues?*

3.10.1 General comments on food controls and the balance between food safety and food standards have been made in paragraphs 2.1.12 to 2.1.18

3.10.2 Within the UK there are two different models for dealing with food fraud.

3.10.3 The Food Standards Agency maintains a small centralised unit and extends its reach by contracting a small number of local authority enforcement officers to support local investigations. The LA officers are contracted for a limited number of days per year.

3.10.4 In Wales a standalone Food Fraud Unit exists. It is difficult to comment on the relative effectiveness of the two arrangements but reference to other countries suggests that standing, permanently staffed operations are likely to be most effective.

3.10.5 In looking across the EU there are generally standing operations that deal with food fraud. There are two basic types, one that is a branch of the police and one that is based on civilian staff. Denmark has a "Flying Squad" that is made up of specialists from civil and judicial backgrounds. There are clear advantages

to the possession of police powers and there are limitations on the availability of police support in the UK. In any review of mechanisms to address food fraud the necessary skills and powers required must be a starting place

- 3.10.6 It is not possible to judge the relative effectiveness of fraud control across the world but it is worth noting that some other areas require more specific industry controls in terms of food defence and traceability which should increase the defence against fraud.

Question 4: Food supply chains have variable economic factors impacting on price at every stage. Which factors in relation to risks of potential fraud are most influential and are there trends developing?

- 4.1 Volatility is the new normality. This is recognised by the Organisation for Economic Co-operation and Development and the Food and Agriculture Organisation. Currently there is considerable uncertainty, and that poses serious threats to stable, expensive inspection systems.
- 4.2 Food systems are now characterised by long supply chains where, as the horsemeat scandal exposed, companies know what a commodity price is, where it is in the flow systems but not necessarily what it is. Even Tesco which built its structures on supposed Toyota management principles was found to know the price of goods and where they were but not what they contained. Their HACCP was about food safety and did not encompass a broad definition of food quality.

Question 5: Do consumers fully understand the way industry describes the composition and quality of the products on sale?

- 5.1 This must be a question for consumer groups but surveys indicate that knowledge is variable. Consumers have not generally been encouraged to know such details, which can be particularly complicated where products involve compound ingredients such as mechanically recovered meat. Beyond this product marketing will often seek to “gloss up” products to make them more appealing to consumers.

Question 6: Has the consumer developed unrealistic expectations of the food industry and if so, what role is there for the food industry and government in doing something about it?

- 6.1 A lot of consumers’ decision-making is based on price and the brand name of the food. The intention of food marketing is to create high expectations of individual food products or products from a particular manufacturer or retailer.
- 6.2 Consumers expect food to be safe and correctly described, this is a reasonable expectation. It may be beneficial to make consumers more aware of the level and type of food fraud that exists so that they can also play a part in combating this issue.

Question 7: Do government decisions about regulation and inspection get the balance right between producer, processor, retailer and consumer when it comes to food? Do further measures need to be taken by the EU or by the UK government to increase consumer trust?

- 7.1 Detailed comments about risk based inspection have been made in the response to Question 2, paragraphs 2.1.2 to 2.1.8.

- 7.2 In summary it is agreed that decisions should be based on risks posed, but there are some inherent flaws in risk based inspection approaches. Risk assessment is complex and can be food or premises based. It does not fully recognise the complexity of the food supply network, nor the complexity of ingredients within some processed products. It is predominantly focused on safety rather than quality and nature, which in light of the horsemeat incident requires review.
- 7.3 Beyond the risk based approach there has been a recent focus on reducing burdens on business and a move to "Earned recognition", particularly for large businesses and supermarkets. The horsemeat incident raises questions about the speed of this change and whether or not sufficiently robust checks and balances are in place to ensure consumer protection.
- 7.4 Supporting business growth and cutting unnecessary red tape is important to balance the economy but recent crises, such as in the banking sector, have shown that light touch regulation can be exploited. At the local level experience shows that business does require regulatory intervention and also wants active enforcement to ensure that unfair competition does not flourish.
- 7.5 In such deregulatory moves it will be important that equivalent standards operate across the entire EU, to both protect consumers and to ensure that the food industry can operate across a "level playing field".

Question 8: What impact could fraud have on the safety of food consumed in the UK?

- 8.1 Fraud always has the potential to affect safety. Fraud is most likely to occur where there is greatest potential for gain and least likelihood of detection. Transfer between plants and premises and across countries disjoins monitoring and direct control. This provides opportunities for fraud.
- 8.2 *At which points in the processed meat supply chain are the economic pressure points the greatest? Are substitution or adulteration most likely to occur at these stages?*
- 8.2.1 Fraud can occur at any stage in the process, but is more likely after the food has had its appearances changed so significantly that it cannot be easily identified. The demand for large quantities of cheap food, particularly from large retailers is likely to increase pressures on the supply chain. This in itself may increase the opportunities for fraud.
- 8.3 *Did the moratorium on the production and use of desinewed meat encourage suppliers to look for new ways to keep their costs down? If so, how did they respond and were those responses appropriate?*

The CIEH has no information on this matter.

Question 9: What implications do the recent changes to the public health responsibilities of English local authorities have for food inspection and enforcement regimes?

- 9.1 For English LAs there is a specific focus on the transfer of public health responsibilities and the integration with existing service delivery. It is not entirely clear where food

safety and quality sit and in some places resources in the more traditional areas of responsibility, such as food fraud and safety, have been diverted into public health.

- 9.2 Localism is the driver at LAs and regulation is often "out of favour".
- 9.3 Environmental health resources at LAs are continually being cut and the local focus is on supporting business growth. Regulators are expected to take a "light touch" approach unless there is clear evidence of failure.
- 9.4 Problems can be seen in a number of areas, not only in reduction of resources but particularly in the loss of skilled enforcement officers. The CIEH believes that relevant knowledge and appropriate competencies are essential for an effective inspectorate. It is not acceptable, even in times of austerity, to utilise a regulatory workforce that is not appropriately knowledgeable, skilled and competent where consumer (health) protection is the objective.
- 9.5 In terms of services, sampling has been hit hard, especially analytical sampling which is not supported by central funding, unlike microbiological sampling.

Question 10: What control systems do food businesses have in place for assuring themselves that the food they supply is of the nature and quality they expect? How have these systems been tightened since the horsemeat fraud was identified?

The CIEH does not have information on this matter.

Question 11: How can large corporations relying on complex supply chains improve both information and evidence as to the traceability of food?

The CIEH does not have information on this matter.

Question 12: Should there be legislative requirements for tamper proof labelling, and/or to advise competent authorities of mislabelling if it is discovered in the supply chain?

The CIEH does not have information on this matter.

Question 13: What additional information does the public need to be offered about food content and processing techniques? How can this information be conveyed in an easy to understand manner?

13.1 Considerable information on consumer wants and needs is held by both Defra and the FSA, gathered through their consumer surveys. Other relevant information will be held by consumer organisations and retailers.

13.2 As such the CIEH believes these organisations are best placed to answer this question.

Question 14: Whose responsibility is it to give the public assurances about the safety and quality of food?

14.1 The primary responsibility rests with the food business. Enforcement officers e.g. Environmental Health Practitioners and Trading Standards Officers carry out risk based checks to assess food business compliance with legislative requirements. Resources and

intelligence drive their focus. Given ongoing reductions in LA budgets the level of enforcement activity is likely to diminish.

- 14.2 Schemes like the Food Hygiene Rating System provide information on hygiene standards to consumers for some businesses and by so doing drive up standards. However for greatest effect mandatory display of ratings is required.

Question 15: How should information about traceability be presented to the public? What level of public understanding is there about traceability and food adulteration?

- 15.1 There appears to be little public understanding of traceability. Since the horsemeat incident there has been greater interest in food provenance and particularly in "Country of Origin". Consumers expect businesses and regulators to be in control of the provenance of food, although legal requirements are inadequate. Rather than seeking to improve consumer understanding about a flawed system a focus on improving the control system is likely to be of greater benefit in delivering consumer protection.

Question 16: Where multiple ingredients are used in food processing to create a dish, should country of origin information be made available for them all? What do the public care most about?

- 16.1 The best people to answer this are consumers and a number of surveys have been carried out around the issue of Country of Origin labelling. It is understood that the main interest is in the key ingredients but recent surveys will provide specific evidence.

Question 17: Should caterers/restaurants and those providing food ready to eat direct to the consumer be required to provide more information? For example, should an item such as 'Fish and Chips' on a menu always state which fish has been used?

- 17.1 Yes as price will be based on the specific ingredients. In the case of fish, market price will vary depending on species and other factors. Information should allow consumers to make "informed" choice and address issues of "quality". It will be especially important when caterers used pre-made products and composite ingredients.

Question 18: Are there shortcomings in the inspection and enforcement tools available to the FSA and local authorities?

- 18.1 There are a wide range of tools available but the horsemeat incident has shown a need for review of the enforcement system, of which inspection and enforcement tools are a part. Comments on the system have been made in previous responses. In terms of tools the following areas warrant detailed consideration:

- Powers of Entry. There is currently a cross government review of powers of entry to ensure that there are adequate safeguards built in. This work is required by the Protection of Freedoms Act and will cover not only powers of entry but also the ability to carry out surveillance to gather information e.g. across various elements of the food supply network and powers of seizure and detention. FSA are currently consulting on this and do not propose significant change. That position needs to be supported as restriction of these powers could significantly impact on the effectiveness of enforcement.

- Primary Authority inspection plans. These restrict activities based on national assessment. Whilst it is right that national assessment identifies areas of greatest risk and focuses LA activities, there is a risk that Inspection Plans could impact adversely on intelligence gathering, particularly in terms of sampling programmes. Given that even the most responsible companies can become victims of fraud, the impact of mandatory requirements that enforcement officers follow Inspection plans needs detailed consideration. This will become even more important as the access to Primary Authority Partnerships expands to include Trade Associations and their members.
- Penalties. Penalties need to be dissuasive and there needs to be a good chance of offenders being caught. Current penalties need review and enforcement needs to be supported in light of budget reductions and the apparent lack of enthusiasm for regulatory activities in many local authorities.
- Due diligence. A Due Diligence defence seeks to lay the blame for fault where it has occurred. This is a useful “tool” but consideration of the possibility of building in a requirement for supply chain checks could prove helpful. This suggestion raises the question about existing guidance for enforcing officers and whether or not it is comprehensive and clear. One example of this apparent lack of clarity relates to the use of Article 19 of Regulation 178/2002 which requires notification in certain circumstances. There are differing views about where this applies.
- Fraud intelligence. It is generally agreed that more needs to be done to gather and develop good intelligence. As part of this development systems should be created to proactively focus enforcement activities.

Question 19: Can substitution or adulteration ever be considered ‘harmless’?

19.1 No. It may result in an unsafe product or, if not unsafe then there is likely to be economic detriment.

19.2 The question that arises will be about where to target scarce resources.

Question 20: Is it appropriate to base inspection and enforcement action on perceptions of risk, or should a zero tolerance approach be taken to all food fraud?

20.1 Generally a risk based approach is supported but comments have been made earlier about flaws in the system. However in the case of food fraud there should be zero tolerance. Follow up action should be based upon the actual detriment caused and the advantage gained by the businesses. Resourcing to detect food fraud is likely to be expensive and should be done mainly at national or regional level. Penalties should be based around the scale of the fraud and the harm caused either to health or to the economy (including the impact on individuals).

Question 21: Does current intelligence make best use of the evidence available, and take adequate account of risk factors such as commercial reputation and public confidence?

21.1 It does not appear to do so. A more collaborative approach is required involving UK Government Departments and Agencies, the UK food industry, local enforcement officers, official control laboratories and equivalent groups in other EU Member States. Given the global nature of the food supply network wider links are also likely to assist.

- 21.2 Whilst action will aim to be based on evidence this may not always be robust. As a consequence consideration of greater use of the precautionary principle might be beneficial.
- 21.3 It is acknowledged that commercial reputation is extremely important to business but the horsemeat incident has shown that even leading businesses can be caught out. When considering fraud risk this needs to be borne in mind. Better horizon scanning should assist in identifying opportunities for fraud and putting deterrence measures in place. It seems likely that where significant risks are identified major businesses would wish to take preventive action, although this would always need to be based on a cost/benefit analysis.

Question 22: Does the Five Point Plan proposed by Commissioner Borg contain the necessary levers to achieve effective change? What further actions might be needed?

- 22.1 The proposals appear appropriate but real action will need cross EU support to prioritise such change and remove barriers. Some points may be easier to implement than others and implementation by 2014 seems optimistic. A detailed action plan with specific timescales and commitments from the Government of each Member State (MS) would give the plan greater credibility. More widely, the publication of the results of MS controls (based on National control plans) by the European Commission would provide greater transparency on EU wide activities.

Question 23: Is there evidence that the machinery of Government changes in 2010 for England (which led to Defra taking over responsibility for authenticity and compositional policy) have made food supply networks more vulnerable to fraud?

- 23.1 The CIEH does not have detailed evidence on this matter however would make the following comments on relationships between the Food Standards Agency (FSA) and the Department for Food and Rural Affairs (Defra) in the context of labelling.
- 23.2 It appears that there are weaknesses in the system created by the Machinery of Government changes in 2010. These changes were made without detailed consultation. The objectives of Defra and FSA are different, which cannot assist in terms of strategy co-ordination. It is worth recalling that the FSA was set up in the wake of the Phillips Inquiry into the occurrence of Bovine Spongiform Encephalopathy. The FSA was created to provide an independent body with a clear mandate to protect public health and other consumer interests in relation to food. Defra has a different and broader remit that includes supporting the farming industry. Accurate labelling should primarily be seen as a mechanism to inform and protect consumers so would appear to be a better fit with FSA.
- 23.3 The recently published Troop report "Review of Food Standards Agency response to the incident of contamination of beef products with horse and pork meat and DNA"² has identified some issues around co-ordination and recommended that the Machinery of Government changes be reversed to deliver better co-ordination. This is a view that is supported by CIEH as clear gaps in co-ordination have been seen in terms of labelling strategy and policy. At the delivery level, in England, Environmental Health Practitioners and Trading Standards Officers now need to work with two different Government

² <http://food.gov.uk/multimedia/pdfs/board/board-papers-2013/fsa-130704-prof-troop-report.pdf>

departments, rather than one to carry out their food safety and standards activities. This is not efficient. Beyond consideration of roles and responsibilities in England, labelling and healthy eating remain within the remit of the FSA in Scotland and Northern Ireland. FSA retains the policy responsibility across these areas for the United Kingdom. This does not appear to be sensible and risks duplication of effort leading to poor value for money. The CIEH's preferred option would be to revert to the pre 2010 position.

Question 24: Are there gaps in analytical approaches to support food testing, to verify authenticity and to enforce food law? Which areas in food authenticity should be prioritised for method development and validation to support testing?

24.1 This is a question best answered by Public Analysts. One general comment is that from an enforcement perspective there needs to be intelligence available to direct the focus and identify what problems are being sought.

24.2 *How can intelligence-based testing be improved to target emerging food fraud in the UK and internationally? How can we get the balance right between intelligence based testing and random testing?*

24.2.1 The EU and the FSA would need to lead in these areas and have a system for identifying and recording intelligence that can then be assessed to determine if follow up action is required. All testing should be coordinated so that larger sample sizes can be achieved to provide meaningful information and aid statistical analysis. Whilst intelligence led sampling should be the main focus some additional market place testing may prove beneficial, not least in providing additional intelligence. This however can be costly and it will be important to ensure it is properly co-ordinated across individual countries.

24.3 *Is laboratory capacity for industry and food law enforcers sufficient? Is the balance between state funded and privately funded laboratories appropriate?*

24.3.1 This is a question on which CIEH has no detailed information. However from the outside it appears that public laboratories can be underfunded and forced to compete to survive.

24.3.2 This can lead to the following problems:

- Lack of funding prevents the development of new techniques; the available resource has to be used to meet current demand
- As a result of the need to compete for business, technologies and intelligence are considered a commercial advantage and therefore not shared
- In the longer term the reduction in the number of laboratories is likely to lead to insufficient MChemA candidates (and hence qualified persons) to maintain the required level of expertise as Public Analysts. Whilst the requirement for MChemA is under consideration, the lessons from the dissolution of the Forensic Science Service should be learnt.

24.4 *Are Public Analysts adequately equipped with the complex technology needed to test for food authenticity? Does more need to be done to make methods more transferable?*

24.4.1 This question is best answered by Public Analysts; however the following comments are made.

- 24.4.2 With food fraud becoming ever more sophisticated, the technology required to detect it also becomes more sophisticated and costly. Some of the methods developed by Defra and the FSA in the last ten years or so have been left and not developed. One example is the Basmati rice authenticity method where it is impossible to obtain robust standards.
- 24.4.3 In the horsemeat incident the initial FSA requirement was that official control laboratories (OCLs) use the 'Bioanalyser' method for speciation, which had been superseded by real-time PCR technology, but this was only available in a small number of laboratories.
- 24.4.4 That being said it is probably not necessary to have all technologies in every laboratory but there needs to be a sufficiency to deal with demand. What is essential is that Official Control laboratories are properly and centrally funded and not forced into competition. To tackle the issue around advanced technologies and rapid change a 'centres of excellence' approach could be adopted.

Question 25: What are the cost burdens and financial benefits to food businesses of current approaches to assurance, information and regulation? What have been the financial and other impacts of recent food frauds?

- 25.1 A number of large businesses use 3rd party Assurance schemes. Such schemes carry out monitoring for the businesses and are often a requirement for new entrants to supply chains, particularly for large retailers. Different schemes cover different aspects of food control but are unlikely to pick up food fraud, though they might identify weaknesses in systems e.g. in traceability.
- 25.2 The FSA has been looking at 3rd party assurance as an alternative to traditional enforcement. It is in use in the area of dairy hygiene and is likely to be part of a future enforcement package in the area of feed control. 3rd party assurance schemes are also being considered as part of the route to "Earned recognition". As a result they may be of particular benefit to food businesses but perhaps are most relevant to larger businesses. Schemes exist for smaller businesses e.g. SALSA but these have not been widely recognised.
- 25.3 Beyond these general comments, the CIEH has no specific knowledge of the costs and benefits of assurance schemes to business.
- 25.4 The costs of regulation are regularly debated and different views expressed.
- 25.5 The current Government approach is deregulatory and aimed at reducing burdens on business. Clear benefits can be seen for business in some areas e.g. those that trade across LA boundaries can develop Primary Authority partnerships that provide assured advice and manage relationships with local enforcing authorities. Whilst this is beneficial to business, as previously commented the restrictions on enforcement activity need to be reconsidered in light of the horsemeat incident.
- 25.6 Looking at smaller businesses CIEH would comment that there is evidence that they often value visits from local regulators as this helps them comply with legislative requirements.

Question 26: What impact does increased sourcing of locally produced foods have on food authenticity and food prices? Is a shortening of supply chains likely to improve traceability?

26.1 *Is it always desirable, or only in certain specific cases? What is the impact of shorter supply chains likely to be on consumers and others in the supply chain?*

26.1.1 Shortening of supply chains may make traceability easier but may not be practical based on consumer demands for choice, which includes food from other countries and "out of season". Even if such factors could be managed the capacity of local producers to satisfy the full scale of demand would need to be assessed. If local producers cannot meet demand, or local produce attracts a premium price then opportunities for fraud are likely to occur.

26.1.2 There may be opportunities for some simplification of the supply network but this may well have cost implications. Even when there is clarity about supply routes food that crosses national boundaries creates enforcement difficulties i.e. maintaining oversight along the chain. This highlights the importance of having local unannounced inspections by competent local inspectors in all countries and good cross-boundary liaison.

Question 27: If additional testing of food products for authenticity is required across a wide range of commodities, can this be kept proportionate, relevant and timely?

27.1 Such a move would require agreement on what needed to be tested, by whom and to what extent. This might be informed by good intelligence but there are likely to be significant cost implications.

27.2 *What is the appropriate level of reinforcement of testing by audit and inspection? Who should pay for inspection? Would recovery of the costs of inspection by local authorities, balanced by a risk based approach to inspection, provide a better or worse incentive to improve the quality and safety of products?*

27.2.1 Audit and inspection should be the main approach to verifying the effectiveness of food control systems. In general testing should only be used to check on control systems and should be limited unless problems are suspected or identified.

27.2.2 Whilst there may be some justification for charging business for inspection and this is currently under consideration at EU level it is likely to be a complex procedure. Currently the Health and Safety Executive is using a recharging model on the basis of "Fee for fault". This may well be worth examining as a model for costs and benefits. One element for particular consideration would need to be the impact on the relationship between the business and the regulator, particularly as much improvement is achieved through support and agreement rather than formal enforcement.

27.3 *What are the risks of higher testing/inspection costs by enforcement bodies being transferred down the supply chain to the UK farming industry or along the supply chain to consumers? Is there clear evidence of the impact this would have?*

27.3.1 Higher testing/inspection by enforcement bodies resulting in significant costs to local authorities could not be absorbed by local authorities particularly in light of continuing budget cuts. Other funding arrangements would be required.

Question 28: Additional testing for food authenticity across a wide range of commodities will have a significant cost. Who should be responsible for absorbing these costs? Food businesses and/or Government – by way of grant funding to LAs to undertake sampling?

28.1 Additional testing will have a significant cost. Large food businesses may pick this up but ultimately consumers are likely to pay. This would be a significant burden for smaller businesses and if this was deemed necessary then ring fenced funding for LA sampling might be the best way to address sampling in SMEs.

Question 29: Other than for allergens, how significant are the issues raised by trace contamination from carry-over from equipment previously used for other food types? What can be done to reduce the level of carry-over while ensuring that the response is proportionate? At what level of trace contamination is there a need to require separate production lines for different products?

29.1 This can be significant for certain sections of the population, e.g. pork being found in food eaten by Muslims or meat in vegetarian products. It will depend on the target consumer for the product.

29.2 Research is currently being carried out, for the FSA, into effective cleaning regimes. This should assist in dealing with carry over in many cases but testing will be required to ensure that implementation is effective.

29.3 In some cases any carry over is likely to be unacceptable e.g. for some faith groups. In such cases complete separation is likely to be required. Ultimately the levels of acceptability need to be determined by the consumer. Businesses will need to be able to prove that they meet the standards and enforcement officers will carry out risk based testing.

29.4 For both business and regulators clear guidance will be required.