



The Food Standards Agency Consultation on Draft Legislation

Presented to Parliament by the
Minister of Agriculture, Fisheries and Food
by Command of Her Majesty, January 1999

Cm 4249

£9.70 Sterling

published by The Stationery Office

The Food Standards Agency - Consultation on Draft Legislation

THE FOOD STANDARDS AGENCY

Consultation on Draft Legislation

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Part I:

Introduction, Summary and Consultation Document

Introduction

1. This document initiates further consultation on the Government's proposals for changes in the arrangements for handling food safety and standards issues in the United Kingdom. It summarises progress since the publication of the White Paper *The Food Standards Agency: A Force for Change* (Cm 3830) in January 1998, and invites comments on the draft Food Standards Bill (Part II of this document). Subject to the availability of Parliamentary time, the Government hopes to be able to introduce the Bill before Parliament in the present 1998/1999 Session.

Timetable for consultation

2. In order to allow time to prepare the Bill for introduction, comments must be received by **no later than 24 March 1999**. Responses from GB or UK organisations, or from organisations and individuals based in England, should be sent to the following address:

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3. Respondents in Scotland, Wales and Northern Ireland should reply to the Scottish, Welsh or Northern Ireland contact, as follows:

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Responses to the White Paper

4. Over 1,000 responses to the White Paper were submitted. Copies were placed in the Library of both Houses of Parliament in May 1998, and are available to interested organisations and members of the public through the Ministry of Agriculture, Fisheries and Food Library, 10 Whitehall Place, London, SW1A 2HH. (Tel: 0645335577)

5. The Government's proposals for the Food Standards Agency as set out in the White Paper received widespread support from consumer organisations, public health professionals, food law enforcement bodies, research interests and the food, farming and associated industries. They endorsed the Government's proposal to establish a Food Standards Agency which would be a new UK body, operating at arm's length from Ministers, taking a strategic view of food safety and standards issues across the whole of the food chain and able to make public its views on matters related to food and public health.

The Draft Food Standards Bill

6. The draft Bill implements the proposals set out in the White Paper where primary legislation is the appropriate vehicle for doing so. Some other aspects of the White Paper proposals will be implemented through amendments to secondary legislation or administrative action.

7. The Bill is being published in draft in order to ensure that it is thoroughly scrutinised and its practicality assessed before a final version is introduced to Parliament. The Government's aim in doing this is to improve the quality of the eventual legislation. Work will continue to refine the text in the light of comments made on the draft during the consultation period and further study of the draft clauses. A number of minor and miscellaneous provisions will also need to be added before the Bill is finalised. Account will also be taken of any report from the special Commons select committee which is to be set up to carry out pre-legislative scrutiny of the draft Bill.

8. The explanatory notes which accompany the draft Bill in Part II of this document are intended to assist consultees in understanding the purpose and effect of the proposed legislative provisions.

Scotland, Wales and Northern Ireland

9. Under the devolution legislation⁽¹⁾ responsibility for food safety and standards will be devolved to the new authorities in Scotland, Wales and Northern Ireland. This means that those food safety and standards functions which are currently the responsibility of the Secretaries of State for Scotland and Wales and, in Northern Ireland, of the Department of Health and Social Services will become the responsibility, respectively, of Scottish Ministers accountable to the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly. Both the Scottish Parliament and the Northern Ireland Assembly will have powers to decide through primary legislation to introduce their own separate arrangements for handling food safety and standards. In Wales, the National Assembly for Wales will have powers to make secondary legislation.

10. Consultation on the White Paper demonstrated that there was support for the Food Standards Agency to be a new United Kingdom body, reporting to the devolved authorities as well as to the UK Government and accountable to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly as well as to Parliament at Westminster. The Government believes that a single body to control and regulate food safety and standards in the United Kingdom is appropriate because it would be impractical and costly to duplicate the necessary scientific advice in all parts of the UK, and because it will facilitate the even implementation of food safety legislation, most of which has its origins in the EU. The Government also believes that it will be in the interests of consumers and food producers, manufacturers and retailers if they can be confident that consistent standards of food safety apply throughout the United Kingdom.

11. This Bill therefore provides for the Food Standards Agency to be a UK body. Special arrangements are proposed to ensure that the Agency is accountable to the devolved authorities and that they are able to operate their devolved functions effectively. These are described further in paragraphs 27 to 29 below. After the elections for the Scottish Parliament and the National

Assembly for Wales on 6 May 1999, the Government will consult formally with those devolved bodies to establish whether they are content to proceed with legislation on a UK basis in the way proposed in this draft Bill.

12. In Northern Ireland, the Belfast Agreement provides for the establishment of six cross-border implementation bodies with the Republic of Ireland. It has been decided that one of these bodies will cover food safety. Details of the new body have yet to be worked out. Once the new Northern Ireland Executive is fully established, the Government will consult with them formally to ascertain whether they are content to proceed with a UK Food Standards Agency, as proposed in this draft Bill, and about the relationship with the proposed all-Ireland food safety body.

The main features of the Bill

13. The main features of the Bill are as follows:

- it establishes the Food Standards Agency, which will be a non-ministerial government department, and confers upon it the necessary functions, powers and duties
- it provides for the Agency's chairman and members to be jointly appointed by the Secretary of State for Health and his counterparts in Scotland, Wales and Northern Ireland, to cover a balance of relevant interests and experience
- it sets out the Agency's general functions and gives it the right to make public any advice it offers to Ministers, government departments or other persons
- it provides new powers for the Agency to carry out surveillance and to propose regulations under the Food Safety Act 1990 to cover the full range of activities connected with the production and supply of food which might cause potential food safety problems
- it provides new powers for the Agency to set standards for, and monitor the performance of, local authority food law enforcement
- it provides new powers to allow Ministers to make an Order applying the provisions of the Food Safety Act 1990 (modified as necessary) to animal feedingstuffs
- it provides that the Minister of Agriculture, Fisheries and Food's functions under the Food Safety Act 1990 and other primary legislation related to food will in future be exercisable by the Secretary of State for Health in England; in Scotland, Wales and Northern Ireland the appropriate Minister or equivalent after devolution will remain responsible for these functions
- it spells out the Agency's future role under other primary legislation such as the Radioactive Substances Act 1993, the Trade Descriptions Act 1968, the Food and Environment Protection Act 1985 and Part VI of the Environmental Protection Act 1990 (which deals with genetically modified organisms)
- a key part (entitled "General Provisions") of the Bill sets out how the Agency will exercise its functions and what powers Ministers will have to direct it or, as a last resort, to dismiss the members of the Agency, if there is a serious failure on its part

Financing the Agency

14. The draft Bill includes new powers enabling the Secretary of State for Health and his counterparts in Scotland, Wales and Northern Ireland to introduce a levy on food premises. A separate consultation document is being published at the same time as the draft Bill which describes the Government's proposed scheme to raise the new costs associated with the Agency through an annual levy on food retailers and caterers. New resources raised through the levy will be additional to the existing budgets for central government's food safety and standards work which will be transferred from the Agriculture and Health Departments to the Agency when it is established.

15. The draft of clause 23 of the Bill, establishing the enabling provisions for the levy, is still provisional since it does not yet take account of the role of the devolved authorities in Scotland, Wales and Northern Ireland. The Government's intention is that the levy should apply in all parts of the UK in a consistent way. A further version of the clause, taking account of devolution, will be published as soon as it is available.

16. The separate consultation on the proposed levy scheme is being carried out in parallel with the consultation on the draft Bill. Copies of the consultation document on the levy scheme will be circulated to all those who commented on the White Paper or can be obtained from the contacts on page 1 of this document.

The Guiding Principles

17. The guiding principles set out in Chapter 2 of the White Paper are an important part of the arrangements for ensuring that the Agency acts in a reasonable, balanced and impartial way, taking full account of the requirements of democratic

accountability. Considerable thought has therefore been given to the best way of reflecting the guiding principles in the Bill. The table on pages 5 and 6 summarises how each of the guiding principles has been reflected in the legislation.

18. The Agency's main aim is defined in the guiding principles as the protection of public health in relation to food. This aim will in principle apply to all its functions. In Clause 1 of the draft Bill, the Agency's main objective also includes the protection of other interests of consumers in relation to food, in addition to protection from risks to health. This is necessary to cover the Agency's responsibility for aspects of consumer protection in relation to food which are not directly health-related, such as food authenticity and many aspects of food labelling. However, the reference to 'the interests of consumers in relation to food' must clearly be read in the context of the Bill as a whole and does not expand the scope of the Agency beyond that described in the White Paper.

19. The Bill requires that the Agency should draw up a statement of general objectives and general practices it proposes to adopt. This statement is expected to encompass the key features of the guiding principles as set out in the White Paper, and in particular those which cannot be imposed as a duty on the Agency under the legislation (the Agency will, of course, also be subject to the requirements of general administrative law). The requirements for openness and transparency and for wide consultation are therefore specified in the Bill as general objectives, which may be supplemented in the statement by more specific objectives relating to those principles, as well as by a description of the methods by which the Agency intends to achieve them. The statement will also cover the arrangements by which the Agency will facilitate good consultation and establish arrangements for co-ordination with other departments and agencies of Government (and the devolved authorities) which have an interest in the safety of food or which are relevant to the other interests of consumers in relation to food. This will be an important way of ensuring that the Agency is kept informed of relevant activities of other departments and agencies, and that it in its turn informs them of its own activities and advice which are relevant to their responsibilities.

The Guiding Principles

Relevant Provisions in the Draft Bill

1. The essential aim of the Agency is the protection of public health in relation to food.

Clause 1(2) "The main objective of the Agency in carrying out its functions is to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way it is produced or supplied) and otherwise to protect the interests of consumers in relation to food".
Note: the main aim encompasses the Agency's responsibilities on food standards and nutrition as well as food safety.

2. The Agency's assessments of food standards and safety will be unbiased and based on the best available scientific advice, provided by experts invited in their own right to give independent advice.

Clause 2(4) (Authorities to consider whether potential Agency members' financial or other interests likely to prejudice exercise of their duties). Clause 19 (Duty to take account of advice from Advisory Committees). Clause 12 (Function to acquire and review relevant information).

3. The Agency will make decisions and take action on the basis that:
- the Agency's decisions and actions should be proportionate to the risk; pay due regard to costs as well as benefits to those affected by them; and avoid over-regulation;
- the Agency should act independently of specific sectoral interests.

Clause 19 (Duty on Agency to assess costs and benefits, nature and magnitude of risks and any uncertainties). Avoidance of over-regulation to be covered in statement to be prepared under Clause 18. Clause 2(4) (see comment above).

4. The Agency will strive to ensure that the general public have adequate, clearly presented information in order to allow them to make informed choices. In doing this, the Agency will aim to avoid raising unjustified alarm.

Clause 10 (Function of providing advice to general public).
Clause 19 also relevant to requirement to avoid raising unjustified alarm.

5. The Agency's decision making processes will be open, transparent and consultative, in order that interested parties, including representatives of the

Clause 18 (general objectives).

public:

- have an opportunity to make their views known;
- can see the basis on which decisions have been taken;
- are able to reach an informed judgement about the quality of the Agency's processes and decisions.

6. Before taking action, the Agency will consult widely including representatives of those who would be affected, unless the need for urgent action to protect public health makes this impossible. Clause 18 (General objectives) + specific statutory requirement in Food Safety Act 1990 to consult on proposals for legislation and statutory codes of practice.

7. In its decisions and actions, the Agency will aim to achieve clarity and consistency of approach. To be covered in statement of general practice under Clause 18.

8. The Agency's decisions and actions will take full account of the obligations of the UK under domestic and international law. Clause 20 and 21 (Powers of direction if Agency fails to comply with international obligations or breaches any duty).

9. The Agency will aim for efficiency and economy in delivering an effective operation. Clause 3 (Chief Executive responsible for ensuring efficiency and effectiveness).

20. Since the Agency is to operate in its day-to-day business at arm's length from Ministers, the Bill requires the Agency to be responsible for drawing up its own statement of general objectives and practices. However, the Agency remains accountable to the Secretary of State for Health and the devolved authorities, and therefore the Bill provides for Ministers to notify the Agency of specific objectives they wish to include and requires the approval of the Secretary of State and the devolved authorities for the statement. This will allow them to satisfy themselves that proper account is being taken of all the guiding principles and also of any relevant Government-wide procedural requirements and guidance (such as the Better Regulation Guide and principles). It would also enable them to include other important objectives such as the need to take account of sustainable development.

21. The Bill provides for the Secretary of State and the devolved authorities to issue directions to the Agency if it seriously fails to comply with the statement of general practice or to perform any of its duties; and to remove the appointed members of the Agency from office if they fail to comply with such a direction. Ministers would of course be expected to explain to Parliament and the public their reasons for deciding to exercise these powers.

Administrative Concordats

22. The Food Standards Agency will report to the Secretary of State for Health and his counterparts in the devolved administrations and will need to work closely with other government departments, in particular the Department of Health and the Ministry of Agriculture, Fisheries and Food, and with the devolved authorities in Scotland, Wales and Northern Ireland. The Government envisages that the relationship between the Agency and other departments and with the devolved authorities should be underpinned by a series of administrative concordats, which would be published documents, setting out the duties and responsibilities each will have in relation to the other. These concordats will, for example, cover such matters as the need for timely provision of information and consultation, arrangements for dealing with issues which cross departmental boundaries such as nutrition or the control of food-borne zoonoses and any necessary arrangements to cover the provision of services from one department to another. Since the Secretary of State for Health will be accountable to Parliament for the Agency (and his counterparts in Scotland, Wales and Northern Ireland to the devolved legislatures), the concordats will also need to establish the framework for dealing with Parliamentary business such as responding to Parliamentary Questions or correspondence from MPs.

Nutrition

23. The Agency's functions will allow it to exercise the role which the White Paper envisaged for it in nutrition policy in particular the provision of readily intelligible, scientifically based information about the nutritional content of individual foods

and impartial and accurate advice on a balanced diet. The Agency will need to work closely with UK health departments who will retain responsibility for wider public health aspects of nutrition. The concordats between the Agency and the UK health departments will set out their respective responsibilities and the mechanisms which will be put in place to deliver the necessary close co-operation in this important and sensitive area.

Pesticides and Veterinary Medicines

24. The Bill will require the Veterinary Products Committee and the Advisory Committee on Pesticides to include a member nominated by the Agency and will provide for the Agency to be consulted by the Veterinary Medicines Directorate (VMD) and Pesticides Safety Directorate (PSD) on veterinary medicines and pesticides policy issues which are relevant to food safety. VMD and PSD will however retain responsibility for all aspects of the authorisation process.

25. As regards the arrangements for surveillance of food for residues of pesticides and veterinary medicines, the Government is clear that the Agency will need to have extensive involvement and to work closely with PSD and VMD in discussing relevant surveillance programmes. The Bill also provides new surveillance powers which could be exercised in relation to pesticides and veterinary medicines, if necessary, as well as other aspects of food safety and consumer protection.

26. The Government has reviewed the proposed arrangements for undertaking surveys for residues of pesticides and veterinary medicines in the light of comments made on the White Paper and by the Agriculture Select Committee. It has concluded that responsibility should remain with PSD and VMD respectively, but with some additional safeguards including the introduction of structured and transparent processes for determining the scope and priorities of the surveillance programmes. The Agency would also review the survey results and seek independent advice on their significance from the appropriate advisory committees.

Detailed arrangements in Scotland, Wales and Northern Ireland

27. The draft Bill includes specific arrangements to take account of the needs of the administrations in Scotland, Wales and Northern Ireland after devolution (see paragraphs 9 to 12 above). There will be distinctly identifiable arms of the Food Standards Agency in Scotland, Wales and Northern Ireland. The draft Bill allows for:

- separate executive bodies in Scotland, Wales and Northern Ireland, each with a director, and with responsibility for the organisation of the Agency and its activities in their part of the UK;
- the creation of new Advisory Committees for Scotland, Wales and Northern Ireland, to give advice on food safety and standards issues in their part of the UK. The chairman of each of these Committees will be a member of the Agency with particular experience in food safety and standards matters in their part of the UK;
- the Scottish Ministers, the National Assembly for Wales and the Northern Ireland Department would retain legislative powers in all the key areas, advised by the Agency;
- the Agency will make annual and other reports to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly as well as to Parliament at Westminster;
- the devolved administrations would fund the costs of the Scottish, Welsh and Northern Ireland arms of the Agency, where these are not met through charges on industry.

28. As indicated in paragraphs 11 and 12 above, the arrangements described here are subject to approval by the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

29. Because the framework of legislation provided by the devolution Acts is still very new, some of its practical and legal implications are still being worked out. The drafting of this Bill as it affects Scotland, Wales and Northern Ireland will therefore be subject to further review during the consultation period.

Reviews of Public Analysts (England and Wales) and Scientific Services (Scotland)

30. As foreshadowed in the White Paper, the Government has carried out independent reviews of the Public Analyst Service in England and Wales and the food-related Scientific Services in Scotland. Both of these reviews have reported and their reports have been published. Ministers are currently considering the reports and, in particular, whether there is any need to amend the relevant provisions of the Food Safety Act 1990 in the light of their recommendations. The Government will reach conclusions on whether any amendments to the Bill are necessary to take account of these points before the Bill is brought before

Parliament.

Notification of Food Borne Illness

31. In the White Paper, the Government indicated that it was considering whether the arrangements for statutory notification of diseases should be extended to include reporting by clinical laboratories of certain specified (human) test results. It was envisaged that this change might be introduced as part of a general revision and streamlining of legislation on the control of communicable diseases. The Government is considering whether it might be appropriate to include within the provisions of the Food Standards Bill a power which would enable the Agency to operate a scheme of statutory notification of laboratory test results for specified food-borne illnesses. Such a scheme might assist the Agency in obtaining the information it needs to develop a national strategy for the control of food-borne zoonoses (i.e. diseases of, or organisms carried by, animals which are transmissible to humans, such as salmonella, E.coli etc) as proposed in the White Paper. The Government may wish to include such provisions at a later stage when the Bill is introduced to Parliament.

Regulatory Impact Assessment

32. A draft Regulatory Impact Assessment for the Bill is included in the Annex to this document and will also be included in the separate consultation document on financing the Agency. Comments are invited on this draft.

Comments on the consultation on the draft Bill

33. The Government would welcome comments on any of the issues raised in this consultation document or on the draft Bill itself. In commenting on the draft Bill, it would be helpful if consultees would explain the intended purpose of any changes they wish to suggest rather than proposing specific drafting amendments.

(1) The Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998.

Part II

Explanatory Notes

These notes refer to the draft Food Standards Bill as published for consultation on 27 January 1999

INTRODUCTION

These explanatory notes relate to the Food Standards Bill as published in draft on 27 January 1999. They have been prepared jointly by the Ministry of Agriculture, Fisheries and Food, Department of Health, Scottish Office, Welsh Office and Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

The Bill gives effect to the proposals in the White Paper, 'The Food Standards Agency: A Force for Change' (Cm 3830).

The main purpose of the Bill is to establish the Food Standards Agency, provide it with functions and powers, and to transfer to it certain functions that are currently exercised by the Minister of Agriculture, Fisheries and Food in relation to food safety and standards. Besides setting down the Agency's main objective of protecting public health and the functions that it will assume in pursuit of that aim, it also gives it the powers necessary to enable it to act in the consumer's interest at any stage in the food production and supply chain. The Bill, in addition, provides for the Agency's main organisational and accountability arrangements.

OVERVIEW OF THE BILL

The main body of the Bill is arranged under five headings:

- (i) *The Food Standards Agency*, concerns the establishment of the Agency, its purpose and its main organisational arrangements (more detailed provisions on procedure, etc. are contained in Schedule 1);
- (ii) The functions of the Agency, describes the general functions of the Agency and provides powers to enable it to carry them out (detailed functions under the Food Safety Act 1990 and other primary legislation are provided for in Schedule 2);
- (iii) *General provisions relating to the functions of the Agency*, concerns certain considerations which the Agency must observe in carrying out its functions, and provides for direction by Ministers and the devolved authorities should it fail to perform its duties;
- (iv) *Miscellaneous provisions*, provides enabling powers to impose a levy on food premises, sets out the functions no longer to be exercised by the Minister of Agriculture, Fisheries and Food, and makes various provisions for consultation with other parts of Government or the devolved administrations on aspects of food safety. It also allows (in relation to England and Wales) secondary legislation to apply to animal feedingstuffs provisions equivalent to those of the Food Safety Act 1990;
- (v) *Supplementary*, defines various terms used in the Bill, makes provision for the Agency to be funded by Parliament and amends or repeals legislation as a consequence of the main provisions of the Bill (other minor amendments and repeals are set out in the associated Schedules 3 and 4).

NOTES ON CLAUSES

The Food Standards Agency

Clause 1: The Food Standards Agency

This clause concerns the establishment of the Food Standards Agency, its main objective and the scope of its functions and activities. More details concerning the constitution of the Agency can be found in Schedule 1.

Subsection (1) establishes the Agency and makes clear that its functions are limited to the functions that are provided for in the rest of the Bill. These functions thus provide a clearly defined framework in which the Agency will operate. The way in which they will be carried out is also limited by the requirements that are set down in the subsequent clauses, in particular clauses 18 and 19. These provide for the Agency to carry out its functions in accordance with a statement of objectives and practice that has been approved by Ministers. Clause 19 furthermore specifies that the Agency must act in a proportional manner by taking account of risks, costs and benefits, as well as of any advice it receives from its advisory committees.

Subsection (2) defines the main food safety and standards objective of the Agency. This has been drawn up so as to reflect the fact that the Agency's main aim is to protect public health in relation to food: in other words, food safety is its main concern. The Agency also has the objective of protecting the wider food-related interests of consumers - sometimes referred to as food standards. This would cover in particular such matters as the composition and labelling of food. This subsection does not imply that the Agency has any wider powers or functions than those provided by the rest of the Bill, but sets the context in which the Agency's powers must be used.

Subsection (3) establishes the Agency as a Crown body.

Clause 2: Appointment of members etc.

This deals with the membership of the Agency and the procedures for appointing people to serve.

Subsection (1). It is envisaged that the Agency will normally have twelve members. Appointments would be made jointly by the Secretary of State for Health and his counterparts in the 'appropriate authorities' for Scotland, Wales and Northern Ireland. The 'appropriate authorities' are defined in clause 29 of the Bill and are:

- the Secretary of State; in practice, for the purposes of the Food Standards Agency, this will be the Secretary of State for Health;
- in Scotland, the Scottish Ministers; this is a collective term for the members of the Scottish Executive of the devolved administration. Again, for practical purposes, the Scottish Minister with responsibility for Health is likely to take the lead;
- in Wales, the National Assembly for Wales. Under the Government of Wales Act 1998, powers are vested in the National Assembly as a whole. In practice, that particular part of the Assembly which takes responsibility for health matters would lead on the Agency in Wales;
- in Northern Ireland, the Department of Health and Social Services; in Northern Ireland, powers are vested in departments, acting on behalf of Ministers, or after its establishment, the Northern Ireland Executive.

Subsections (2) and *(3)* require that a reasonable balance of relevant skills and experience should be reflected in the Agency's membership. The members will not be appointed to be representative of any particular interest or sector, though certain members will be appointed because they have particular knowledge of food safety and standards issues of relevance to Scotland, Wales and Northern Ireland. *Subsection (3)* requires at least two members with relevant knowledge to be appointed for Scotland and one for each of Wales and Northern Ireland. The Agency is intended to act collegiately and reach collectively agreed decisions.

Subsection (4). This duty is intended to enable the appropriate authorities to satisfy themselves that the person in question has no financial or other interests for example shares in a major food manufacturer which could compromise his or her position as a member of the Agency. This does not necessarily mean that any such interests will automatically disqualify a person from appointment as a member. Under paragraph 9 of Schedule 1, the Agency will be obliged to establish a register of private interests: although the Bill does not specifically require it, the Agency's procedural rules would be expected to prevent a member with an interest in a particular matter from taking part in discussions on it.

Clause 3: Appointment of chief executive and directors

Subsection (2) gives the Agency's chief executive particular responsibility for compliance with the requirement in the guiding principles to ensure that the Agency is run efficiently and effectively. He or she will be responsible to the Agency's members for the day to day running of the Agency itself and will also be the Agency's accounting officer (the officer responsible to Parliament for the way in which the Agency spends its money). It is intended that the terms of appointment that are made under *subsection (6)* of this clause will be fixed but renewable. Under *subsection (3)* the first chief executive is to be appointed jointly by the appropriate authorities, because the members of the Agency are unlikely all to be appointed when this appointment is

made. Subsequent appointments will be a matter for the Agency, with the approval of the appropriate authorities.

Subsection (4). The separate directors for Scotland, Wales and Northern Ireland will each head an executive body with responsibility for the operation of the Agency in the relevant part of the UK and will report to the chief executive. By analogy with the chief executive, the first appointment of the directors under *subsection (5)* will be made by the appropriate authority in Scotland, Wales or Northern Ireland, with subsequent appointments by the Agency with the authority's approval.

Clause 4: Advisory committees for Wales, Scotland and Northern Ireland

The purpose of the committees established by this clause will be to provide a focus for Scottish, Welsh and Northern Ireland interests in food safety and standards. They will be set up with a defined remit that will reflect the responsibilities of the UK Agency. Their membership will reflect the range of interests on food safety and standards issues in Scotland, Wales and Northern Ireland. The Agency is obliged under clause 19 to take their advice into account when carrying out its functions or advising Ministers or the appropriate authorities. In practice, it is expected that the Agency will explicitly inform the appropriate authorities in Scotland, Wales and Northern Ireland of the views of these committees.

The term 'members of the Agency' used in *subsection (2)(a)* and elsewhere in the Bill and these notes means members of the Food Standards Agency appointed in accordance with clause 2. The chairman of each of these committees must be a member of the Agency.

Clause 5: Advisory committees for England

This clause enables the Secretary of State to establish an advisory committee for England, or English regions, with a similar purpose to those for Scotland, Wales and Northern Ireland. This provision has been included in case the Secretary of State feels such committees may be needed in future in particular, for example, following any legislation for devolution to the English regions. There is no intention to establish such committees at the outset.

Clause 6: Other advisory committees

This clause empowers the Agency to establish specialist advisory committees.

A number of non-statutory independent advisory committees currently exist which deal exclusively with food related matters and which will provide advice to the Agency and be treated like committees established under clause 6. They are the Advisory Committee on the Microbiological Safety of Food (ACMSF), the Advisory Committee on Novel Foods and Processes (ACNFP), the Food Advisory Committee (FAC) and the Consumer Panel. The Agency may vary their terms of reference or wind them up if it chooses. In addition, advice will also be available to the Agency from a number of other committees, including the Spongiform Encephalopathy Advisory Committee (SEAC), the Committee on the Medical Aspects of Food and Nutrition Policy (COMA) and the Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT). The Agency will provide a secretariat to the first four of the above and contribute to the work of the secretariats of the remaining three together with other interested departments (MAFF and the Department of Health in the case of SEAC and the Department of Health in the case of COMA and COT). In the case of SEAC, the Agency will provide the committee secretary currently provided by the MAFF/DH Joint Food Safety and Standards Group (one of the three secretaries to SEAC). The Agency will also have a key role in supporting the proposed new Advisory Committee on Animal Feedingstuffs (ACAF), which is now being established.

It should be noted that this clause is not concerned with statutory committees established under other legislation that have an interest in food safety. There are two such committees: the Advisory Committee on Pesticides (ACP) and the Veterinary Products Committee (VPC). Both of these committees have a remit that extends beyond matters of food safety, however, and they will continue to advise the licensing authorities for pesticides and veterinary medicines. MAFF and its executive agencies, the Pesticides Safety Directorate and the Veterinary Medicines Directorate, will continue to provide secretariat services. The effect of Schedule 2 paragraphs 8(2) and 9(6), however, will be that the Agency has a right to nominate a member of each committee. It is also intended that the Agency will contribute to the safety assessment and surveillance work of the two committees.

This clause would empower the Agency to establish other committees if it so wished.

Clause 7: Advisory committees: supplementary

Subsection (1) allows the Agency to pay advisory committee members or reimburse their expenses, such as travel costs to attend committee meetings.

Clause 8: Annual and other reports

The Agency will be required to lay an annual report before Parliament in Westminster and before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It may also make other reports to them.

The functions of the Agency

Clause 9: Development of food policy and provision of advice etc. to public authorities

This clause gives the Agency the function of providing advice, information and assistance, including on matters relating to the development of policy on food safety and related matters, to any public authority (which would include, for example, local authorities or agencies of government). So far as Ministers, government departments and their equivalents in the devolved authorities are concerned, the Agency will have a duty to provide such advice and information, unless it is not reasonably practicable for it to do so (for example, because the resource costs of providing any particular item of information would be completely disproportionate).

The advice, information and assistance which the Agency is under a duty to provide could for example include making recommendations to Ministers on the need for new primary legislation or proposing secondary legislation in order to improve food safety and standards. Another important aspect of the Agency's function of assisting Ministers will be to represent the UK at working level in relevant EU and other international fora.

It is intended that the Agency as a UK body will be the primary source of policy advice in relation to food safety and associated areas to the Government as a whole, and to the devolved authorities. Most of the relevant expertise available to the Government and those authorities in the area of food safety and standards will therefore reside with the Agency and will not be duplicated within government departments. The Agency will also be able to advise on the development of policies by other departments of government on matters that are relevant to the Agency's own area of responsibility, for example advice to the Minister of Agriculture, Fisheries and Food on activities on the farm which may have an impact on food safety; or on relevant consumer protection matters to the Department of Trade and Industry.

Clause 10: Provision of advice, information and assistance to other persons

This clause deals with the provision of advice, information and assistance to the general public or to individuals and bodies who are not public authorities.

The clause allows for information and advice to be given to either the general public as a whole or to particular sections of it. The Agency will be able, for example, to:

- run information campaigns on issues of current interest or importance;
- publish scientific data arising from research or surveillance and advise on its interpretation;
- publish information on enforcement activities, such as the existing BSE/meat enforcement publications;
- produce leaflets on food hygiene, labelling etc.;
- run a consumer helpline;
- issue advice for people with food allergies;
- convey information about developments in food science to the public as a whole and to particular groups such as food producers;
- produce educational material;
- issue food hazard warnings, alerting the public to particular problems.

Clause 11: Publication by the Agency of information and advice

This clause empowers the Agency to publish its advice or information given in accordance with the previous two clauses, or any other information, including advice to Ministers. The Agency's express ability to publish any of its advice to Ministers will be an important factor in its influence and independence: although Ministers would not be obliged to accept the Agency's advice, they would normally be expected to explain their reasons for not doing so.

Subsection (2) requires the Agency to take account of any considerations of confidentiality before publishing any information, but makes clear that it may publish where there is an overriding public interest. It is envisaged that the Agency will normally wish to publish much of its advice and information as part of its commitment to operate as transparently as possible. The provisions of the Bill dealing with confidentiality may need to be reviewed when the Freedom of Information Bill is available.

Subsection (3) provides that the Secretary of State may prevent the Agency from publishing material where confidentiality is

required on grounds of national security. It is expected that this would only arise in exceptional circumstances.

Clause 12: Acquisition and review of information

This clause concerns the Agency's duty to keep itself properly informed in order to carry out its other functions.

Under *Subsection (2)(a)*, the Agency will keep abreast of new developments in discharging this general function. It will do this not only through the expertise of its individual members and the activities of its staff (who will monitor relevant developments) but also through the advice of the advisory committees, the members of which are appointed (among other things) for their ability to bring up-to-date knowledge of scientific and related developments to bear on their advice. The Agency will also be able to seek advice from other scientific experts as necessary.

Subsection (2)(b) provides for the Agency to develop its scientific understanding by undertaking or commissioning research. Current research and development projects within the remit of the Agency funded by the Ministry of Agriculture, Fisheries and Food and any relevant research funded by other departments (such as the Department of Health) will be transferred to the Agency at the outset. The Agency will also develop and publish its own scientific research strategy.

Subsection (3) makes it clear that the purpose of the Agency's information-gathering activities, including the carrying out of observations (see clause 13 below), is to enable it to carry out its general functions in an informed and effective way.

Clause 13: Power to carry out observations

This clause sets out specific powers that will help the Agency to fulfil its general function of obtaining and keeping under review any information relevant to its work. "Observations" describes the gathering of information on food safety and related matters through undertaking surveillance programmes or by other appropriate means for this purpose. The Agency will, if necessary, be able to conduct such work at any point in the food production and supply chain and anywhere else where there might be implications for food safety and related matters. In particular, this means that the Agency will be able to undertake observations on farms.

Subsections (1) to (6) give the Agency specific powers necessary to obtain information, either directly or through an authorised person acting on its behalf. These powers replace and augment existing powers contained in section 25 of the Food Safety Act 1990. These existing powers allow Ministers to make orders concerning the provision of information and the taking of samples, but are restricted to food, substances used in the preparation of food and contact materials. The new provisions would not require secondary legislation to be made. They expand the existing powers to allow the Agency to carry out its proposed role in monitoring activities at earlier stages of food production; to allow authorised persons to make observations; and to require disclosure of certain relevant records relating to employees. This clause will supersede the Food Safety Act provisions, which will be repealed by Schedule 4 of the Bill.

Examples of the types of observations that the Agency might carry out are surveillance programmes to investigate the presence of pathogens that could carry risks for human health; or of a particular contaminant, such as lead, in certain types of foodstuffs; or surveys of hygiene practices in a certain type of food business.

It should be noted that the powers in this clause relate to the gathering of information of a general and representative nature and not to the investigation of individual complaints or failures for which the enforcement powers in the Food Safety Act 1990 and other powers will continue to be used by enforcement authorities. These powers will not be used to gather evidence in accordance with the kind of safeguards contained in the Police and Criminal Evidence Act 1984, and thus any information obtained could not be used directly for the purposes of food law enforcement. Where apparent problems were identified in the course of a surveillance exercise, the information gathered would normally be passed to the relevant enforcement authorities who would then take a decision on the need for further investigation.

Subsection (2) provides for observations to be undertaken on the Agency's behalf by contractors, such as university research teams.

Subsections (3) to (5) describe the powers to enter premises, take samples and inspect records, and the conditions under which they must be exercised.

Subsection (6) provides for access to health records of people employed in food production, supply, etc. but only where that information is relevant to food safety. For example, under certain of the vertical food hygiene directives, employers are required to obtain medical certificates assessing their employees' suitability, on health grounds, to be employed in the handling of food, so as to ensure they do not constitute a general risk to public health. This provision would not, however, allow the Agency general access to an individual's personal health records.

Subsections (7) and (8). It is expected that the Agency would normally publish, as a matter of routine, the information obtained through observations, subject to considerations of genuine confidentiality or the information being false, incomplete or misleading, or where it concerned personal information on individuals.

Subsection (9). This provision is similar to that contained in the Food Safety Act 1990. The current maximum value of a level 5 fine is £5,000.

Clause 14: Monitoring of enforcement action

This clause empowers the Agency to monitor, set standards for and audit the performance of enforcement authorities (which are defined in *subsection (8)*) in carrying out food law enforcement.

Subsection (2) gives the Agency power to set standards against which to monitor performance. Normally, these would be set in respect of enforcement authorities generally, although the power extends to the setting of standards for individual authorities, should this be necessary.

Subsections (3) gives the Agency power to publish, where appropriate, information relating to the performance of enforcement authorities.

Subsection (4) sets down considerations that the Agency must take into account in deciding whether or not to make such information public. As with the publication of information obtained as a result of any observations carried out by the Agency (clause 13), these are based on the presumption that the public interest is paramount but that legitimate considerations of confidentiality should otherwise be observed.

Under *subsection (5)* the Agency must publish (as part of its annual report) information about its own performance as an enforcement authority corresponding to the information it would obtain about other authorities. At present, for the most part, this would relate to its role in enforcing the provisions of the various meat hygiene legislation through the Meat Hygiene Service and in the enforcement of dairy hygiene regulations.

It is envisaged that a reasonable period of time would be provided for an enforcement authority to report back under *subsection (7)(b)* on its response to a report on its performance that was issued under *subsection (6)*. This would take account of the need for local authorities to consider their response in the course of their usual committee cycle. It would also enable the Agency to assess whether further direct intervention on its part was necessary (see clause 15 and Schedule 2 below).

Subsection (8) defines the meaning of an enforcement authority (and *subsection (9)* contains a related provision) for the purposes of the above provisions as well as the legislation under which such authorities are required to act. "Food authorities" in the Food Safety Act 1990 are, unless otherwise specified, the bodies responsible for enforcing or executing the provisions of the Act or legislation made under it. They are defined in the Act as normally being local authorities (metropolitan borough, district or county councils in England and Wales; island or district councils in Scotland) or, where appropriate, port health authorities. Under Part IV of the Agriculture Act 1970, "enforcement authorities" are county, metropolitan district and London borough councils, and the Port of London Health Authority in England; and county and county borough councils in Wales.

Clause 15: Monitoring of enforcement action: specific powers

This clause provides the specific powers necessary for the Agency or an authorised person to carry out the monitoring role provided for in clause 14. At present section 41 of the Food Safety Act 1990 makes provision for Ministers to require reports and returns, but does not allow for audit visits or the provision of detailed returns, statistics and supporting documentation, nor does it provide for Ministers to set performance targets in relation to enforcement. Part IV of the Agriculture Act 1970 contains no powers comparable to section 41 of the Food Safety Act 1990. The majority of the powers contained in this clause are therefore new.

Subsection (1) empowers the Agency to require any information that may be relevant to its assessment of an enforcement authority's performance. As provided for in *subsection (2)*, this requirement would apply to anyone representing, working for, or acting on behalf of that authority.

Subsection (4) provides the Agency (or an authorised person) with powers to enter and inspect individual premises in order to carry out monitoring work. Besides giving access to records and data held by the enforcement authority or anyone acting on its behalf, this power also provides for the taking of samples.

Subsection (5) specifies the types of premises that may be entered under the previous subsection. Besides offices and other

premises used by the enforcement authority, this would include any laboratories that provide it with services relevant to its enforcement activity (both in-house and independent laboratories). The Agency would not be expected to publish the details of the performance of the laboratories themselves; nor would its monitoring powers impinge on any service provided by the laboratories to private customers. The third category of premises subject to these powers covers any in which food law enforcement may be carried out.

Subsection (6) provides a power for an authorised person when entering premises to be accompanied by another person. This might, for example, be a technical expert or an official from an interested government department other than the Agency, or possibly an official of the European Commission who was engaged in a routine audit of member states' enforcement of the provisions of EC food law.

Subsection (9) makes it an offence for anyone to refuse entry to the Agency's authorised officer or knowingly to provide false or misleading information or to withhold information required under *subsection (1)*. The current maximum value of a level 5 fine is £5,000.

Subsection (10) applies the provisions of this clause to monitoring of enforcement activity of the Agency itself or of Ministers or the devolved authorities (for example the enforcement of meat hygiene legislation). Not all the provisions of this clause have been applied since it is clearly unnecessary, for example, to give a power to the Agency to authorise a person to enter its own premises.

Clause 16: Delegation of powers to make emergency orders

Under sections 1 and 2 of the Food and Environment Protection Act 1985 and section 13 of the Food Safety Act 1990 Ministers may make emergency orders in response to circumstances or incidents which pose a threat to public health in relation to food. The Secretary of State will retain this power, and in addition the Agency may be directly empowered to make these emergency orders itself on his behalf. This power does not give the Agency the ability to make legislation itself in other areas, and in practice it is envisaged that the Agency will only make orders in emergency situations where the Secretary of State is not available.

Subsection (3) makes it clear that it is the Secretary of State who is ultimately answerable for emergency legislation made by the Agency on his behalf, and that anything done by the Agency is in law done by the Secretary of State.

Responsibility for orders under the two Acts is devolved to the appropriate authorities in Scotland, Wales and Northern Ireland by the devolution Acts. *Subsection (5)* makes clear that the provisions of this clause also apply to those authorities within their own devolved competence.

Clause 17: Functions of the Agency under other Acts

This clause introduces Schedule 2, concerning amendments to other Acts which confer functions on the Agency.

General provisions relating to the functions of the Agency

Clause 18: Statement of general objectives and practices

This clause requires the Agency to publish (with the approval of the appropriate authorities) a statement of its general objectives and practices. This statement will be formulated within the general framework of the Agency's main objective, in clause 1(2).

Subsection (2) specifies that, among any other general objectives it wishes to include in the statement, the Agency must address three in particular. These relate to

- consulting with interested parties on the Agency's activities,
- facilitating proper consultation between the Agency and other departments of government on matters of mutual interest, and
- ensuring that the Agency's activities and decisions are transparent to the public.

It also provides for the appropriate authorities, acting jointly, to ask for the inclusion of particular objectives in the statement. *Subsections (4), (5)* and *(6)* require that the statement should be approved by the Secretary of State and the devolved authorities, acting jointly, and published. The Secretary of State and the other appropriate authorities may amend the draft proposed by the Agency, but must consult the Agency before doing so.

Clause 19: Consideration of objectives, risks, costs and benefits, etc.

This clause requires the Agency, in carrying out its functions, to have due regard to its statement of general objectives and practice (clause 18) and take account of relevant advice from advisory committees and certain other important considerations, as follows.

Subsection (2) requires the Agency to take account in its decision-making process of:

- a. the nature and size of the risk which the action under consideration is designed to address. Risk to health is highlighted as of particular importance but other risks in relation to consumer protection (for example where labelling may mislead consumers) may also be relevant. The Agency is also required to take account of any uncertainty in the evidence. For example, where it is taking decisions in relation to a risk which is potentially very serious, but about which there is very little evidence, the Agency is likely to want to take a precautionary approach; and
- b. the likely costs and benefits associated with the course of action under consideration. This would mean that the Agency must balance obvious compliance costs, as well as matters such as restriction of consumer choice, against the benefits of reduced risk to health etc. arising from any action.

Subsection (3) provides that the duty under the clause does not apply where it is unreasonable or impracticable. For example, some of its actions may raise no concerns about risk, or an analysis of costs and benefits may not be appropriate. Decisions on appointments would be examples of this kind. It also states that the duty conferred upon the Agency in this clause may not be used to justify failure to fulfil a legal duty over which it has no discretion.

Clause 20: Directions relating to the implementation of international obligations

This clause allows the Secretary of State to give the Agency directions to do anything the UK is obliged to do under EU or international law. These are reserve powers, for use if the Agency has not already taken steps to fulfil the UK's obligations.

The power to issue directions under this clause is also vested in the devolved authorities where the directions relate to the implementation of EU or other international obligations within their devolved competence.

Clause 21: Directions relating to breach of duty by the Agency

This clause permits the Secretary of State (*subsection (1)*) to give the Agency directions in cases where it appears to him that the Agency has failed seriously to fulfil the duty to comply with its statement of objectives and practice, take account of the advice of advisory committees, or consider risks, costs and benefits; or where it has failed in any other duty that he considers it should have performed. The power of direction relates only to significant failures by the Agency and is only likely to be used as a last resort where other means of rectifying problems have failed. The Secretary of State must consult the other appropriate authorities before issuing such directions.

Subsection (3) gives similar powers of direction to the devolved authorities to the extent that it is within their devolved competence. This means that they will generally be able to direct in relation to the Agency's activities in Scotland, Wales and Northern Ireland, as appropriate.

If the Agency fails to follow the directions, the Secretary of State or the devolved authorities may give effect to them, or the Secretary of State may take the steps outlined in *subsection (2)(b)* with the agreement of the other appropriate authorities. Such powers, however, would only be used in the last resort and where normal processes of dialogue had failed to secure the necessary changes.

Clause 22: Supplementary powers

This clause gives the Agency power to take any action which will help it to discharge its functions (subject to other provisions in the Bill which constrain the manner in which the Agency may act). For the avoidance of doubt, specific reference is made to the acquisition or disposal of property and the institution of criminal proceedings (in England, Wales and Northern Ireland - prosecutions in Scotland are the sole responsibility of the Procurator Fiscal). Other action might include entering into contracts.

Subsection (3) allows the Agency to charge for any facilities or services it provides. Such charges would be made in accordance with the usual Government guidance on fees and charges.

The Food Standards Agency - Consultation on Draft Legislation

The Draft Food Standards Bill

Arrangement of Clauses - pdf format

Bill paragraphs 1-19 - pdf format

Bill paragraphs 20-32 - pdf format

Schedules - pdf format

Annex

Draft Regulatory Impact Assessment

1. Title of the regulatory proposal

- (i) the draft Food Standards Bill;
- (ii) proposals for raising funds for the Food Standards Agency by means of a levy.

2. Purpose and intended effect of the proposal

(i) The Bill has been drawn up in the light of public consultation on the White Paper, *The Food Standards Agency: A Force for Change*, which was published in January 1998. Its purpose is to establish a Food Standards Agency, the main aim of which will be to protect public health from risks connected with the consumption of food, and otherwise to protect and promote the interests of consumers in relation to food. The establishment of the Agency is intended to address factors contributing to the erosion of public and producer confidence in the current system of food controls. The Bill also sets down the main functions that the Agency will discharge and provides a range of powers that will enable it to take effective action to protect the public at any stage in the food production and supply chain.

The purpose of the Bill is to create a UK Agency. It will, however, take proper account of devolution. It will include provisions to ensure that the devolved administrations can properly exercise their own functions and that their views are fully taken into account.

(ii) Creation of the Agency will give rise to new costs. These result both from the need to set up a new body in its own building(s) with dedicated corporate services and an entirely new governing body, and from the additional functions that the Agency will assume. As foreseen in the Comprehensive Spending Review, the Government intends over time to recover more of the costs of food safety from the food industry in a way that is both administratively simple and fair to small businesses. It proposes to achieve this by means of a new, annual levy on food retailers and caterers. The Government has undertaken that, initially, the total sums recoverable through the levy will not exceed £50 million. The necessary secondary legislation to establish the levy will itself be subject to public consultation and Regulatory Impact Assessment.

3. Risk Assessment

(i) Establishing a Food Standards Agency will strengthen the arrangements in Government for dealing with food safety and standards. The Government believes that reorganising this work into a single department with significant powers and the scope to act throughout the food chain will represent a critical step in reinforcing public confidence in food. In particular, it will directly address the risk of any conflict of interest arising as a result of a single department having simultaneous responsibilities for protecting the interests of consumers and for promoting the interests of the food industry. In addition, it will reduce the fragmentation between the various government bodies involved in food safety and will promote a greater consistency in the enforcement of food law. The general response to the Food Standards Agency White Paper suggests that there would be a significant risk to public confidence if the Government failed to introduce these changes.

(ii) If the levy is not introduced, then the Agency will not have sufficient funds to carry out the additional functions proposed for it and will therefore be unable to discharge its responsibilities effectively.

4. Options

(i) Creation of a Food Standards Agency will implement a Government manifesto commitment. The Government consulted extensively on its proposals through the White Paper and has concluded that the draft legislation represents the appropriate response that will bring its proposals concerning the Agency to fruition.

(ii) The Government intends to introduce an annual levy on the food industry that is both administratively simple and fair to small businesses. It has considered a number of options in determining how best to meet these criteria. These are:

- a) whether the levy should be set at a flat rate or graduated;

b) what, if any, exemptions there should be; and

c) whether the levy should be collected at central or local level.

The balance of benefits for each of these is considered in paragraph 6 (ii) below.

The Government does not consider that there is a realistic alternative to applying the levy to premises at the final point of sale to the consumer. This approach is the best way of ensuring that home-produced foods are treated equally with those imported from other EU Member States or from third countries and prevents the levy having a cumulative effect through the food chain.

5. Issues of equity and fairness

(i) Establishing the Agency is a Government manifesto commitment and responds to public concerns.

(ii) The general issue of equity relates to whether the Agency should be funded through a levy on the food industry or from central funds. The proposals strike a balance. Existing central funding of Government work on food issues will continue (and be transferred to the Agency). The levy will cover the additional costs associated with the establishment and work of the Agency. These costs should be borne by the food industry, as the sector which stands to benefit from the increase in public confidence that the Agency is likely to bring. More specifically, the key issues of equity relate to the ability of small businesses to meet a flat rate charge at the level proposed, and whether there is a clear and justified basis for exempting certain categories of premises. The Government believes that its proposals strike an acceptable balance between the need to respect the position of smaller businesses and the need to keep the operation of the levy as simple and transparent as possible. At the level proposed the levy should not have any significant effect on consumer prices and therefore will not discriminate between particular groups of consumers.

6. Benefits

(i) Some of the benefits associated with the Agency are already being experienced as a result of interim work to strengthen food safety arrangements. These include better co-ordination of work within Government through the creation of the MAFF/D Joint Food Safety and Standards Group, and moves to provide more and better information to the public (for example through the publication of brand names in surveys of chemical contaminants in food). However, creation of the Agency itself is expected to have the following additional benefits.

Consumers and the general public will benefit from

- an authoritative and independent structure with a statutory duty to protect consumer health and with the powers necessary to take action at any stage in the food production and supply chain;
- statutory guarantees that the Agency will act in a responsible and balanced manner and in the light of the best available science;
- greater openness and transparency in the decision-making process on food safety and standards and an opportunity to make their voice heard;
- a clearer understanding of who is responsible for food safety, ending concern about conflicts of interests in Government;
- a clearer statement of the Government's principles and objectives in promoting safe food;
- better information about food safety and standards to enable consumers to make informed choices.

Food producers, manufacturers and retailers will benefit from:

- increased consumer confidence in food safety and the effectiveness of the system for promoting it;
- clear and open decision making processes on food safety, requiring effective consultation with those affected and taking full account of costs, benefits and risks;
- statutory guarantees that the Agency will act in a responsible and balanced manner and in the light of the best available science;
- a single point of access to food safety and standards issues dealt with by the Government;
- more consistent and effective enforcement of food law and therefore a more equitable basis for competition.

(ii) The options for the levy identified in paragraph 4(ii) above each carry a balance of benefits and drawbacks:

(a) Flat rate or graduated levy. In administrative terms, a flat rate is the simplest and most transparent way of structuring a levy. The Government believes that at the rate proposed (about £90), this would not create significant problems for the great majority of small businesses. The alternative of a graduated levy, linked either to the size or risk classification of a business would superficially demonstrate greater fairness in the treatment of businesses. However, it would be more complex and

to operate, and this would be difficult to justify in relation to the relatively modest sum proposed. Difficult decisions would have to be taken in selecting criteria for graduation that were fair and transparent and did not risk erecting barriers to the development of businesses or employment.

(b)Criteria for determining exemptions. Exemptions have been considered for premises which are either exceptionally vulnerable to the effects of the charge, or for which it would be inappropriate in principle to apply the levy. Premises dealing only in wrapped confectionery and similar wrapped products are generally very small and represent a distinct category that can easily be identified for the purposes of implementation. Moreover, their relevance to the Agency's work of tackling risk is marginal, making it difficult to make a strong case of principle for subjecting them to the levy. The Government believes this is the only category of food retail or catering premises for which there are clear arguments in favour of creating an exemption.

(c)Central or local collection of the levy. Local registration records are an important tool in planning effective enforcement and applying the levy to registered premises would create a new incentive for ensuring that they are kept up-to-date. The mechanisms of collection and enforcement of the levy would benefit substantially from this local knowledge.

The option of collection through the Non-Domestic Rate (NDR), as some commentators have suggested, would be complex to manage, since it would require separate identification of food businesses in a system that does not in general distinguish between business categories. Being linked to property values, moreover, collection through the NDR could give rise to inequities in the sums charged to competing food premises. The Government thus does not consider that the NDR would provide an appropriate vehicle for collecting the money.

The option of central collection would not carry the benefits of local knowledge that would be associated with a local system based on the existing registration of premises. Whilst offering a superficially cheaper mechanism, centralised collection would not necessarily be more effective in recovering the money and could duplicate the work of local authorities in listing food premises.

7. Compliance costs for business, charities and voluntary organisations

(i) The Agency will be required by the terms of its founding legislation to take account of the risks, costs and benefits of a proposed course of action, consulting interested parties wherever possible. The Food Standards Bill provides primary powers for the Agency to carry out its functions rather than directly imposing a regulatory burden. It is not possible to anticipate how precisely the Agency will choose to exercise these functions and therefore what impact its decisions will have on businesses, etc. In some cases the Agency's decisions will be enacted through secondary legislation, which will be subject to Regulatory Impact Assessment as necessary.

Like any other department of government, the Agency will be fully accountable to Parliament at Westminster and the devolved legislatures for its activities and expenditure and will be required to meet high standards of efficiency in its use of resources.

(ii) As the consultation document on charging makes clear, the new business cost associated with the levy is estimated at £90

Business sectors affected

(i) The work of the Agency, with its remit across the whole food chain, will potentially affect the entire food industry and ancillary businesses, from food producers, through manufacturers and processors, to retailers and caterers.

(ii) The levy will directly affect those catering and food retail establishments required to register under the Food Premises (Registration) Regulations 1991 (and equivalent Northern Ireland legislation). It is proposed that there should be exemptions for premises dealing only in wrapped confectionery, soft drinks, crisps and similar wrapped products.

Food retailers come under business sectors PA 52110, 52210 to 52250 and 52270. Catering premises fall under sectors PA 55111 to 55520. However, this is only an approximation of the sectors covered, since other premises will be included where food is not the main purpose of the business (e.g. a museum café). The number of retail and catering premises registered in the UK stood at 515,000 in 1997. Of these, roughly 25,000 would fall within the exemption category defined above.

Compliance costs for a 'typical' business.

(ii)Recurring costs

A flat rate estimated at £90 per annum will be levied on all registered premises within the scope of the scheme. The levy is based on an existing registration scheme, and administrative costs for businesses in making the annual payment are therefore

expected to be negligible.

Non-recurring costs

None.

Total compliance costs

(ii) On the basis of the most recent registration records available (see 'Business sectors affected' above) and excluding those businesses qualifying for an exemption, the proposed £90 levy would yield total additional recurring costs to industry of around £40 million. Whatever rate is finally set, the total amount to be collected through the levy will not exceed £50 million p.a. in the period covered by current public expenditure plans.

8. Consultation with small businesses

(ii) The Government proposes to undertake further detailed discussion of its charging proposals with business representatives during the consultation period. This will include contact with representatives of small businesses, including a sample of small business proprietors.

9. Other costs (e.g. to citizens, the environment, Government)

(i) With the exception of those that are already recovered through existing charges, the overall costs of the Agency will be met both through the taxpayer, following the transfer of existing food safety and standards budgets from those departments that currently have responsibility in these areas, and through the proposed levy scheme.

(ii) The levy scheme will involve additional costs for local authorities who will collect the levy. The Government will discuss with local authority representatives how much of the charge should be retained at the local level to cover administrative costs of collection.

The Food Standards Agency White Paper acknowledges that some of the costs of charging are likely to be passed on to the consumer. However, it is estimated that the total recoverable sum will have relatively little impact on retail prices.

Administration of the levy is likely to give rise to modest additional costs for the Agency itself. These will depend on the precise details of the arrangements, which are to be discussed with local authorities.

10. Results of consultations

(i) Public consultation on both the James Report and the White Paper showed widespread support for the broad thrust of the Government's proposals from across the whole range of stakeholders. There was however some disagreement on specific aspects of the proposals, in particular whether the scope of the Agency's work should include nutritional matters.

(ii) There was more widespread opposition, above all from the food industry, to the proposal to recover food safety costs through charges (although many pointed out that this did not mean opposition to the basic idea of the Agency). Most of those who criticised the proposal argued that the Agency's costs should be funded entirely from the public purse. The Government, however, maintains its stated commitment to funding through a charging scheme.

11. Summary and recommendations

(i) The proposals for a Food Standards Agency represent a significant overhaul of the system for managing food safety and standards. They build upon the changes that the Government has already made to modernise and open up the existing arrangements. Creating an authoritative body with the scope and powers to deal with all aspects of food safety at any point in the chain will provide the means to drive up standards coherently and in a way that commands general confidence.

It is not possible to quantify in purely financial terms how the Agency will benefit its stakeholders, or to identify what new burdens may arise from its future decisions and practices. The Agency will however be required to act in a responsible and proportionate manner, taking full account of risks, costs and benefits and consulting those who may be affected by its decisions wherever possible before acting.

It is on this basis that the Government recommends that primary legislation be introduced to establish the Agency as soon as an opportunity is available.

(ii) The proposals for a levy are designed to deliver the Government's commitment to recover more of the costs of food safety

from the food industry in a way that is administratively simple and fair to small businesses. The Government believes that applying the levy at the final point of sale to the consumer and setting it at a modest flat rate that would be acceptable to small businesses represents the most effective way of meeting these objectives. The proposed levy of £90 on catering and food retail establishments would result in a total recurring cost to industry of around £40 million a year.

12. Enforcement, sanctions, monitoring and review

(i) In terms of its accountability, the Agency will be required to act in an open and consultative manner and to publish a statement of the general practice and objectives that it aims to adopt in carrying out its duties. The Agency will also be answerable to Parliament at Westminster and the devolved legislatures through the Secretary of State for Health and his counterparts under devolution, who will have powers of direction over it. These powers are laid down in clause 21 of the draft Bill. It will produce an Annual Report and Business Plan and will be expected to meet specified performance targets relating to efficiency and quality of service.

Once the Agency is established, general enforcement of food law under the Food Safety Act 1990 will continue to be the responsibility of local authorities. The Agency will however have a co-ordinating role in this work, setting standards for enforcement and auditing enforcement authorities against those standards. It will also be able to take action in default of, or in substitution for, an enforcement authority which is shown to have failed in the delivery of an effective service.

(ii) It is proposed that enforcement of the levy will be the responsibility of local authorities, who will collect the money. It is proposed that non-payment of the levy within a period of three months after the annual levy date should carry an automatic financial penalty equal to the rate of the levy. Non-payment of the levy and the penalty will be treated as a debt recoverable through civil court procedures. However, the draft Bill also provides for criminal offences to be created. It is envisaged that these would apply to more serious breaches.

The detailed arrangements for the levy will be established in secondary legislation made under the enabling provisions contained in the Food Standards Bill. Consultation will be carried out on the regulations setting the level of the levy (which themselves be subject to a Regulatory Impact Assessment). This will provide a mechanism for keeping under review the impact of the levy on businesses.

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Part II Explanatory Notes continued

These notes refer to the draft Food Standards Bill as published for consultation on 27 January 1999

Miscellaneous provisions

Clause 23: Levy on food premises

Note: the drafting of this clause is provisional since it does not yet take account of devolution. However, it sets out the range of enabling powers which the Government intends to include in the Bill. A revised version of the clause will be published shortly.

It is proposed that public funding of the Government functions which will be taken on by the Agency will transfer with those functions. The Government also intends, over time, to raise more of the costs of food safety work by means of a levy on the food industry. This clause provides the Secretary of State with a general enabling power to impose such a levy on food premises and specifies the broad categories of work for which funding may be met through the levy.

The powers provided by this clause are enabling powers only and do not deal with the detail of, for example, the actual rate of any levy or which premises will be liable to pay. These specific matters, and other detailed arrangements, will be covered in secondary legislation, and proposals for how this will be taken forward by means of a new levy scheme are the subject of separate consultation.

Clause 24: Statutory functions ceasing to be exercisable by the Minister of Agriculture, Fisheries and Food

Under this Bill, the Minister of Agriculture, Fisheries and Food will cease to have any functions in relation to most matters within the Agency's remit.

This clause removes that Minister's statutory responsibilities in relation to emergencies which are likely to create a hazard to human health through the contamination of food stuffs (under Part I of the Food and Environment Protection Act 1985); food safety and standards (under the Food Safety Act 1990); and radioactive substances and waste (under the Radioactive Substances Act 1993).

The detailed transfer of responsibilities to the Secretary of State for Health and devolved authorities and/or the Agency is dealt with in Schedules 2 and 3.

Clause 25: Regulations under s.16 of 1990 Act relating to production of food sources

Schedule 1 to the Food Safety Act 1990 supplements the subject areas in which regulations may be made by Ministers under section 16 of that Act. This clause provides additionally for regulations to control substances and activities relating to the farm production of food sources⁽¹⁾ which may have an impact on food safety or otherwise affect consumer interests. The effect of this amendment is therefore to extend the scope of the Food Safety Act 1990 to cover the whole of the primary production end of the food chain. However, these powers will normally be used in relation to on-farm activity only where existing powers available to, for example, Agriculture or Environment Ministers are unavailable or insufficient.

Clause 26: Duty for Agency and Ministers to make arrangements for sharing information about food-borne zoonoses

This clause makes it an explicit duty of the Minister of Agriculture, Fisheries and Food and the devolved authorities on the one hand and the Agency on the other to make administrative arrangements for sharing relevant information on food-borne zoonoses (as defined in *subsection (5)*): this would include, for example, salmonella, campylobacter and E.coli).

It is envisaged that the Agency, MAFF and the devolved authorities will establish a joint committee to co-ordinate information on the surveillance of pathogens. This committee will provide a focus for the exchange of information about food-borne zoonoses, or any emerging pathogen which it is suspected might be a new zoonosis, identified through veterinary surveillance of farms or otherwise. This exchange of information will assist the Agency in developing co-ordinated strategies for the control of food-borne zoonoses.

Clause 27: Consultation on veterinary products

Subsection (1) requires that Ministers who have responsibility for regulating veterinary products (principally, the Minister of

Agriculture, Fisheries and Food acting through the Veterinary Medicines Directorate, an executive agency of MAFF) will consult the Agency on general policy matters relating to this work.

Subsection (3) lifts, so far as the Agency is concerned, a general restriction in the Medicines Act 1968 on disclosures of information relating to veterinary products (provided, for example, by businesses in connection with a licence application) so that the Agency can be fully consulted on the policy matters referred to in *subsection (1)*.

Clause 28: Animal feeding stuffs

In order to be able to exercise its responsibility to safeguard human health across the whole food chain, the Agency will have responsibility in relation to animal feedingstuffs. These are currently regulated by Part IV of the Agriculture Act 1970 and by Regulations under that Act and the European Communities Act 1972. This clause empowers the Ministers (for the purposes of this clause this means the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly) to make an order for the purposes of replacing Part IV of the Agriculture Act by new provisions parallel to those available in the Food Safety Act 1990 and clauses 915 of this Bill (the Agency's functions). It may, for example, cover areas such as the composition, processing, treatment, manufacturing conditions and labelling of animal feedingstuffs. The order would therefore have the effect of updating the primary powers available for the regulation of feedingstuffs and applying the same provisions as are available for food safety purposes.

These powers take the scope of this clause beyond that necessary simply to ensure the safety of food derived from animals which have eaten a particular feed. They will allow the Ministers to make provision to safeguard the health of animals in relation to feedingstuffs as well as the health of humans who might consume those animals or animal products as food (see *subsection (4)*).

The order may provide powers to make other secondary legislation (again parallel to those in the Food Safety Act 1990). The Agency's general functions, however (for example information-gathering, enforcement monitoring, research and the provision of information and advice) will apply in relation to all controls on feedingstuffs that are introduced under the provisions of this clause.

Subsection (1) enables the Ministers to regulate feedingstuffs along the lines described above.

Subsection (2) provides that an order made under these powers can be used to apply to animal feedingstuffs provisions which match those contained in the Food Safety Act 1990 or in clauses 915 of this Bill, so that food and feed may be dealt with in a similar manner. It will also allow EC requirements to be readily transposed into UK provisions under a single set of powers. This will give a more coherent body of legislation than at present where provisions are implemented under both the Agriculture Act 1970 and the European Communities Act 1972.

Subsection (3) provides that the power can also be used in relation to provisions of the Food Safety Act 1990 or the relevant parts of this Bill if they are in future amended by further Acts.

Subsection (4)(a) provides for orders made under this clause to address the needs of animal health or human health and is necessary because the scope of the powers in this Act would not otherwise extend to animal health.

Subsection (4)(b) and *(c)* contains standard provisions but additionally provides power to amend or revoke inconsistent primary legislation.

Subsection (7) provides that an order made under this clause must be subject to the affirmative resolution procedure - i.e. approved in draft by each House of Parliament before being made.

A general definition of 'animal feeding stuff' is given in clause 29, although this may be refined in any orders to cover specific areas.

This clause applies to England and Wales only. The devolved authorities in Scotland and Northern Ireland have the necessary powers to make similar provisions in the Scottish Parliament and Northern Ireland Assembly respectively.

Supplementary

Clause 29: Interpretation

This contains definitions of terms used in the Bill.

Clause 30: Financial provisions

This clause provides for the Agency's expenditure to be paid from money provided by Parliament, unless it is met from some other source (such as the levy). The clause specifically provides also for grant in aid from the National Assembly for Wales. Although it is not necessary in this Bill to mention funding from the Scottish Parliament and Northern Ireland Assembly, it is envisaged that they will also make payments to the Agency.

Schedules

Schedule 1: Constitution etc. of the Agency.

This schedule sets out detailed provisions on the constitution, staffing and operation of the Agency. In this Schedule, the term 'the Agency' means the Food Standards Agency appointed in accordance with clause 2.

Paragraph 2 provides that members of the Agency can be re-appointed to posts they already hold or have held in the past, including those of chairman and deputy chairman.

Paragraph 4 describes the circumstances in which the appropriate authorities may dismiss a member of the Agency. They have to satisfy themselves that the person is failing to perform his duties, has been declared bankrupt, is unable to meet his debts or is otherwise unfit to carry out his functions.

Paragraph 6 covers the circumstances in which the appropriate authorities may pay compensation to a member of the Agency who ceases to hold office. It is up to the appropriate authorities to make such a decision and thereafter the Agency is under a duty to pay whatever sum of money is decided.

Paragraph 7 disqualifies members of the Agency from standing as Members of Parliament or the Northern Ireland Assembly. Disqualification from the Scottish Parliament and the National Assembly for Wales will be made by separate provisions.

Paragraph 8 gives the Agency a duty to appoint other staff. The staff will be civil servants (many of the Agency's staff will transfer from the Agriculture and Health Departments). Staff transferring in this way will be formally appointed by the Agency.

Paragraph 11 ensures that any document which appears to be signed or sealed by or on behalf of the Agency is valid until shown not to be.

Paragraph 12 sets out to whom the Agency may delegate. *Subparagraph (2)* preserves the rules about the staff of the Agency acting on its behalf. This is the same as the power that other civil servants exercise on behalf of Ministers, but is added here for the avoidance of doubt.

Schedule 2: The functions of the Agency under other Acts.

Part I: Functions under the Food Safety Act 1990

This Part summarises the functions under the Food Safety Act 1990 which will be taken over by the Agency. The amendments to that Act which bring this about are detailed in Schedule 3.

These functions allow the Agency to act as an enforcement authority in similar circumstances to those in which the Minister of Agriculture, Fisheries and Food and the Secretaries of State for Health, Scotland and Wales can act (the option of allowing any of the Ministers to be an enforcement authority is retained). These provisions do not therefore create new powers. In addition, the Agency may: grant consents or give directions in relation to emergency control orders (see also clause 16); issue Codes of Practice and give directions for their enforcement; require returns of information from food authorities; exercise default powers; and undertake consultation on proposals for regulations as to charges.

In general, the functions of the Minister of Agriculture, Fisheries and Food will be transferred to the Secretary of State for Health, although the Bill retains the option for the Minister to be an enforcement authority. The Minister's current enforcement functions (for example on dairy and meat hygiene) will be transferred to the Agency by amending relevant secondary legislation.

Part II: Other functions

Paragraph 8. Section 4 of the Medicines Act 1968 provides for the establishment of committees to advise on various aspects of the licensing of medicines (including veterinary medicines). *Subparagraph (2)* amends this provision to provide for the Agency to nominate for appointment by the Secretary of State a member of any committee established under it dealing with veterinary medicinal products.

This provision will in practice apply to the Veterinary Products Committee, which considers applications for authorisation of new veterinary medicines and related products. (It should be noted that, as with the Advisory Committee on Pesticides, it is expected that the Agency will also provide an adviser to this committee and its sub-committee).

Subparagraph (3) amends the Medicines Act 1968 (under which veterinary products are regulated) to specify that the Agency must be consulted on any new regulations concerning veterinary medicines.

Paragraph 9: Food and Environment Protection Act 1985 (FEPA 1985).

Subparagraphs (1) and (2) set out the Agency's functions in relation to emergency control orders made under FEPA 1985, conferred by amendments to section 2 of that Act. Consequential amendments are set out in more detail in Schedule 3.

Subparagraphs (3) to (5) amend Parts II and III of FEPA 1985, which relate respectively to the licensing of deposits at sea and of pesticides. The amendments introduce a requirement for the Agency to be consulted on individual licensing matters under Part II (dumping at sea), and a more general requirement for consultation of the Agency on matters covered by Part III (pesticides).

Subparagraph (3). Powers are available under Part II of FEPA 1985 for Ministers to license the deposit of substances and articles in the sea and the loading of vessels with materials destined for incineration at sea. For these purposes, "Ministers" means the Minister of Agriculture, Fisheries and Food and the Secretary of State (in practice the Secretary of State for the Environment, Transport and the Regions) acting jointly. They may also make orders which specify types of operation which do not need a licence or which specify the conditions under which they may be exempt.

The purpose of such powers is primarily to protect the marine environment and to prevent interference with legitimate uses of the sea, and it is proposed that the powers should remain with Ministers as defined. However, in view of the potential effects of dumping at sea on the safety of food obtained from it, *subparagraph (3)* amends the powers of exemption to require that the Agency be consulted before any exemptions are made or conditions for exemptions set down in law.

Subparagraph (4) requires the licensing authority (which is the Minister responsible for fisheries in the place where dumping is proposed) to consult on specific applications and on the general way in which food safety should be addressed when considering licence applications. The licensing authority is obliged to take the Agency's advice into account.

Subparagraph (5). Part III of FEPA 1985 concerns the licensing of pesticides and related products for the purposes of protecting human, animal and plant health, safeguarding the environment and securing safe, efficient and humane methods of controlling pests. Primary responsibility for such licensing lies with Agriculture, Health and Environment Ministers. Section 16 of the Act relates to the requirement on Ministers to consult the Advisory Committee on Pesticides (ACP) on proposals:

- for regulations;
- for giving, revoking or suspending approvals of pesticide products;
- for conditions to which they are considering making approvals subject.

This subparagraph amends this provision to require Ministers to consult the Agency as well as the ACP on proposals for regulations, and from time to time on the general policy towards pesticides approvals. These are similar to the provisions concerning veterinary products outlined in the notes to clause 27 and Schedule 2, paragraph 8 above.

In practice, the amendment means that the Agency will be formally consulted by officials from the Pesticides Safety Directorate (an executive agency of MAFF) on policy advice that they intend to submit to Ministers on any of the above three matters where there are implications for food safety. It will also be achieved through the provision by the Agency of an assessor to the ACP and its sub-committee (the assessor's duty is to contribute to the assessment and authorisation of pesticides). This supplements the provision in *subparagraph (6)* below.

Subparagraph (6) amends FEPA 1985 to provide for the Agency to nominate a member of the ACP.

Paragraph 10: Environmental Protection Act 1990 (EPA 1990)

This paragraph concerns the Agency's involvement in controls on the deliberate release of genetically modified organisms (GMOs) into the environment. Lead responsibility for this area of policy lies with the Secretary of State for the Environment, Transport and the Regions.

This paragraph amends section 126 of EPA 1990. Section 126 makes it a requirement for regulations controlling the import, acquisition, release or marketing of any GMOs and related matters to be made jointly by the Secretary of State for the Environment, Transport and the Regions and the Minister of Agriculture, Fisheries and Food, where the regulations concern

any matter with which the latter is concerned. The amendment made by this clause does not alter this requirement, since MAFF will retain an interest in the economic and environmental implications of GMOs for the farming and food industries after the Agency comes into being.

It does, however, introduce mechanisms to ensure that the Agency can exercise the same degree of influence as MAFF does now (acting via the Secretary of State for Health on any functions which should be reserved for Ministers). In particular, the Agency must be consulted before any regulations on the deliberate release of GMOs are made where these relate to matters connected with its food safety and consumer protection remit.

The proposed amendment to section 126 would have the following effect.

Subsection (1) of this new section continues the Minister of Agriculture, Fisheries and Food's role in relation to regulations under Part VI of EPA 1990. It does however exclude him from the power to make regulations relating to fees and charges under section 113 of that Act (but see *subsection (6)* below).

Subsection (2) introduces a new requirement for the Agency to be consulted before any regulations under Part VI of EPA 1990 are made, where these relate to matters within its remit.

It should be noted that *subsections (1)* and *(2)* do not give the Secretary of State for Health any explicit role in the making of regulations. This is because secondary legislation is normally signed by only one Secretary of State, while standard administrative arrangements are used to ensure that interested departments are involved as necessary. The requirement for consultation with the Agency will go further by providing a statutory guarantee that health interests relating to food are fully addressed. The Agency will of course be able to advise the Secretary of State for Health to intervene with his Environment opposite number if it feels that food safety implications are not being given sufficient weight.

Subsection (3) preserves the Minister of Agriculture, Fisheries and Food's role in all the functions under Part VI (other than the power to make regulations, which is dealt with under subsection (1) above).

Subsection (4) adds the Agency to those exercising certain of the non-regulatory functions under Part VI of EPA 1990 where these relate to matters within its remit. Thus it would act jointly with the Secretary of State for the Environment, Transport and the Regions or, where appropriate, jointly with him and the Minister of Agriculture, Fisheries and Food. The functions in question are as follows:

- under section 108(8), requiring certain persons to apply for authorisation to release GMOs;
- under section 110, prohibiting certain persons from releasing GMOs if it is believed that they risk damaging the environment;
- under section 111, issuing consents for the release of GMOs;
- under section 112, setting conditions and limitations on the granting of consents under section 111.

Subsection (6) requires the Secretary of State for the Environment, Transport and the Regions to take account of costs incurred by the Minister of Agriculture, Fisheries and Food and the Agency in drawing up a charging scheme under section 113 of the EPA 1990.

Subsection (7) qualifies the subsections of this clause that deal with joint action and consultation. Essentially, it makes it clear that any regulatory power or function exercised under this subsection is not rendered invalid if there is subsequently any question as to whether it should have been done jointly with, or else following consultation with, the Minister of Agriculture, Fisheries and Food or the Agency (or both), rather than by the Secretary of State for the Environment, Transport and the Regions acting alone. This makes it important for proper understandings to be instituted between the lead Department (DETR), MAFF and the Agency to ensure that the interests of all three are taken fully into account in any action taken under this clause.

Paragraph 11. This paragraph sets out the Agency's right to be consulted on authorisations to dispose of radioactive waste. The detailed amendments to the Radioactive Substances Act 1993 are made in Schedule 3.

Schedule 3: Minor and Consequential Amendments

This Schedule makes minor amendments to other legislation which are a necessary consequence of the creation and new responsibilities of the Agency, and also to confer the functions of the Agency outlined in Schedule 2.

Paragraph 1 amends the Trades Descriptions Act 1968. Orders made under that Act concerning food or feedingstuffs will in future be made jointly by the President of the Board of Trade, the Secretary of State for Health (rather than the Minister of Agriculture, Fisheries and Food), and the Scottish, Welsh and Northern Ireland Ministers if appropriate. The Agency will also

be consulted. In practice, this provision is likely to be used only rarely since these provisions are largely overtaken by EU law.

Paragraph 2 amends FEPA 1985 Part I. References to the Minister of Agriculture, Fisheries and Food are removed and replaced by the Secretary of State.

Paragraphs 4, 7, 8, 9, and 10 amend the Food Safety Act 1990, removing references to the Minister of Agriculture, Fisheries and Food and replacing them with the Secretary of State; and confer on the Agency the powers described in Part I of Schedule 2.

Paragraph 5 amends section 6 (enforcement) of the Food Safety Act 1990. It provides for the Secretary of State to direct that a duty imposed on an enforcement body under the Act should instead be discharged by himself or by the Minister of Agriculture, Fisheries and Food or by the Agency. It also provides for the Agency to be one of the bodies which may be named as an enforcement body in regulations made under section 6 of the 1990 Act (this power will be used for instance in relation to the Meat Hygiene Service, which will become part of the Food Standards Agency). Amendments also provide for the Secretary of State to take over a prosecution begun by another person under the Food Safety Act 1990 (this replaces a similar provision in the current Act) or for the Agency to take over such proceedings with the consent of that person or at the direction of the Secretary of State.

Paragraph 6 amends section 13 of the Food Safety Act 1990 (emergency control orders), removing references to the Minister of Agriculture, Fisheries and Food and replacing them with the Secretary of State and the Agency. Power to make emergency control orders rests with the Secretary of State, although this may be delegated to the Agency under clause 16 of this Bill. If so, these amendments allow the Agency and Secretary of State as authorities making emergency control orders to consent to exemptions, give directions to prevent food subject to an order being used commercially, and to recover costs from persons failing to comply with an order.

Paragraph 11 concerns offences by Scottish partnerships. Section 36 of the Food Safety Act 1990 provides that, where an offence under the Act committed by a body corporate is proved to have been committed with the consent or connivance of (or be attributable to any neglect on the part of) a director, manager, secretary or similar office holder of the body, or by a person purporting to act in such a capacity, that person (as well as the body corporate) is deemed guilty of the offence. It has been held that in Scotland the words "body corporate" include a partnership which in Scots law has an identity separate from that of the individual partners. This clause adds a new Section 36A to provide that individual partners may be charged along with the partnership in respect of any offence committed under the Act.

Paragraph 12 amends section 40 of the Food Safety Act 1990 in the following ways. *Subparagraph (2)* inserts a new subsection (1A) to give the Agency power to issue a direction to a local authority to ensure that it complies with a statutory code of practice issued under section 40. *Subparagraph (3)* amends section 40(2)(b) to require enforcement authorities to comply with a direction of the Agency, but the power of Ministers to direct is abolished. *Subparagraph (4)* amends section 40(3) so that the Agency rather than Ministers can obtain a court order forcing an enforcement authority to take appropriate action where it fails to comply with a direction. *Subparagraphs (5) and (6)* amend section 40 (4) of the Food Safety Act, concerning consultation of interested parties before issuing codes of practice. Ministers are required to have regard to the Agency's advice on these matters. The requirement to consult relevant organisations is retained, although consultation carried out by the Agency may be taken as meeting this obligation.

Paragraph 13 amends section 41 of the Food Safety Act 1990 by removing from the Minister of Agriculture, Fisheries and Food the power to require enforcement authorities to provide information that is relevant to their enforcement work carried out under the Act and assigning that power to the Agency.

Paragraph 14 amends section 42 of the Food Safety Act 1990 by empowering the Secretary of State to direct the Agency (as an alternative to designating another enforcement authority) to carry out the enforcement functions of an enforcement authority that has failed to meet its enforcement obligations.

Paragraph 15 amends section 45 of the Food Safety Act. Shortly after the enactment of the 1990 Act, the Parliamentary Joint Committee on Statutory Instruments expressed some doubt as to whether section 45 allowed for charges to be imposed on application for a licence, rather than on its granting. This amendment makes it clear that section 45 enables Ministers to provide for charges to be imposed on application (for example, for a licence) and not just on completion of a transaction.

Paragraph 16 makes amendments to section 48 of the Food Safety Act 1990, concerning consultation before legislation is made under that Act by the Secretary of State. These are similar in effect to those described in paragraph 12(5) and (6) above.

Paragraph 18. This paragraph revokes any byelaws made (or having effect as if made) under section 15 of the Food Act 1984

and which still have effect under the Food Safety Act 1990. That Act abolished the power to make food byelaws, subject to a provision which saved those in force immediately before the Act came into force. Byelaws related to miscellaneous matters are no longer needed in view of the current legal provisions for food safety and standards.

Paragraph 19. This paragraph amends provisions of the Radioactive Substances Act 1993 (RSA 1993) to make the Agency the statutory consultee of the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) on authorisations to dispose of radioactive waste, as well as on the revocation and variation of such authorisations. This will enable the Agency to influence the control of an important potential hazard to food safety. The Agency will replace the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales in these roles as far as England and Wales are concerned and the Secretary of State for Scotland in relation to authorisations issued by SEPA.

Subparagraph (2) amends the relevant provisions of RSA 1993 to make the Agency the statutory consultee on authorisations in place of Ministers.

Subparagraph (3) does the same in respect of the revocation and variation of authorisations.

Subparagraphs (4) and (6) remove references to the Minister of Agriculture, Fisheries and Food from those parts of RSA 1993 where he no longer has a function.

Subparagraph (5) amends section 25 of RSA 1993. That section allows the Secretary of State for the Environment, Transport and the Regions to restrict access to information in applications under the Act on grounds of national security. The section (prior to the amendment made by the Bill) makes it clear that this power did not release the EA or SEPA from their duty to consult Ministers on applications for discharges and did not apply to any information sent by the EA or SEPA to Ministers. The amendment made by this paragraph simply relates the provision to the Agency rather than to Ministers, to ensure that the Agency is able properly to exercise the consultation function given to it by *subsections (2) and (3)*.

Paragraph 20. Before setting charges in relation to licence applications, including those under RSA 1993, the Environment Agencies are currently obliged to take into account the costs and expenses of the Minister of Agriculture, Fisheries and Food and certain of those of the Scottish and Welsh administrations (i.e. those performed by the Scottish and Welsh administrations which would be performed by the Minister of Agriculture, Fisheries and Food in England). The Minister's and Secretary of State's functions under RSA 1993 are being transferred to the Agency (see note to *paragraph 19* above), and, accordingly, the amendments to the Environment Act 1995 made in this paragraph specify that it is the Agency's costs and expenses that must be taken into account.

As the Minister of Agriculture, Fisheries and Food will no longer have responsibilities in this area, *subparagraph (4)* removes the need for that Minister to approve any relevant charging proposals.

Fees charged by the Environment Agencies for licences may include an element to meet the costs incurred by the Agency. *Subparagraphs (5) and (6)* allow for these sums to be transferred from the Environment Agency to the Agency after collection.

(1) Food source is defined in the Food Safety Act 1990 (section 3) as any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise).

