

**RESPONSE TO THE FOOD STANDARDS AGENCY
CONSULTATION**

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My qualifications to comment

1. I have written more than twenty books, papers and monographs specifically on standards and quality, and another forty on food and agricultural marketing. These are not just ordinary academic papers and books, but include several which are among the one in ten thousand papers that are standard reading on university courses for the next twenty five or thirty years.
2. My books and papers are not written in an academic ivory tower: they are based on many years of research on how the markets actually work, taking into account for instance, how the quality of fruit and vegetables is adjusted to meet the standards of supermarkets and greengrocers.
3. I have worked in 35 countries around the world, both as a civil servant developing and administering food policy and as a consultant to the Food and Agricultural Organization of the United Nations, the World Bank, and the EC, advising on food policy and food marketing, including all aspects of grading and standards. And I have had major impacts on providing cheap food for many millions of consumers, while at the same time doubling or quadrupling the net farm income of tens of millions of farmers.
4. I initiated the criticisms of the theory and practice of the EC fruit and vegetable standards, and expounded them in a series of books and papers. The EC has accepted my recommendations in their

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I agree to my response being made known to the public, for instance in the Scottish Government Library and on the Scottish Government website.

entirety in their latest reforms, which has resulted in savings to the consumer estimated at *ten billion pounds a year*. (Bowbrick, 2012)

5. Much of my work for governments has been reforming markets for food and agricultural products, to make them more honest, more efficient, and more effective. I have been successful in this.

PRIORITIES

6. The proposal that the Scottish New Food Body should cover a large range of products (not defined or specified at present) with a lot of different standards (not defined or specified at present) makes it probable that it will spread its resources so thinly that it does nothing properly, creating a serious risk of a major public health problem. With limited resources it is necessary to define priorities and concentrate on them.
7. Another danger is that it will spend resources on enforcing standards that are not just low priority but are harmful. There is a large body of research going back to World War II at least showing that many of the standards imposed by governments have been harmful, increasing costs (including the costs of poor health) to consumers, increasing costs to producers and distributors, and generally making markets work inefficiently. Red-tape costs arise. Ill-conceived, badly-designed and badly-implemented standards are harmful, and because grades and standards are such a powerful marketing tool, the costs are high.
8. It is shown below that the proposed organization will have strong internal pressures to divert scarce resources to low priority issues.

INCOMPATIBLE FUNCTIONS

9. The proposed Scottish New Food Body will have functions including determining policies, deciding what resources to allocate to the different policies, laboratory services and inspection. Experience suggests that having all these functions in one body will result in decisions being made by the wrong people, often on the basis of office politics.

Inspectors

10. Inspectors have an important role to play, but it is important that they confine themselves to this role. Asking them to determine the standards or to determine priorities has been likened to asking traffic wardens to determine national transport policy.
11. In the fields of Quality Assurance, TQM, Quality Control, and food marketing, there is something called 'Inspector Quality'. This is a standard drawn up by inspectors, often a tick list of product characteristics that are easy to check. It does not, however, bear any relation to what consumers or distributors want and are willing to pay for. This means that Inspector Quality results in an inferior product being produced at a higher price, and in the market performing less efficiently.
12. There have been many examples of Inspector Quality in food standards in the United States and the EU. The EC standards for fruit and vegetables ('the crooked cucumber regulations') are a classic example, as the EC now admits. The standards were drawn up by grading inspectors at a meeting in Geneva in 1947. They were based on no theoretical or empirical research, but rather on a gut feeling. They resulted in a situation where a third of all production was thrown away on the grounds that they did not meet the cosmetic standards. This meant an added cost to EC consumers of ten billion pounds a year. In addition, the high prices meant that many people could not afford to eat their five a day, with obvious health consequences. The environmental costs of wasted resources and pesticide use were serious. The compulsory use of inappropriate grading standards reduced the efficiency of the market.
13. When economists started attacking the standards, producing empirical research, some grading inspectors started fighting to retain them, using techniques of office politics within the Ministry. It is not clear how far it was because they believed that a standards system devised in 1947 was the best possible system for a very different marketing system and very different consumers sixty years later, or how far it was because their jobs and their careers depended on it continuing. It is noted that grading inspectors in MAFF flouted Treasury guidelines on the employment of independent consultants to review these standards, with the result that reform was delayed several years (Bowbrick, 2012). Had there been meaningful separation of the powers, with inspectors not in the same part of the ministry, they would not have been able to put pressure on those supervising the policy.
14. There are therefore two dangers in having a large number of inspectors in a situation where, by sheer weight of numbers, they can put pressure on people with totally different functions. First they can press for more standards, and can press for certain designs of stands

and certain criteria (Inspector Quality). Second, they can press for the Scottish New Food Body to devote a large part of available resources on those activities that ensure the continued employment of a large number of inspectors, and of a large number of inspectors with certain skills, rather than on those activities that achieve policy objectives. And policy makers certainly have to concentrate on a few policy objectives, doing little or no enforcement of many of the standards that exist.

Determining policies for standards

15. Determining policies for standards is a high level job for specialists, who will not be employed by the Scottish New Food Body. Standards which are designed purely to facilitate trade require the services of a specialist marketing economist with special skills in the economics of quality (the economics of quality is the most difficult area of economics, as it incorporates all of normal economics and then introduces the multiple dimensions of characteristics and attributes.) The MLC also made use of research scientists in developing its standards. When objectives include better diets, for instance, other specialists, such as sociologists and nutritionists join the team.
16. It is particularly important to have outside experts to act as Devil's Advocate, to challenge policies for standards, and their implementation. A small expenditure here can save billions.

MORAL HAZARDS AND CORRUPTION

17. It is normal when introducing a new administrative system such as this to consider carefully the moral hazards that arise, and to devise systems that minimize or remove temptations for dishonesty at the institutional and personal levels. This is particularly important when the international community considers the UK public sector to be even less honest than Ireland, say (see Transparency International). It is a matter of deep concern that this is not addressed in the consultation document.
18. It is a matter of deep concern that the consultation document mentioned only two research papers in support of its idiosyncratic proposals for new enforcement sanctions such as administrative penalties. There is a vast literature on food law, another on the economics of crime, another on agricultural economics and marketing, another on constitutional law, another by consultants and practitioners in public administration, and others elsewhere. They raise issues that are not mentioned at all in the document. In the

research literature on such actions it is concluded that the 'Moral Hazard' of a badly designed system normally leads to misconduct.

19. My own work on cleaning up corrupt, inefficient, markets works partly by removing such Moral Hazards, so firms make more money by being efficient than by being corrupt. This is the mainstream approach.
20. It was fundamental to the constitution of the United Kingdom and Commonwealth countries that fines should not be levied by civil servants, but by the courts, i.e. that 'administrative penalties' are not acceptable. It remains fundamental to the constitution that any money obtained by a public body should go into the General Revenue Fund, and not be kept by that body. There are very important reasons why this should be so.
21. There are a range of civil liberties issues: the right to a fair trial for instance.
22. It has been found that Government Departments come to expect a certain revenue from 'administrative penalties', and this is put in their budget, so public servants are put under pressure to get the money somehow. Recently it has been revealed that UK civil servants have been given targets to reduce the number of people claiming benefits, so the Department is putting pressure on staff to steal money from people who are entitled to these benefits. That is to say there is institutional criminality.
23. If a Scottish New Food Body, for instance, is put under pressure to achieve a certain level of income from 'administrative penalties', staff members will be put under pressure to levy 'administrative penalties' when they are not appropriate. It is safe for the Authority to extort money in this way as the cost of appeal is high and firms may not believe that they will get a fair hearing, so it is cheaper to pay a fine than go to court. Paying a departmental fine is also far less costly to a firm than appearing in a publicly reported court and having its alleged lack of hygiene etc reported in the newspapers.
24. Similarly, a department comes under pressure from the Treasury to concentrate on those activities that raise the most income from 'administrative penalties'. These are not necessarily or even normally the activities that will achieve the primary objectives of a proper Scottish New Food Body. For example, it is likely that the maximum quantity of 'administrative penalties' will be raised by going for the 'low hanging fruit', that is by going for the easily observable, though trivial, failures in a very wide range of products and standards. And this means diverting resources from the key public health issues.

25. Again revenue can be maintained and increased by invention of new offences, new inspection charges, etc. It happens.
26. The 'administrative penalties' proposed will have little effect in improving food safety compared with prosecution. If a major food firm, or a local restaurant, is prosecuted for hygiene violations, the publicity affects their sales and profits. The reaction to the horsemeat scandal was all about publicity damaging sales. An administrative fine is relatively minor: it can be built into the cost structure.

Corruption

27. Firms in the food industry face a Moral Hazard. They can operate to the highest standards, at a cost. They can operate at lower standards, in the expectation that they will get away with it for most of the time, and the probable costs of failure are acceptable. If they are caught committing an offence, it is cheaper to pay a bribe to the inspector than to go to court or pay an administrative fine. Inevitably many will try to bribe inspectors - there is widespread dishonesty in the food sector, as the horsemeat scandal shows.
28. Most civil servants are honest unless there is serious temptation. However, experience throughout the world is that if inspectors are offered bribes, some will take the bribes, and will solicit bribes from other firms ('rent-seeking behaviour' is a term used in the literature.) This is so normal that it is taken for granted in the extensive literature on corruption and public administration.
29. This bribe becomes a normal part of their income, and part of the cost structure of the industry. The inspectors use the threat of an unjustified administrative fine as a way of extorting even more money.
30. This corruption can rapidly extend through an organization. (An example in Edinburgh recently came to light.) It has been found that it is then almost impossible to stamp it out: often new alternative organizations have to be created to replace the corrupt ones.
31. Again, the consequences are that the inspectors search for ways to make money for themselves, rather than to achieve what should be the objectives of the Scottish New Food Body. This is likely to mean concentrating on products and issues of little impact and of little relevance to the public, instead of the key issues.
32. The food industry accepts such corruption as long as they believe all players are equally affected, or where the large powerful

organizations (such as supermarket chains) are preferentially treated. It adds to their costs without damaging their market share.

33. Some countries have harsh penalties for crime, sending the prisoner to a gulag, removing a limb or execution. This does not stop crime: it appears to increase the level of bribe payable.

The Detention of Food

34. It is proposed that there are 'New primary legislative powers to enable the detention of any food, where there are reasonable ground [sic] to suspect that it does not meet the requirements of food law in relation to food standards or labelling, similar to those which already exist for foods not complying with food safety legislation.'
35. It is already possible to prosecute under such situations, with the offender facing a three year prison sentence.²
36. Giving an inspector the right to detain food puts him in a powerful position to solicit bribes. Even if he thinks his decision might be overruled by the courts, he knows that his action costs the distributor money even when it is not a perishable food. If it is perishable, the distributor loses the whole consignment. It would be naïve to think that no inspector would take advantage of this.
37. It is difficult to imagine a situation where removing improperly labelled, but perfectly safe, foods from the distribution chain would be a priority for a Scottish New Food Body which has limited resources and which bears the responsibility for ensuring that food supplied to the public is safe.

² Both lying and failing to give relevant information to customers would constitute the criminal offence of Unfair Trading throughout the EU under Directive 2005/29/EC on Unfair Commercial Practices (European Commission, 2005) and The Consumer Protection from Unfair Trading Regulations (2008)