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## **The Food Standards Agency: Making a Difference?**

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## **Abstract**

The governance of food in Britain has been in a state of flux in recent years. For over a decade, from the mid 1980s to the late 1990s, the then Ministry of Agriculture, Fisheries and Food (MAFF) found itself mired in a series of food controversies. Eventually, partly overwhelmed by its inability to reassure consumers or the food industry on the safety of food in Britain the Ministry was replaced by the Food Standards Agency (FSA). In this paper, we briefly review the background to the formation of the FSA and its formal role. We then describe how the creation of the FSA has changed the interrelationships between organisations and how these patterns have shifted the nature of food governance in Britain. To analyse the changing nature of food governance two models are outlined; one coercive and the other partnership based. An assessment of the extent to which the FSA works with one or other of these models is then made by exploring how key FSAs activities, especially its approach to enforcement, are shaping its relationships with other organisations and its policy outcomes. The paper draws heavily on material made available by the FSA through its website and a set of key person interviews with those with an interest along the whole food supply chain.

## About the BRASS Centre

In 2001, Cardiff University won £3.1 million in research funds from the Economic and Social Research Council to develop a Research Centre for Business Relationships, Accountability, Sustainability and Society (BRASS). The Centre is a joint venture between the University's Schools of Business, City & Regional Planning and Law. It brings together the three Schools' existing research expertise on issues of sustainability, business ethics, company law, corporate reporting and business communication.

The Centre started work in October 2001 under the leadership of Professor Ken Peattie of the Business School, Professor Terry Marsden of the Department of City and Regional Planning and Professor Bob Lee of the Law School. The funding of the Centre covers an initial five-year period, but this should just mark the beginning of BRASS' contribution to creating more sustainable and responsible businesses locally, nationally and globally.

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# The Food Standards Agency: making a difference?<sup>1</sup>

## Introduction

The governance of food in Britain has been in a state of flux in recent years. For over a decade, from the mid 1980s to the late 1990s, the then Ministry of Agriculture, Fisheries and Food (MAFF) found itself mired in a series of food controversies. Eventually, partly overwhelmed by its inability to reassure consumers or the food industry on the safety of food in Britain the Ministry was replaced by the Food Standards Agency (FSA). In part the creation of the FSA was simply a changing of organisational labels since the FSA took over many of the food safety responsibilities of MAFF but gained very few additional powers. However, the changing governance of food in Britain is a much more complex story. The FSA has wanted to make a difference to food governance. At the most obvious level the FSA represents a move to a more transparent and inclusive process of governance that sharply contrasts with the widely perceived closed style of government that characterised the Ministry of Agriculture. As one senior figure in the FSA has commented:

*“Our experience so far is that the powers we have are certainly adequate. It is the way we use them that is critical and the work we and the new ways we find of doing work which has not been done before. The openness agenda was a new approach to that”* (Bell, 2003)

It involves the efforts of the FSA to change existing relationships, such as the food enforcement activities of local government, and to engage with stakeholders in a quite different way from MAFF. Patterns of food governance in Britain, though, have also been shaped by a broader restructuring of risk and within the food sector have increasingly involved a European level regulatory dimension (see Smith et al 2004 for a much fuller analysis of these trends).

The system of food safety that dominated under MAFF regarded food and agricultural production systems as being safe unless proven otherwise by technical and quantitative analyses. In this way, government (and the food industry) had a rational and scientific basis on which to rest relevant public health and food quality assurance

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policies. The transformation, since the mid-1980s, in how food risk is perceived and the new regulatory framework that has emerged to mediate the new concerns, have been traced by Marsden *et al.* (2000). In depicting the evolution that was taking place in food safety assurance strategies in the UK from the 1980s into 1990s, they pointed to a transition from a traditional government-led corporatist regulatory and monitoring model (conservative, proof-based approach enforced at the local level by Environmental Health and Trading Standards Officers) to a new phase dominated by supply-chain management, and food standards strategies, designed and applied by the large multiple food retailers. In this case, food safety issues are perceived by large food retailers; the public sector, principally local government is left to act mainly as an auditor rather than a standard-setter and enforcer of the mainstream process.

In terms of understanding food safety, the FSA has found itself having to operate with classic issues of governance. The debate about governance is about understanding how to steer society towards collective goals, in this case improved food safety. The FSA represents one of the ways in which we are witnessing the wider 'hollowing out' of the state since it is the removal of formerly central government responsibilities to a Non-Ministerial Department (NPD). Since the food industry has complex and globalised supply chains with sophisticated notions of quality, governments at a national and European level have to seek to engage in new forms of intervention to retain a regulatory and enforcement role. In relation to food safety, as in many other policy areas, governments cannot simply exercise their authority through traditional top-down models. Long-standing government structures and interventions seem anachronistic. It is no surprise that tensions over the regulation and governance of food at a national level have been mirrored at a European level where significant moves have taken place to promote consumer interests in policy making with the creation of DG SANCO and the formation of a European Food Safety Authority (EFSA). Interestingly in a sign of the changing priorities and the need to assuage consumer concerns over food safety EFSA reports to DG SANCO. Governments now face challenges of policy co-ordination and power sharing as more actors engage in policy making and implementation. In other words, the traditional clear divide between government and other actors begins to dissolve. Public policy goals of food safety and quality increasingly depend upon the standards promoted in their food supply chains by private sector companies. In a context in which the boundaries

between public and private sectors are becoming more blurred than before we are interested to critically examine the extent to which the FSA can make a difference to the regulation of food in Britain and to understand the ways in which it tries to promote regulation through the enforcement activities of local government.

In this paper, we briefly review the background to the formation of the FSA and its formal role. We then describe how the creation of the FSA has changed the interrelationships between organisations and how these patterns have shifted the nature of food governance in Britain. To analyse the changing nature of food governance two models are outlined; one coercive and the other partnership based. An assessment of the extent to which the FSA works with one or other of these models is then made by exploring how key FSAs activities, especially its approach to enforcement, are shaping its relationships with other organisations and its policy outcomes. The paper draws heavily on material made available by the FSA through its website and a set of key person interviews with those with an interest along the whole food supply chain. This includes interviews with the leading and second tier retailers, food manufacturers, growers and their trade associations. Interviews have also included local level food regulators. Food policy is a sensitive issue and so the identity of the interviewees is not revealed. The work on the FSA is part of a wider analysis of the restructuring of food regulation, food supply chains and sustainability that is taking place at a national and European level (see Smith et al 2004).

## **Background to the FSA**

Food controversies during the 1990s for the most part concerned issues of safety (e.g. salmonella, E.coli, BSE) and raised searching questions about the source and method of food regulation. A high point of political and public concern occurred in the late 1990s, when within the same month (April 1997) eminent commentators were reporting for the government on E.coli (The Pennington Group 1997) and for the then Labour opposition on a Food Standards Agency (James 1997). Both reports documented the changing nature of food regulation processes, highlighted weaknesses in current implementation practices, and pointed to the confusing range of responsibilities and professionals involved in food regulation. Both reports concerned themselves with a range of food regulators and regulatory activities, and pinpointed

the key role of environmental health and trading standards departments in ensuring food standards and safety (James 1997, p11). The major change in regulatory structures that the outgoing Conservative and incoming Labour governments envisaged was the Food Standards Agency (FSA). The creation of a new body (largely) untainted by the food scares of the 1980s and 1990s was widely welcomed.

The Labour Government elected in 1997 published in January of the following year (1998) a White Paper (Cm3830) setting out its proposals for the FSA. The Bill to establish the FSA received Royal Assent in November 1999 and became operational on 3 April 2000. The speedy passage of the Bill through a crowded parliamentary timetable demonstrated the Government's commitment to the idea of a new food safety agency.

### **Why establish the FSA?**

The Government's thinking on the FSA largely followed that of the earlier James Report. The White Paper (Cm3830) on the FSA identified three factors that had eroded confidence in food safety. First, there was the conflict of interest within the Ministry of Agriculture, Fisheries and Food (MAFF) between its responsibilities for sponsoring the food and farm industries and ensuring the safety of food. Critics alleged that too often MAFF favoured producer over consumer interests. Second, the fragmentation of responsibilities for food within government between MAFF and the Department of Health was believed to lead to confusion. Third there was uneven enforcement of food law by local government environmental health officers (EHOs). For some local authorities food was a high priority but for others it was not.

To address these problems the FSA had transferred to it from MAFF and the Department of Health most food safety matters to which were added limited but more extensive powers still. In consequence the FSA does not face the internal tensions that so bedevilled MAFF. The fragmentation of responsibility within central government was overcome by transferring most of the staff with food duties from MAFF and the Department of Health to the FSA. The Agency also has responsibility for the Meat Hygiene Service, an executive agency. Moreover, the Agency reports to the Department of Health and not Agriculture (now DEFRA) so removing it as far as

possible from the latter's productivist link, and ensuring a single line of command to government. The FSA also oversees enforcement by setting standards and auditing local authorities' compliance with them, so trying to directly tackle the problem of uneven enforcement. On the face of it then the creation of the FSA makes good many of the deficiencies that had been identified in the regulation of food.

The FSA's main objective as set out in the Food Safety Act 1999 is

*“to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food”.*

Restoring consumer confidence in the safety of food is, therefore, at the heart of the Agency. It is a task that MAFF especially and to a lesser extent the Department of Health proved unable to perform (see Barling and Lang 2003). The Agency has marked out its distinctiveness from what has gone before by interpreting its responsibility to public health as three core values:

- To put the consumer first
- To be open and accessible
- To be an independent voice

Whilst these values might have been shared by MAFF its reputation in relation to food safety had been so damaged that it could not have credibly promoted them. As one former senior MAFF official put it:

*“the FSA was set up so that we could put the consumer first and part of that structure seems to me ... that we must keep the food industry at arms length, and we shouldn't be seen to be associated with them because they're not nice people”.*

Formally the key functions of the FSA are to:

- provide advice to the public and Ministers on food safety from farm to fork, food standards and nutrition;
- protect consumers through effective enforcement; and
- support consumer choice through effective labelling

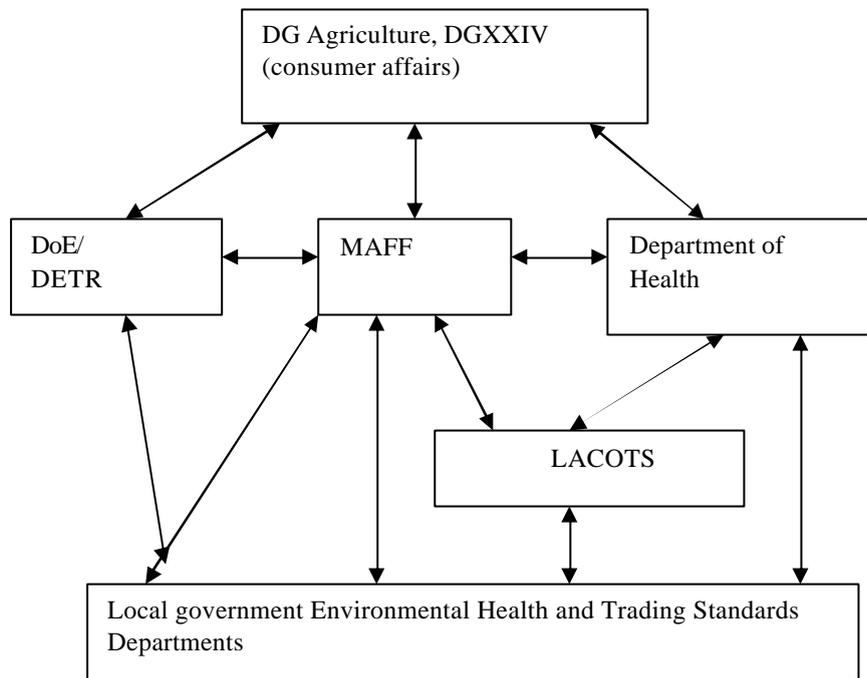
Below we outline how patterns of governance relate to structures and networks of responsibility and how these have changed with the creation of the FSA.

### **Patterns of governance: structures and networks of accountability and responsibility**

The two figures below show the difference in organisational lines of responsibility and accountability pre and post the creation of the FSA. It is important to note, however, that there has been a broader dynamic of organisational change in food management of which the FSA has been a part. So, Figure 2 does show a changed organisational landscape but it is not one that is simply due to the creation of the FSA. Amongst the major organisational changes at a national level are the demise of MAFF, the creation of the Office of the Deputy Prime Minister and the reform of LACOTS into LACORS. The creation of devolved administrations for Scotland and Wales have also compounded the sense of organisational change, since they will have responsibility for local government within their countries. At a European level too there has been organisational change with the development of DG SANCO to represent consumer affairs and the creation of the European Food Safety Authority (EFSA).

The two figures represent merely the public side of regulation and do not include the private supply chain regulation of food that also takes place (see Flynn et al 1999). They indicate a dense network of formal relationships that has if anything become more complex over time. In terms of political accountability the FSA in England is responsible to Parliament through the Secretary of State for Health. What is also clear is that food remains a policy area with diffused responsibilities. For example, the Agency also has to co-operate on food issues with the DEFRA which has responsibility for issues like animal welfare, food labelling, GM foods and animal feedingstuffs. The Department of Health retains responsibility for nutrition (HC 524 2003, p23), foodborne diseases and the handling of emergencies (HC 524 2003, p26). With both Departments the FSA has Framework Agreements to establish the roles and responsibilities of the different bodies. In its role as a Non-Ministerial Department the FSA negotiates in EU on behalf of the UK government and then leads on the implementation of EU food law in the UK.

**Figure 1 The structure of food regulation – pre FSA**



Notes

DoE is the Department of the Environment

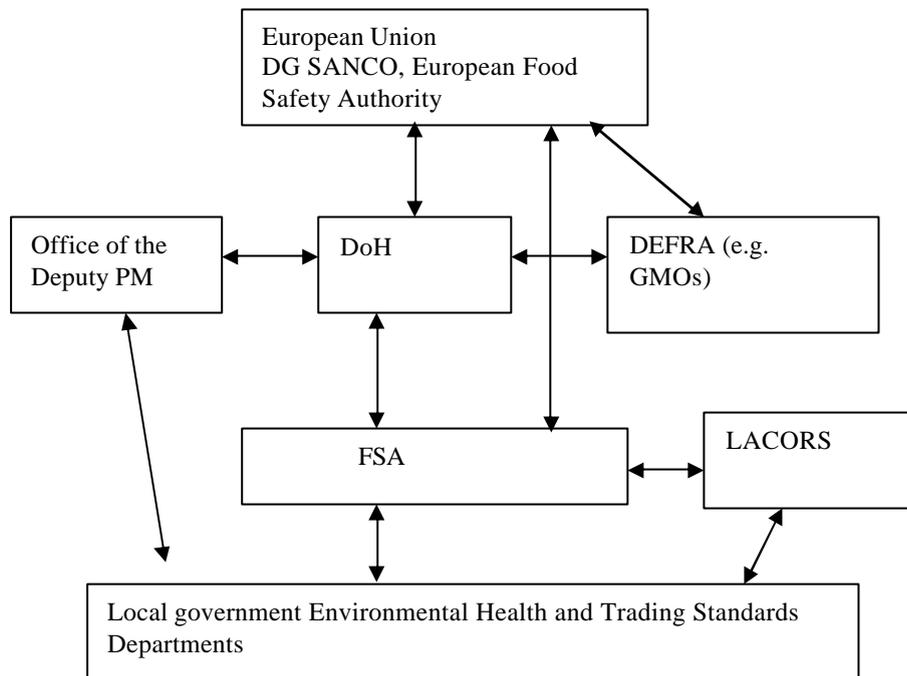
DETR is the Department of the Environment, Transport and the Regions

MAFF is the Ministry of Agriculture, Fisheries and Food

LACOTS is Local Authority Committee on Trading Standards

As a body largely created from the staff and food standard safety responsibilities of MAFF and DoH the FSA is now at the centre of a network of food governance. But what do the changes arising from the creation of the FSA mean in practice? First, the FSA has become the national focal point for food issues. It is the key intermediary between European, national and devolved governments on the one side and local government on the other. What the Figures do not reveal however is that funding for local authority food hygiene and standards work remains the responsibility of central government. This key lever for promoting change remains outside of the remit of the FSA and as we shall see has important implications for our understanding of food governance. Moreover, central government retains a responsibility for the most sensitive food issue (e.g. GMOs).

**Figure 2 The structure of food regulation in England: the FSA**



**Notes**

The diagram above does not show the impact of the devolved administrations for Wales and Scotland. In Wales the Welsh Assembly Government and in Scotland the Scottish Executive will play the part of the Office of the Deputy Prime Minister.

The Office of the Deputy Prime Minister (ODPM) was created in May 2002

DoH is Department of Health

DEFRA is Department of Food and Rural Affairs

LACORS is Local Authority Co-ordinators of Regulatory Services

Second, at a national level the likely overlap between the functions of LACOTS and the FSA in relation to promoting good practice and consistent enforcement practices seems to have been resolved. LACOTS which changed its name in April 2000 to LACORS (Local Authorities Co-ordinators of Regulatory Services) are bodies created by the Local Government Associations to co-ordinate local government activities. Pre-FSA, LACOTS performed a number of food law roles such as an interpreter of law, communicator between central and local government and general trouble-shooter. It also issued guidance notes to local authorities, participated in consultation with government and industry, co-ordinated operational practices of authorities and ensured revised patterns of enforcement, often arising from EC membership, were effective. In short, it sought to achieve greater consistency in local government

enforcement practice. Given that these functions were given to the FSA, it is necessary to consider what role LACOTS had after the creation of the FSA in April 2000. The possibility of overlap of functions was addressed in a Concordat between the FSA and LACOTS, which sets out the framework for co-operation between the bodies.

Nevertheless the question remains, why was LACOTS not dissolved upon the creation of the Agency in order to avoid duplication of efforts? The answer is that the FSA and LACORS are creatures of different levels of government. LACORS is a representative body of local government and therefore seeks to protect and promote local government activities. The FSA was a creation of national government and although it has very close relations with local government it is not part of local government and will not always share its agenda and therefore a role remains for a body such as LACORS.

Third, that there is a role for LACORS alongside the FSA illustrates how complex patterns of food governance can emerge. Indeed, Figures 1 and 2 present a much simplified picture of food governance. Although the FSA is the pre-eminent food regulatory body a number of other bodies have food enforcement responsibilities (FSA 2002, p3):

- Meat Hygiene Service – responsible for enforcing legislation in slaughterhouses and cutting plants. This is an executive agency that reports to the FSA.
- Horticultural Marketing Inspectorate – responsible for checking the quality of fruit and vegetables in the UK
- Dairy Hygiene Inspectorate – responsible for checking standards at milk production holdings
- Egg Marketing Inspectorate – responsible for checking standards in egg production, packing and distribution centres
- Wine Standards Board – responsible for monitoring standards in wine making
- Port Health Authorities and Border Inspection Posts – responsible for checking food imports and products of animal origin. These can only enter the UK through authorised Border Inspection Posts.

Apart from the Meat Hygiene Service the other bodies are in large part independent of the FSA, though Port Health Authorities and Border Inspection Posts fall within the FSAs inspection remit.

Two sets of questions that immediately raise themselves are, why when the FSA was created was the opportunity not taken to engage in further organisational rationalisation? In other words, why not create a single, integrated food regulator? The second set of questions relates to how these different organisations share responsibility for food regulation, how do they ensure consistency? How do they overcome organisational competition? Do they share a common agenda on enforcement? And what difference, if any does it make to those that they regulate? To begin to understand these questions means recognising the complex and dense organisational networks that help to make up food governance in Britain.

### **Food governance**

Understanding governance and assessing its implications for the government of the state and society at a time of new and changing internal and external constraints itself remains contested. Berger (2003) has distinguished five different approaches to governance and it is worth following these through to identify what they mean for the Food Standards Agency and food governance in Britain.

First there is governance as networks. This is probably the most prominent approach to current debates on governance. Networks are used to describe the different social actors structures and interactions involved in negotiating and delivering policies. Governance is about managing these networks in different policy fields. Of course, government has always had to deal with different actors in developing and delivering policy but what is new is the limited control that government has over these actors or networks, mainly because of a lack of legitimacy and the complexity of the policy process. As one of the leading advocates of the network approach, Rhodes (1996, p660) has pointed out governance refers to self-organising, inter-organisational networks with characteristics like interdependence between societal actors, continuing interactions between network members and a significant autonomy from the state. The management of food can easily be situated within a network perspective. From

the late 1980s government has lost legitimacy in food policy and has had to deal with an increasingly complex policy environment. On the one side the EU has been a key driver for new policy and on the other the corporate private sector has helped to deliver on public policy goals relating to food standards and choice. The FSA has developed its own network of actors that includes all parts of the food supply chain as well as parts of local and central government and the EU.

A second approach is governance as the inclusion of wider parts of society. The approach also recognises that policy outcomes are not the product of actions by government alone. With the increasing complexities and specialisation of society, no single actor – public or private – has all the knowledge, information or resources required to solve problems. Moreover, an ever more knowledgeable and interested (or is it sceptical and suspicious) public demands a greater inclusion in the policy making process. The task of government is to enable wider socio-political interactions and so will entail notions of capacity building, inclusion and participation. Again, it is easy to see how the creation of the FSA ‘fits’ into this perspective on governance. Government, specifically the Ministry of Agriculture, Fisheries and Food, was widely perceived to be part of the food problem, that is of public concern over the safety of food. The FSA was in part created to assuage that concern and much has been made of its independence from government. The FSA is structured so that it can take account of a wide range of interests within the food system and has prided itself on its inclusivity and approach to participation in its practices.

Governance as multi-level government is a third approach. This form of governance implies the stronger inclusion of all tiers of government – with a special emphasis on the regional and local levels – in the design, formulation and implementation of policy making. Each step of the policy making process should be carried out at the appropriate level and so this approach has strong links to debates on subsidiarity. In terms of understanding food governance this approach too has some merit. The FSA has to engage with European and national governments when contributing to policy making and the interpretation of regulation and with local government when implementing policy.

A fourth perspective is governance as the new public management. This approach to governance is linked to discourses of efficiency and effectiveness and borrows heavily from a market rhetoric. Within public policy this suggests the introduction of private sector management methods to the public sector and incentive structures such as market competition into public service provision (Rhodes 1996, p665). It also leads to the development of targets and indicators that have a market base (e.g. the efficiency of aspects of service provision). Interestingly, in its examination of the performance of the FSA, the National Audit Office (NAO) adopted a wide-ranging approach, going well beyond a traditional efficiency or effectiveness study to embrace how the FSA made decisions, assessed risks and was recognised by the public as a source of authoritative advice (see HC 524 2003, p20-53).

A fifth view is governance as hierarchies. This refers to the fact that although there has been much interest in the horizontalisation of institutions and actors hierarchies or vertical relationships continue to play an important part in political life. For the FSA vertical relationships and the patterns of power that go with it are part and parcel of its everyday life. For example, EU directives and regulations come down to the member states and must be complied with. Similarly the FSA will at times seek to invoke its power and authority over local government.

Governance is not only about structures and institutions but also actors, processes and outcomes. It is important to understand the interactions and networks that exist between structures. One way of seeking to understand the interactions between institutions, actors processes and how this may produce different outcomes is to develop two ideal types of food governance in Britain and then explore them for the activities of the FSA.

From the perspective of governance a key research question is, what difference does the FSA make to the management of food in Britain? In answering this question we need to be able to establish the relationships in which the FSA engages. As Figure 2 above shows the FSA is likely to be involved in a set of hierarchical rather than vertical relationships. Does the FSA seek to coerce local authorities or work in partnership with them? Or does the FSA seek to establish a more variable geometry of relationships with local government in which it works with both coercive and

partnership models of governance? What are the resources that the FSA can bring to the networks in which it operates to try and promote its agenda?

In Table 1 below we outline an ideal-type model of coercive and partnership-based multi-level governance. The features in the ideal type draw on some of the themes identified by May et al (1996) in their study of co-operative and coercive environmental intergovernmentalism.

**Table 1 Ideal types of food governance**

<b>Feature</b>	<b>Coercive</b>	<b>Partnership</b>
Targets	Set from centre, prescriptive	Agreed by consent
Means to achieve goals	Hold to account and audit, rule bound relationships	Educate and spread knowledge
Accountable to	Higher level of government	Public, stakeholder groups and government
Agendas	Likely to be different agendas held by different actors	Seek shared agenda
Lower level autonomy	Minimise local discretion	Accept local discretion and autonomy
knowledge	Concentrated at the centre and to be dispersed from the centre outwards	Knowledge diffused and seek means to utilise local knowledge
Openness	Limited and to favoured few	Consultative and participatory
Views of lower tier of government	hierarchy	Partner in policy delivery
Funding	Ring fence budgets	Budgets determined according to local priorities within a common agenda
Policy outcomes	Seek uniformity around a baseline because monitoring for compliance with targets	Accept variability above baseline because seeking improvements in practice and spreading knowledge

The model is not suggesting that organisations will engage in either co-operative or coercive relationships since the features of the models are not necessarily mutually exclusive. Nevertheless some of the features are likely to reinforce one another. For instance, the way in which an organisation seeks to achieve its goals should be closely associated with who it is held accountable to. Within the coercive model the rule bound nature of relationships is likely to result in a narrow perspective on accountability to government in which performance is measured in financial or political terms. A partnership model of governance will have both more complex sets of relationships by which to achieve goals and also for establishing and reporting on the accountability of an organisation. So when analysing the impact of the FSA on

food governance although we can pay more attention to some features than others the features themselves do run into one another.

A good starting point is to establish the autonomy and accountability of the FSA. This will help to establish the independence of the FSA and its stakeholders. Is the FSA simply a tool of central government or an independent actor? We then go on to analyse the agenda of the FSA. What does it do and how much of what it does is driven by the EU and how much by a domestic agenda? With the FSA responsible for food safety in Britain, and given Britain's track record on food safety, does the FSA feel under additional pressure to comply with European demands? If the FSA does feel such pressures does it mean that it more likely to adopt a coercive approach in its dealings with local government to secure compliance?

## **Independence and Accountability of the FSA**

### Independence

Independence from government consists of at least two features. One is the funding of the Agency, is it dependent on government for its money or not? If it is dependent on government is it likely to feel compromised in challenging government? A second feature follows on from the first and concerns the remit of the FSA and its freedom to act without the sanction of government.

- Funding

Perhaps the most controversial issue surrounding the formation of the FSA related to its funding. The Government initially proposed that all food premises should pay a £90 annual levy to fund the Agency's start up and running costs. Not surprisingly the food retail industry strongly opposed paying for the Agency either arguing that it should not have to pay for its own watchdog - calling it a "poll tax on food" - or that a more equitable system of sliding payments based on the size of the firm should be introduced. Although in the early part of 1999 the Government had strongly defended its intended fee on food premises, by June it had agreed that cost of the Agency would

be absorbed into general taxation. As the Minister of Agriculture, Nick Brown, explained

*“There were a lot of representations made to us against the idea of a flat rate levy. Representations were particularly strong from those who represent small shops, village shops and rural communities, and on consideration the government has decided to abandon the idea.” (Brown 1999)*

Brown’s comments indicate that the Government’s approach to food ran into a rather different agenda, that of its rural policy where the Government had felt rather exposed to claims that it did not fully appreciate rural life.

- Action

With one exception, there is very little to indicate that relations between the FSA and government have been anything other than cordial. The FSA has not appeared to feel hamstrung by government or that it has needed additional powers to guarantee its independence (see HC 708). The one public source of tension between Government and Agency has actually seen the Agency successfully asserting its independence in relations to its position on GM foods.

A report in the Guardian (7 December 2002) claimed that in an exchange of letters between the Chair of the FSA, Sir John Krebs, and the then Environment Minister, Michael Meacher, the latter had asked the Agency to be more supportive over the potential benefits of organic foods over conventional foods. However, the Agency’s line is that based on current research there are no significant differences on safety and nutrition between the two types of food. The dispute arose after Meacher, who chaired a government advisory group, produced an action plan to boost organic farming. It was endorsed by Margaret Beckett, the Environment Secretary, who said organic farming and food offered

*“real benefits for the environment”.*

Mr Meacher wrote to Sir John in October asking whether the Agency could make

*“a positive but factual statement on the pesticide, additive, GM and regulatory assurance benefits that are associated with organic food”.*

Mr Meacher said:

*“I do appreciate the FSA would not wish to see any words not based on scientific evidence. However, it is a fact that organic food production uses a much narrower range of pesticides and additives than conventional farming, eschews GMOs, and that there are environmental benefits. I would hope that it would be possible for FSA to acknowledge these points as a matter of consumer information for those who wish to choose food produced by organic methods.”*

Sir John replied that

*“the agency's position on organic food is that it is not significantly different in terms of food safety and nutrition from food produced conventionally”.*

He pointed out that the Agency had no remit on environmental matters. He continued,

*“The organic action plan team invited the agency to make a positive factual statement about organic food in order to help organic producers sell more of it. Our independence of industry interest is of paramount importance to us. Only by maintaining this can we operate credibly in the consumer interest. I am sure, therefore, that you will understand that it would be inappropriate for the agency to make statements supporting any particular food promotion scheme.”*

The spat between Krebs and Meacher is illustrative of the disputes that are often hidden behind the closed doors of Whitehall. Here the FSA has not played according to a Whitehall rule, that is of supporting government policy when invited to do so. Professionals in other parts of government have often had to defend their integrity in the face of pressure to be more sympathetic to policy than they believe is justified. So such disputes over evidence are not new. What is rather novel is that the dispute became public knowledge. This raises the question of whether the outcome would have been the same (i.e. a refusal to endorse organic food) if food responsibilities had remained in central government? Here the operation of government would surely have produced a different outcome as Beckett and Meacher had made a policy and political decision in support of organic farming. At a minimum it is likely to have led

a minister in one department to have a word with another to remind them of the need for government unity.

### Accountability

Although the creation of the FSA has been well received by all sections of the food system, it has not been without controversy. The James Report had recommended that the Agency (or as it called it a Commission) should be dominated by consumer and public interests. This was presumably in the belief that such people would hold the Agency staff to account. The Government was rather more wary and proposed that it should consist of individuals with a

*“proven track record in relevant fields”,*

with a majority coming from a

*“wider public interest background without any specific affiliation”.*

So whilst there are members of the Agency Board with a background or longstanding interests in consumerism it does reflect a broader range of food and scientific perspectives. From the perspective of one senior ex-MAFF official there is the view that relationships with the food industry have changed:

*“I think the interactions are different, my impression is that they are not close or cordial, the impression I get from talking to people who are in the food industry, the good relationship that we [in MAFF] had with them are now harder to form with the FSA. On the Board of the FSA there is only limited food producer representation. The emphasis is to put the consumer first...” (interview)*

Whilst the FSA Board<sup>2</sup> has a different mix with more economic interests and fewer consumer representatives than James may have wished to see, it is a moot point as to

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<sup>2</sup> The Agency has a Chairman, Deputy Chairman and 8-12 other members (one of which is appointed by the National Assembly of Wales, two by the Scottish Ministers and one by the Department of Health and Social Services for Health the rest of the Board members are appointed by the Secretary of State for Health). The Chairman and the Deputy Chairman are appointed by the Secretary of State for Health and his counterparts in Scotland, Wales and Northern Ireland. The FSA also has a Chief Executive who is responsible to the Agency members, for ensuring that the Agency is run efficiently and is responsible to Parliament for the way in which the Agency spends its money. Whilst the first appointment was made by central government subsequent appointments are made by the Agency subject to the approval of the authorities. There are also separate directors for Scotland, Wales and Northern Ireland, who are responsible under the Chief Executive for the activities of the Agency in Scotland, Wales and Northern Ireland.

whether or not it has affected its accountability to the public. The Agency has from the outset sought to engage with a wider set of interests than MAFF and to report widely on its activities. Positioned as the consumer's champion on food matters, the FSA's credibility lies in its transparency, openness and accountability. This is supported by the requirement under s.4 of the Act for the FSA to prepare a public report on its activities and performance during each financial year. Moreover, as a public body anyone aggrieved by a decision the FSA makes may seek judicial review of that decision. As a public body the FSA is also formally accountable for its activities to the Secretary of State for Health and to Parliament for the way in which it spends its money. The Agency's spending and activities are scrutinised by the National Audit Office whose reports are passed to the House of Commons Public Accounts Committee (the first reports on the FSA were published in 2003, see HC 524 and HC 708).

### **The FSA agenda and its activities**

The James Report (1997) had wanted the Agency to promote food safety "from plough to plate". In the consultation on the FSA some environmental and consumer groups argued that the FSA's agenda should extend to issues such as animal welfare and the environmental impacts of farming. The Government opted for a narrower mandate. It argued that giving the Agency

*"operational responsibility for all aspects of farming practices would risk diverting it from its essential aim of protecting public health."*

Instead, it wanted to put the Agency in a position where it would be able to "intervene" where farming practices have an impact on food safety. However, as the ENDS Report (No 276) pointed out the FSA's proposed intervention powers appear to be very much reactive, being essentially restricted to controlling the entry of materials into the human food chain. Central government (i.e. DEFRA) retains responsibility for farming practices.

A useful window on the activities of the FSA is provided by an analysis of the consultation documents on its website. From the consultation process it is possible to identify:

- The source of the consultation (i.e. what has driven it)
- The division within the FSA that is responsible for the consultation

The information provided on these two issues will indicate on which side of a continuum the FSA can be placed. At one end is the FSA acting largely as a postbox in that it mainly responds to an EU agenda. Brussels drives much food policy and one line of thinking would be that the FSA workload is largely a response to a European agenda. It passes information on current and upcoming European issues to a domestic audience and then feeds those responses back to Brussels. At the other end of the continuum it maybe that the FSA has developed its own domestic agenda and is seeking to promote it. After all the FSA was largely a response to domestic food crises. Either end of the continuum can be represented by different arguments. Briefly the former would suggest that the FSA is an organisational fix, changing little; the latter would contend that the FSA is a more substantial reform changing the regulatory politics of food. Data on the divisions within the FSA that are responsible for most consultations will provide an indication, from an FSA perspective, of the most topical food issues.

Below we analyse by year of start date FSA consultations since the summer of 2001 until the end of 2003.

### UK consultations for 2001

#### **Source of consultation**

UK	EU	Codex
8	4	6

#### **Subject of consultation**

Labelling	Meat hygiene	Food Chain Strategy	Animal feed	Additives	Novel foods	Radiological Safety	Microbiological safety	Unknown
7 + (1)	(1)	(3)	1		1	1 + (1)	(1)	(1)

Numbers in brackets refer to domestic source of consultation

2001 is the first year for which figures on consultations are available and are only for part of the year. The figures on the number of consultations are thus lower than for successive years and so not too much can be read into them. Domestic issues, though, show themselves to be twice as important a source of consultation than those from the EU. In its early life it is important for the FSA to establish its profile amongst key actors in the UK and so, perhaps, not surprisingly domestic issues and stakeholders are to the fore.

Within the FSA the work of the Food Chain Strategy Division was the main area of domestic work and it dealt with FSA response to the Policy Commission on Farming and Food for England and contributed to an FSA Task Force on the Burdens of Food Regulation on Small Food Businesses. The other notable feature of the table on the subject of consultation is that it is dominated by labelling issues.

#### UK consultations for 2002

##### **Source of consultation**

UK	EU	Codex
15	12	5

##### **Subject of consultation**

Labelling	Meat hygiene	Food Chain Strategy	Animal feed	Additives	Novel foods	Radiological Safety	Microbiological safety	Unknown/misc
8 + (5)	1 + (4)		3	1	1		1 + (1)	2 + (5)

Numbers in brackets refer to domestic source of consultation

As is to be expected during a full year the number of consultations increases on 2001. Once again in 2002, UK issues are the most important source for consultation exercises, though EU issues closely follow them. Labelling issues are the most important topic for UK consultation issues, and they are also the subject of most of the Codex consultations. Labelling dominates the FSA agenda with a total of 13 different consultations with meat hygiene the subject of five consultations the next most popular topic.

## UK consultations for 2003

### **Source of consultation**

UK	EU	Codex
1	2	1

### **Subject of consultation**

Labelling	Meat hygiene	Animal feed	Additives
1	1 + (1)	1	

Number in brackets refers to domestic source of consultation

## England only consultations

### **Source of consultation**

UK	EU	Codex
1	9	1

### **Subject of consultation**

Labelling	Meat Hygiene	Chemical Contaminants and Animal Feed	Additives	Unfit meat
5	(1)	3	1	1

Numbers in brackets refer to domestic sources of consultation

## Comment

For 2003 the consultations show a marked swing to the EU as the most important source<sup>3</sup>. This trend would seem to indicate that the period following the EU white paper on food safety is leading to a lot of legislative and consultative activity within Member States. In terms of the subject of food consultations food labelling and standards remains the most important topic.

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<sup>3</sup> For 2001 and 2002 the results are for UK consultations whereas for 2003 the FSA reports on consultations that refer to UK-wide food responsibilities and those where responsibilities can be dealt with by consultations in the devolved nations. For ease of analysis only the results for England are reported here.

What do these results indicate about the nature of food governance? First, the EU is a key source for consultation and one that appears to be becoming increasingly significant over time. Codex too is making its mark on FSA consultations. Together these two non-national sources of consultation account for more sources of consultation than domestically driven consultation exercises. In terms of its consultative activities the FSA is an integral part of a system of multi-level food governance. However, it would be a mistake to simply portray the FSA as simply a postbox, or a conduit between international and national stages. This is because second although domestically sourced consultations may be becoming relatively less important for the FSA they have helped it to define its position in food regulation. For example, the FSA consulted on how it could present a consumer perspective to the Curry commission. Consultations must also have helped the FSA develop relationships with key stakeholders. A consultation exercise on meat hygiene, for instance, will be circulated to about 200 groups and organisations. Whilst it would be naïve to equate consultation with partnership in terms of governance it does mark a more inclusive approach than had previously prevailed (interview with consumer organisation).

### **Enforcement strategy**

Analysis of consultations provides an insight into the agenda for food management at a national and international level. It does not, however, tell us anything about how the FSA is allocating its resources. Information on the internal resource allocation of the FSA provided in Table 2 below indicates something of a mismatch with the results arising from the consultation strategy.

**Table 2 FSA Proposed Thematic Expenditure 2002-03**

<b>Task</b>	<b>%</b>
Food safety: BSE	27
Food safety: Food Products and Processes	13
Food Safety: Foodborne Illness	12
Food Safety: Chemical Safety of Food	11
Nutrition and Diet	10
Consumer Confidence	8
Developing Staff	5
Food Law and Enforcement	5
Other	5
Public Information, Labelling and Choice	4

Total Expenditure £97m

**Source FSA 2002, p11**

Perhaps the two most notable features of the pie chart are:

1. That so much resourcing is devoted to BSE (it was the subject of only one consultation paper)
2. That so little resource is devoted to food law enforcement

The limited resourcing of food law enforcement is revealing of the nature of governance relationships and responsibilities. On the one side improving food enforcement is a key task for the Agency but on the other it lacks a key lever, namely control of funding for that task which is undertaken by local government. Here the FSA faces one of the classic challenges of governance: how can it steer others to achieve its own policy goals?

Lax enforcement of food law is perceived by the FSA and other commentators to have been a key factor in the number of food borne illnesses in the UK. An improvement in food law enforcement is a key priority of the Agency's strategic plan for 2001-6, and would mark an important break with the past. The assumption is that more effective enforcement will raise standards in food businesses and thus improve the safety of food that people eat and this will help to meet the Agency's strategic aim of reducing food borne illnesses by 20% by 2006. (FSA 2002a, para 2.4).

Some idea of the scale of the regulatory challenge can be gauged by assessing the structure of food businesses. There are about 600,000 food businesses in the UK of which:

- 372,000 (62%) are caterers
- 186,000 (31%) are retailers, and
- 18,000 (3%) are food manufacturers

### FSA Enforcement activities

Food enforcement work is shared between the FSA and local government. The FSA is consistent in its message that it is working with local government to promote better food standards. Local authorities are the frontline, the primary food enforcement body at the local level; the FSA is responsible for the development of food enforcement policy and support functions for local government. The Food Standards Act 1999 provides the FSA with a package of statutory powers to strengthen its influence over enforcement activity (FSA 2002b, p3). The Act gives the Agency powers to:

- Set standards of performance in relation to the enforcement of food law
- Monitor and audit the performance of local government
- Require information from local authorities relating to food law enforcement and inspect any records
- Enter local government premises to inspect records and take samples
- Publish information on the performance of local government
- Make reports to individual local authorities, including guidance on improving performance
- Require local government to publish these reports and state what action they will take as a response.

These powers appear to be wide-ranging and interventionist. They also fit well in a coercive model of governance with the emphasis on inspection, audit, standard setting and monitoring. Whilst the powers are significant they do not in themselves provide the levers to make local authorities single-mindedly pursue an FSA agenda. Powers to influence local government agendas remain well outside the remit of the FSA, for

example in the hands of the Office of the Deputy Prime Minister and the devolved administrations. So a potentially coercive style of governance has to be nuanced by the FSA: the Agency can hector and cajole but it would find it difficult to coerce local government. Even where the FSA may be able to act in a more coercive style through its audit powers it finds them potentially undermined by the actions of the Audit Commission which has its own food enforcement performance indicators and which is accorded a higher priority in local government than the FSA (local government interview).

### The FSA enforcement agenda

The FSA recognises that the effectiveness of food law depends on how well it is enforced.

*“[A] key role for the Agency is to work with local authorities to ensure the effectiveness of UK food law enforcement” (FSA 2002b, p6).*

The FSA will do this by (FSA 2002b, p6):

- Providing guidance and support for local enforcement staff
- Ensuring proportionate and more consistent enforcement
- Providing more information about standards of food safety
- Improving the transparency of enforcement arrangements for stakeholders
- Promoting the wider implementation of risk-based systems for improving safety standards across the food chain.

Key features of the model for improving local enforcement are that first it is partnership based – local government is to be guided and supported. This would seem to be partly a result of the philosophy of governance that promotes partnership as a preferred way of working but also partly recognition of the limitations of FSA powers over local government. It has very limited authority to dictate to local government and a dictatorial stance might lead to a breakdown in relations with local government and undermine the FSA’s enforcement strategy. Second, the FSA is keen to promote consistent and transparent enforcement by local government. Here a more coercive model of relations between the FSA and local government is implied. Consistency

and proportionality in enforcement activity will mean that decisions are not made according to local circumstances but by centrally based (and probably centrally developed) criteria. An indicator of the Agency's thinking is the comment that:

*“One key area of the Agency's work has been to strengthen links with LAs. To help achieve this a Framework Agreement on Local Authority Food Law Enforcement was developed with a joint Government/local authority group (the Local Authority Enforcement Liaison Group). The Framework Agreement includes the standards and arrangements through which the Agency sets, monitors and audits local enforcement services” (FSA 2002b, p6).*

This would seem to undermine the local discretion implicit within a partnership model. Third, the approach is typical of the rational model of decision making with the belief that providing actors with information on their performance will make them better informed and so willing to improve their performance. Such a belief, however, tends to ignore the realities of enforcement activity where actors find themselves confronted by competing demands for their time and resources and where local politics may play a big part in their activities – all often undermine a rational mode of behaviour.

The Framework Agreement on Food Law came into force on 1 April 2001 and is but one of a number of such agreements that have been negotiated between the Local Government Association (or the Welsh Local Government Association) and government and its agencies across the range of local governments work. The Framework was developed through the Local Authority Enforcement Liaison Group (now the Enforcement Liaison Group). Typically Framework documents set out the responsibilities of the different actors and the expectations that they may have of each other's performance. For central government the Framework Agreements are a means of trying to ensure that local government shares its agenda and policy priorities. In other words, they are a mechanism for trying to overcome the diversity of local government by promoting greater consistency in its behaviour. So, the Framework Agreement on Food Law does not provide for any new powers or resources for local government or the FSA but in one document makes clear FSA expectations of local authority responsibilities for food law enforcement. It thus provides the Agency with a mechanism for implementing its powers under the Food Standards Act to influence

and oversee local authority enforcement activity. The Agreement applies to local enforcement of all food laws, and incorporates the latest guidance and standards on food law enforcement.

The Agreement provides for:

- Publicly available local service plans to increase transparency of local enforcement services
- Agreed food law enforcement standards for local authorities
- Enhanced monitoring data with greater focus on inspection outcomes and which provides more detailed information on local authority performance
- An audit scheme aimed at securing improvements and sharing good practice.

Another element of the Framework is the demand that local authorities should develop Service Plans that outline their food enforcement activities and resourcing and these will provide the basis for FSA monitoring and auditing of individual authorities. Service Plans are to be drawn up by officers but should be approved by councillors to ensure political buy-in. Again Service Plans are a typical feature of other Framework Agreements.

Promoting greater consistency by local government is one of the key messages emerging from the FSA. A recent initiative has been the production of revised Codes of Practice on food enforcement. The FSA proposes to consolidate in a Code of Practice (FSA 2003a) and Practice Guidance (FSA 2003b) the 20 sets of Codes of Practice that currently exist. In its consultation advice on the Code of Practice the FSA notes that

*“The Codes set out instructions and criteria to which the [food] authority should have regard when engaged in the enforcement of food law and are intended to achieve more even standards of enforcement by food authorities.”*

It is intended that consistency will emerge through the rationalisation of documentation and the simplification of food inspection regimes (FSA 2003c).

The FSA, in line with its commitment, to openness and transparency, has made available on its website individual local authority enforcement returns (FSA 2002, p9). The information, as we shall see below is a double edged sword. On the one side the FSA appears to hope that exposing instances of poor performance will force recalcitrant authorities into line through embarrassment or local political concern. On the other side the data exposes the weakness of local government food enforcement activities and so opens up to critical scrutiny the role of the FSA. Whilst the data for 2000 was produced in early 2002 and that for 2001 in 2003, to date no data has appeared on 2002 local government enforcement activities.

### Local authority enforcement

The enforcement of food legislation is mainly carried out by of local government Environmental Health and Trading Standards Services (so-called enforcement authorities) in 499 local authorities. The food enforcement duties vary depending on the type of local authority:

- English County Councils are responsible for enforcing food standards (e.g. checking food composition, labelling, claims and presentation matters). This work is carried out by Trading Standards Services.
- English District Councils are responsible for enforcing food hygiene controls (e.g. staff hygiene, hygiene structures and equipment, level of hygiene and HACCP training, temperature controls etc). This is carried out by Environmental Health Services.
- Unitary authorities, Metropolitan Borough Councils and London Boroughs are responsible for enforcing both food hygiene and food standards.

The statutory Codes of Practice issued under Section 40 of the Food Safety Act 1990 lay down minimum inspection frequencies for premises according to their risk rating. Local authorities should aim to carry out 100% of the inspections due in each of the premises risk categories. For food hygiene these currently are:

Category A – at least every 6 months

Category B – at least every year

Category C – at least every 18 months

Category D – at least every 2 years

Category E – at least every 3 years

Category F – at least every 5 years

Minimum frequencies for food standards inspections currently are:

High risk – at least once every year

Medium risk – at least once every two years

Low risk – at least once every five years

Analysis of authorities reporting at least 100% of programmed inspections for premises risk rated Category A for food hygiene and high risk for food stands reveals considerable variation in performance by local authorities (FSA 2002, p14-5). First, the figures show that food standards inspections (i.e. the TSO role) are achieving a consistently better performance than the food hygiene work (i.e. the EHO role). For instance Welsh unitary authorities are amongst the worst performers (only 1 authority met the 100% target) in meeting their food hygiene targets but achieve the highest percentage (41%) for inspection of high risk premises. This may in part reflect the greater professional standing of TSOs compared to EHOs and/or greater ring fencing of the budgets of the former. Second, that for some types of authority (e.g. Welsh unitary, English district councils for food hygiene and the London Boroughs for food standards) there is a higher rate of inspection activity across lower rated risk premises for their food hygiene and food standards work (FSA 2002b, p16-17). The FSA does not have a full explanation as to why some types of local authority should focus their efforts on lower risk rated premises but dryly notes

*“as a national statistic it is of concern”* (FSA 2002b, p16).

The implication is, of course, that when one activity measure is number of visits to food premises, and departments are perhaps under-resourced and under-staffed, that they concentrate on the less demanding low risk premises. Third, there is considerable variability in levels of enforcement activity. Metropolitan councils are the most active in taking enforcement action and district councils the least active. There is also a large degree of variation in enforcement action within authorities of the same type (FSA 2002b, p18). Finally, there is also considerable variation in

sampling rates both between and within different types of local authority (FSA 2002b, p23). In follow up work with local authorities the FSA reported

*“that there was a tendency for authorities to give much higher status and priority to food premises inspection work compared to food sampling. This may be partly due to inspection work being included as an Audit Commission performance indicator, whereas sampling has not”* (FSA 2002b, p24).

The message here is simple: local authorities find themselves operating in a complex web of relationships and not surprisingly sometimes receive inconsistent messages from central government or its agencies. Local authorities respond to the pressures that they regard as most acute and in this case the Audit Commission is regarded as more important than the FSA. It also illustrates the ways in which other agencies, who have no obvious food remit, can impinge on the regulation of food.

It is also worth briefly commenting on the data that the FSA utilises for its management of local government. The FSA is required to provide an annual report on enforcement activity to the European Commission under Article 14 of the Official Control of Foodstuffs Directive 89/397. It covers basic information relating to the enforcement work of local food authorities (e.g. number of businesses, number of inspections, formal enforcement and sampling). For the FSA

*“the returns provide a valuable source of data and form the central plank on which the enhanced monitoring arrangements implemented as part of the Framework Agreement have been built”* (FSA 2002b, p8).

The use of Commission data to provide monitoring data for the FSA of its local authority partners is revealing. First, it provides an indication of EU influence on both the FSA and local government enforcement. The FSA will be constrained in any changes it may wish to make to local government enforcement behaviour because of the need to meet the reporting requirements of the Directive. Moreover, the FSA has to rely on management data on the monitoring of local authority performance collected for other purposes and which may not always be appropriate for its own information needs. For local government the need to provide data to the Commission will presumably help to shape the working lives of its food enforcement staff.

### What is being achieved?

Key findings arising from the Agency's enforcement strategy of local authority health departments are (FSA 2003d, paras 7-9, 11-13):

- The total number of inspections and other visits to food premises are lower in 2001 than in 1999 and 2000. However, more premises were subject to a full inspection in 2001 than was the case in 2000 or 1999.
- More of the premises visited in 2001 were found to be fully compliant with food law than in the two previous years, though the improvement is small.

*"This trend would seem to indicate a gradual year on year improvement in food safety standards"*  
(FSA 2003d, para 10).

- The number of enforcement actions remained stable. However, the FSA notes approvingly that environmental health departments are making increasing use of Improvement Notices (FSA 2003d).
- The number of prosecutions fell.
- The number of food samples taken continue to fall and

*"is of concern given that the importance of sampling to an effective food law enforcement service"*  
(FSA 2003d, para 13).

- There are a small number of local authorities undertaking unacceptably low levels of activities.

### Why do inconsistencies remain with enforcement?

The FSA has identified what it believes are three key factors that account for poor performance of some local authorities. These are:

- Local authorities have had to devote resources to dealing with foot and mouth disease
- There are problems with staff retention and recruitment

- Software problems have meant that some local authorities could not record their enforcement activities.

What is interesting about the FSA analysis is that it points to resource and software issues that can be resolved but not to ones of intergovernmentalism that are much more challenging. The FSA response is therefore a classic one of further control and management of a problem as it intends to:

- check that poorly performing local authorities do meet their inspection targets by subjecting them to an audit.
- Name (and shame) poor performers are identified on the FSA website (see FSA 2003d, Appendix 2). Public identification it is hoped will allow citizens, officers and councillors to find out who the poor performers are and then to put pressure on them to improve.
- Meet with stakeholders to discuss why problems have arisen.
- Start assessing local authority performance against very limited indicators of enforcement activity. Statutory Codes of Practice require local authorities to have a risk based inspection programme with an expectation that all high risk food businesses will be visited at least once a year. Whilst this is the expectation of the FSA they have used a measure of under 50% of high risk inspections being carried out as a basis for identifying local authorities with

*“clearly unacceptable levels of enforcement”* (FSA 2003d, para 19).

The vast majority of local authorities are operating well in advance of these levels. In view of this and to encourage further improvements in local authority performance the FSA propose to increase measures of inspection levels by 5% each year for the next five years (FSA 2003d, para 19).

There is clearly an implementation deficit between the requirement of at least one visit a year to high risk food businesses and what is happening in practice. It is not clear how big the deficit is or whether it is closing. It is also not clear that simply setting more testing targets by which local authorities are assessed as unacceptable

performers will lead to an improvement in performance. This is in large part because enforcement seems to be dependent on issues that even the FSA identifies as outside of its control. These include external issues (e.g. FMD) making resource demands on local government, different local political priorities (that presumably accept naming and shaming and/or an audit by the FSA as an acceptable price to pay), and problems with staff recruitment and retention. As the FSA admits:

*“enforcement is a matter which resides with local authorities. Our power there [for enforcement] concerns the audit of local authorities and being able to say when they need to do more and we will help them to do more” (Bell 2003).*

(Details of the FSA audits of local food authorities are explained below).

The FSAs commitment to transparency has made clear the extent of the variability in local government enforcement activities that have been alluded to over a number of years (for example going back to the James report). Until now though there had been little publicly available data on the topic. Having exposed the variability in performance the FSA has the challenge of reducing it. However, it has only limited tools by which to ‘manage’ local government and so overcoming its diversity is going to be an issue on which the FSA may find itself in a rather vulnerable position.

### Auditing local government

The Agency currently aims to audit 40 local authorities in England each year. Its counterparts in Scotland, Wales and Northern Ireland each operate their own audit programmes. An audit programme is published quarterly in advance of the audits. Local authorities are selected to represent a cross-section of local authority types, geographical location and level of enforcement activity as indicated by quarterly monitoring returns.

Audits employ a Pre-visit Questionnaire requesting information from local authorities and sent 3 months prior to the on-site audit; an Audit Protocol and Audit Checklists; and on-site officer interviews. The on-site visits will typically last 2-3 days and may also include visits to local food business. In line with its commitment to openness and

transparency, the Agency publishes the reports from these audits, together with the local authorities' action plans to address the recommendations made. In order to secure improvement, follow-up action is undertaken by the Agency approximately six months after the audit report is published, to assess the progress local authorities have made in implementing their action plans. In some circumstances this will entail a re-visit to local authorities. In others, correspondence between the Agency and the local authority may suffice. Agreed revised action plans are published with the audit reports. The audit regime clearly fits into the coercive style of governance.

Audits may well prove to be a useful way of focussing the minds of local government staff on food enforcement. The audit reports may also be a good way of feeding back to individual local authorities good practice in food management. Audits could thus prove to be a useful tool for raising food enforcement standards in local government. The problem for the FSA is that if audits and inspections are its key tools of management (by coercion) they are unlikely to engender the broader change that it wishes to see in commitment to local food enforcement. This is because it cannot offer other coercive tools such as ring fencing funding to support its position. It therefore also has to work with more partnership-based tools such as Framework Agreements in the hope that these will raise the profile of food enforcement within local government. In a frank assessment of the difficulties that the FSA faces, one of its senior figures, Jon Bell has admitted when questioned by the Commons Public Accounts Committee:

*“We [the FSA] are very much there supporting the environmental health departments in doing their job and if they feel they have inadequate resources to meet the sort of targets we are setting, then we are very much there to support them, in making the case to the council for more resource. At the end of the day in the democratic system, the way it is set up, the council has to decide how to apportion its resources” (Bell, 2003)*

### **Conclusions: multi-level food governance and the FSA**

The FSA operates at a number of levels of government. Its principal relations with local government are to promote higher and more consistent levels of enforcement; its relations with national government are to report on its activities and for its budget;

and its relations with the EU are to represent the British position on food safety issues. At each of these tiers of government the FSA will be engaging in different types of relationship and these different tiers of government will have different expectations of the FSA and its activities. In this paper we have concentrated on exploring the patterns of emerging national food governance.

The FSA works with two different models of governance, and seems to vacillate between the two. On the one side it appears to favour a coercive model of governance in which it imposes its will on local government. Here it has the ultimate sanction of taking over the food enforcement activities of a local authority. However, to do so would raise at least two problems and may help to explain the apparent reluctance of the FSA to intervene when faced with very poor local authority performance. First, if it takes over a food authority it will face the same issues that it has identified as contributing to underperformance, such as staff recruitment and retention and which it is likely to find equally difficult to solve at a local level. The second factor to be borne in mind, and the other side of the governance spectrum is a partnership model that the FSA also wishes to adopt in its dealings with local government. To take over a local authority would undermine the partnership model. The partnership is predicated on consensus and goal sharing.

The irony is that as the FSA makes more information available on the levels of performance of local government food enforcement it shows how poor they are and then exposes its own weaknesses in raising standards. One of the key tasks of the FSA is to improve on that level of performance, but as Figure 2 above illustrates and the discussion of food enforcement shows it lacks crucial levers to exercise power over local government.

In its dealings with the EU and central government the FSA is likely to find itself experiencing different relationships. The EU operates by holding lower tiers of government and their agencies to account. Within a federalised system of policy and decision making higher levels of government favour target setting as means of getting lower tiers of government to meet policy objectives. At the national level the FSA will be held to account by the Treasury to ensure that government is receiving value for money for the FSA's expenditure and by the Department of Health and Parliament

for its performance on food issues. The temptation is, therefore, for the FSA to similarly seek to hold local government to account but lacking the authority of the European Commission and central government must also work with local government to help deliver food enforcement. The FSA faces particularly acute problems with regard to the food enforcement activities of local government and these have significant implications for the likely patterns of governance that will emerge. Both in terms of the FSA agenda to promote consistency in local government performance and how it is held to account for variation in local government performance by the NAO and Public Accounts Committee, local variability is to be discouraged rather than celebrated.

In practice, some tiers of government will act in a coercive manner because they are able to exercise power, they can impose their views. Other actors must adopt a partnership model because they must work with those who deliver services. The latter model may well be more resource intensive and involve capacity building in lower tiers of government which may not be sympathetic to annual reporting and auditing where much shorter time horizons come into play.

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