

Responsibility and cost sharing for animal health and welfare: next steps Consultation Paper Defra, April 2008

Responsibility sharing: Possible Legal Structures

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Introduction

The purpose of this paper is to consider the appropriate legal structures capable of delivering competent responsibility and cost sharing in animal health and welfare¹. The paper is in response to the Defra Consultation Paper (2007). The Consultation Paper is part of a strategy set out by Defra in 2004 in *The Animal Health and Welfare Strategy (2004)*. The strategy addresses animal health and welfare by hoping to make “joint working between industry and government a reality”. This involves making joint decisions over the prevention, control and eradication of animal diseases under the vision of a clear understanding of the roles and responsibilities that define the relationship between industry and government.

There are a large number of organisations, stakeholders and interested parties that are relevant to animal health and welfare². Appendix 1, set out below, provides a list of the major stakeholders and organisations. As part of the partnership envisaged by Defra there are a number of objectives defined as crucial to the partnership. These include “better risk management, improved decisions, more efficient delivery and a fairer, clearly understood distribution of costs between industry and government and between businesses and industry”.

Defra’s Consultation Paper asks how best to develop the right structures and reorganisation that is capable of meeting these objectives. Currently, annual public expenditure on animal health and welfare is in excess of £400 m. Sharing responsibility and costs is linked to the need to achieve “a better balance between taxpayers and industry”. Cost sharing and engaging with industry is required, as is, the need for a closer relationship between animal health and welfare. This appears to include preventative health care as well as the setting of benchmarking standards and risk assessment strategies to ensure good quality in animal husbandry. Understandings of animal welfare are to some extent contested and this needs to be factored into future strategic thinking. The main criticisms of the current arrangements³ are that government may not always strike the correct balance in its role, this includes providing sufficient independence and expertise in regulating the industry; that the right incentives may not be provided to support and encourage individuals to make the correct choice; and that industry may be better able to assess and manage its own risks rather than through government intervention. There are perspectives that go to profit maximisation that do not always engage with the overall animal health and welfare strategy. There are also related difficulties in defining the market and ensuring that there are sufficient and adequate incentives if market forces are shown to be inadequate.

¹ The paper is in the form of a response to *Responsibility and cost sharing for animal health and welfare: next steps Consultation Paper* Defra, December, 2007. Hereinafter the Defra Consultation Paper.

² See Appendix 1 below.

³ Defra Consultation Paper para 2.15.

The Defra Discussion Paper identifies areas where there is need for improvements⁴. There is a need for improvements in risk management, the allocation of responsibilities to those best able to undertake activities and in the effective delivery of animal health and welfare. There is also a need for greater involvement of farmers and industry in the policy making process and also the need for simplification of regulatory burdens. Finally, it is clear that greater priority ought to be given to the need to find efficient and effective market solutions. How might all these issues best be addressed? This question is not easy to address as there are inevitable contradictions in perspective. In response this paper sets out the regulatory issues involved in developing a new partnership approach to animal health and welfare. This is primarily focused on the regulatory system that is best designed to meet the needs identified by Defra in its Consultation Paper. It is hoped that developing a suitable regulatory structure will engage a diverse range of interests in setting standards, monitoring behaviour and engaging in developing effective strategies for animal health and welfare. It is also important to stress that process is just as important as structure and building adequate and effective networks is important⁵. Crucial to the success of the regulatory regime will be the ability to deliver satisfactorily implementation and enforcement arrangements to deter bad practice and engage efficiently with market forces. This is one of the most important roles of any regulatory system. Developing suitable regulatory rules and tools is essential as is risk assessment and reactive strategies to encourage compliance and deter bad practice.

Designing a suitable regulatory structure

Defra's Consultation Paper invites consideration of the appropriate legal structures capable of delivering competent responsibility and cost sharing in animal health and welfare.⁶ This is timely given the recent Avian Influenza outbreak, and also the outbreaks of Foot and Mouth and Bluetongue diseases. There are also issues arising out of the eradication of BSE in cattle and in the adoption of the National Scrapie Plan. Biosecurity and compliance as well as the implementation of risk assessment strategies need to be addressed. Also relevant is the increasing need for certification and control of exports and import border controls. Sharing information and data is also increasingly important as is co-operation within the European Union (EU). Surveillance and monitoring are also important as is disease control. There are wider EU and international regulatory requirements that need to be addressed and setting a balance on proportionate responses has to be achieved. The recent experience of the Farm Assurance Schemes is illustrative of the problems of implementation strategy and the challenges of introducing new economic instruments in farming. The new *EU Animal Health Strategy 2007-13 "Prevention is better than Cure"*⁷ provides a broad strategic context in which future policy will need to be developed. This includes:

- Prioritisation of EU intervention;

⁴ Defra Consultation Paper para. 3.2.

⁵ See: Wyn Grant and Justin Greaves unpublished work on Biopesticides.

⁶ The paper is in the form of a response to *Responsibility and cost sharing for animal health and welfare: next steps Consultation Paper* Defra, December, 2007 Hereinafter the Defra Consultation Paper.

⁷ See: EU Commission, *A New Animal Health Strategy for the European Union (2007-13)* is based on the idea of that prevention is better than cure. COM 539 (2007).

- A modern and appropriate animal health framework;
- Better prevention, surveillance and crisis preparedness;
- Reliance on Science, Innovation and Research;

The Strategy goals include providing a high level of public health and food safety through minimising biological and chemical risks to humans. It also includes promoting health by preventing and or reducing the incidence of animal diseases and providing greater growth as well as cohesion and competitiveness in terms of goods and proportionate animal movements. Finally there is the goal of promoting farming practices and animal welfare that is intended to minimise the environmental impact that is in support of the overall EU policy of Sustainable Development Strategy⁸. Account must therefore be given to the general direction of the EU strategy and the mechanisms used to regulate animal health and welfare should be consistent with the EU strategy.

Defra's own analysis suggests that animal health and welfare has in the past not been well considered or adequately addressed. While a great deal of effort has been expended in creating strategy and policy, implementation and enforcement has been poorly applied. There is also a wide dispersal of resources across the different actors engaged in animal health and welfare with difficulties of evaluating and ensuring efficiency of delivery. The rise in market power of supermarkets has also been a major factor and this aspect is considered below. Taking all these matters into consideration it is essential that animal health and welfare should be considered coherently. This means taking account of the EU's animal welfare strategy and ensuring that the various regulatory parts are joined up in a workable way. Advising on and making policy should be considered in the context of implementation and enforcement. The efficiency and effectiveness of public spending is also a key part of the drive for a greater partnership with industry where sharing costs are essential. Sensitively taking account of cost analysis is one of the most important aspects of engaging with stakeholders in a responsible and careful way.

Advancing animal health and welfare regulation

The Defra Discussion Paper outlines the remit and tasks that may fall under a suitable regulatory structure. These include:

- exotic and endemic diseases;
- disease prevention, preparedness and control;
- policy and delivery in terms of animal health and welfare;
- responsibilities under the Official Feed and Food Controls Regulations;
- domestic and EU/ international commitments.

It is important to establish the parameters of any regulatory structure. Animal health and welfare ranges across a variety of farming activities and engages with the farming industry in its many guises. Large supermarkets engage in a competitive business that seeks to ensure optimum use of resources and inevitably affect animal breeding and attitudes to disease control. The high quality branding of supermarkets and their engagement with the public provides a sensitive measurement of how market share may drive up quality and also determine pricing strategy. The notion of value added in terms of quality is

⁸ See European Council in June 2006 *EU Sustainable Development Strategy* DOC 10917/06.

another feature of the supermarket culture that may help to improve standards even though there are extra costs. Supermarkets have an extensive knowledge of how to convey quality standards even at additional costs in terms of persuading and educating consumers as to their best choices. Well informed consumer choice is an important aspect of quality control.

Policy and strategic planning are essential in developing animal health and welfare that is sustainable. Regulation has to engage with the farming industry across its many sectors. There are many stakeholders from a diverse range of interested parties including supermarkets and consumers. Pressure groups and trade associations are also relevant in shaping and developing agricultural policies. Regulatory responses will have to take account of the various stakeholders.

Professionals, especially Animal Health, the successor to the State Veterinary Service, are also relevant to the success of any strategy. They provide relevant in house expertise, an understanding of the livestock sector and access to relevant informal networks. They are able to situate the knowledge thus acquired within the broader context of developing government policy. Helping to ensure the effective integration of specialist knowledge in the decision-making process is a long standing challenge, but one that Defra is better placed to address than most government departments because of the range of expertise it uses in policy-making.

There are a number of additional factors to be taken into account: The United Kingdom is regarded as a single epidemiological unit for the purpose of animal disease prevention and control. This interacts with the various local controls set within the devolved system of government for Wales, Scotland and Northern Ireland. The regulatory structure should be capable of adapting to the diversity of issues that arise from different animal sectors. The impact of animal health and welfare has significance in terms of the economy, the environment and the public interest. There also has to be established a high degree of trust between ministers and the regulatory body in terms of setting standards, achieving efficiency and advancing the need for animal health and welfare. The regulation of animal health and welfare works under acute pressure from market forces in the food industry. Consumer choices have major implications for public health. Large scale purchasers and international markets that are in competition may leave the main actors with disincentives to co-operate with regulatory arrangements that may be regarded as anti-competitive. Equally it is possible that self-regulation through brand reputation may drive up standards and require little regulatory intervention. Nevertheless, it has to be accepted that in considering standards that the market is not homogeneous and may require sensitive regulatory oversight. Self-regulation may also establish mechanisms for enforcement and information communication may establish standards for monitoring quality⁹.

Adopting the appropriate regulatory framework

Defra has considered how a new regulatory body must achieve a number of aims and objectives including:

- it should be fit for purpose;
- it should be cost effective;

⁹ J. Black, "Constitutionalising Self-regulation" (1996) 59 MLR 24-56. M. Moran, "Not Steering but Drowning: Policy Catastrophes and the Regulatory State" (2001) 72 Political Quarterly 414-27.

- it should be sustainable;
- it should offer value for money;

The question about whether or not to adopt a regulatory structure that differs from the current arrangements is a critical one. The case in favour of a regulatory body needs to be fully reasoned and supported by analysis. Defra's existing arrangements are departmental led with stakeholders, including the private and public sectors working together through informal working groups, strategy groups and individual consultation arrangements. Essentially Defra hopes to combine its role as a government department developing and implementing policy with its role as a "broker" between business and government. The fact that this has proved difficult to achieve in terms of clear goals and objectives makes regulation and a regulatory body a logical next step. Traditionally the adoption of a regulatory body is seen as a "bipartite process involving government and business with the former acting in the role of regulator and the latter as regulate"¹⁰. There is much to be said in favour of the simplicity of that approach. There are many different ways in which regulation may be advanced. In many instances involving the utility sector, the role of regulation is focused on ensuring competition in the sector. The recent report by the Committee of the House of Lords on *UK Economic Regulators*¹¹ identified the different forms of regulation that applied to the public utilities. In respect of energy, water and telecommunications the report concluded that the duties of the regulators was clearly enough defined. The original idea of regulating monopolies promoting competition and setting prices had been to some extent achieved. There were concerns that water regulation was inadequate as it had failed to create sufficient competition within the sector. Significantly in terms of designing good regulatory systems the Report concluded:

Regulators were most likely to be effective when they are working towards limited and relatively narrowly defined duties and objectives. Where a regulator was handed an unclear remit, comprised of broad and imprecise duties, it would necessarily have to exercise broad discretion over how it handled that remit and, in a worse case scenario, objectives which Parliament intended to be central to that regulator's work could fall by the wayside¹².

It is also clear from the House of Lords perspective that in the life cycle of the regulatory experience, there are moments where regulators' role may be changed and subjected to different pressures than was the case in the early stages of regulation. The Report argued that it was important that there should not be a continuous drive on regulators to expand their remit. In the case of public utilities there was an expectation that the role of the regulator would be reduced and the role of regulators in developing competition was an important one at the early stages of achieving a suitable market. The House of Lords Committee concluded that even in respect of promoting competition it was not always desirable to have a regulator. One argument is that there should not be separate utility regulators, particularly where there is no demonstrable natural monopoly, and the tasks undertaken should be subsumed in the Competition Commission. However, it was accepted that the mechanisms available to regulators to achieve adequate competition might involve one or more of the following:

¹⁰ See: Neil Gunningham, "Regulating biotechnology: lessons from environmental policy" in H.Somsen, ed., *The Regulatory Challenge of Biotechnology*, Edward Elgar, 2007, pp.5.

¹¹ See: HL Report of the House of Lords Select Committee on Regulators 2006-7.

¹² *Ibid.*, para 3.7

Regulators promote competition in a range of different ways. These include unbundling potentially competitive elements in a market from natural monopoly networks, ensuring equal access to these monopoly networks for all competitors, promoting switching, enforcing licence conditions and competition law, and withdrawing burdensome regulation where possible¹³.

How does the experience of utility regulation fit the animal health and welfare sector? It is accepted that the utility sector is a special case, specifically in terms of competition policy and in the regulating of a pre-existing monopoly.

The primary focus of any regulatory body concerned with animal health and welfare is to ensure that the various stakeholders work more effectively **together** and that there is a clearer and more transparent understanding of costs and benefits of animal health and welfare. Co-ordination is therefore essential as is the cooperation between the competing interest groups and stakeholders. There are opportunities for market competition in respect of the EU legal framework for trade in live animals and animal products with the aim of establishing a single market in animals and animal products. This is consistent with achieving public health and food safety as part of the rationale to promote animal health. The economic consequences of disease and its control contribute to the need to achieve a harmonised system of animal health measures, disease surveillance, diagnosis and control. Setting targets and monitoring standards are therefore envisaged as essential prerequisite for the successful functioning of the market economy. Without checks and balances, the market economy can destroy itself as recent events in financial services have shown. Monitoring and enforcement strategies are also a key part of any regulatory activities. There is a need for Defra as a public body to provide resources, communication and expertise that engages with the private sector. In summary the regulatory activities that address the Government's animal health and welfare strategy include the following list:

Setting clear roles and responsibilities; achieving partnership between stakeholders and ensuring that prevention is integral to the benefits of animal health and welfare also includes ensuring effective delivery and enforcement of animal health and welfare standards.

This means having to select the most suitable regulatory form that provides for the furthering of policy objectives but also the means to achieve them.

Animal health and welfare provides specific challenges that need to be addressed. The farming industry comprises large and small operators. There are professional services such as Animal Health (formerly the state veterinary services) and private vets. There are large supermarkets and the range of regulation must take account of their role and the opportunity they may provide to engage with animal health and welfare may defray costs from the public to the¹⁴ private sector. There is also a strong culture of subsidy and preferential treatment in terms of "ring fencing" agriculture. This has its roots in the second world war, but this agricultural "exceptionalism" has been eroded as new policy emphases have taken hold. Taken together it is essential that any regulatory preference should engage with the wide range of specialisms that cover the agricultural sector. This includes areas such as disease control, food quality and environmental issues already mentioned above..

¹³ *Ibid.*, para 7.9

¹⁴ *Op. cit.*, Gunningham, p.6

Account also needs to be taken of the EU's Animal Health Strategy for the European Union (2007-13) four goals that may be summarised thus:

- to ensure a high level of public health and food safety by minimising the incidence of biological and chemical risks to humans;
- to promote animal health by preventing/reducing the incidence of animal diseases and in this way to support farming and the rural economy;
- to improve economic growth/cohesion/competitiveness assuring free circulation of goods and proportionate animal movements;
- to promote farming practices and animal welfare which prevent animal health related threats and minimise environmental impacts in support of the EU Sustainable Development Strategy.

Adopting the four pillars engages with risk assessment strategies, and setting priorities that are cost benefit related but also embrace the precautionary principle. There is the need for integrating sound science into the work of stakeholders and also setting the amount of resources needed to address identifiable risks. There is also a clear agenda set for replacing various “linked and interrelated policy actions” by a single policy framework. This provides a much clearer need for standard setting that meets the needs of well defined and integrated common principles for animal health and welfare. Incentives as well as a mixture of public/private funding in line with EU commitments and the prevention of the distortion of competition in the sector are seen as important drivers in the development of EU strategy. The EU Commission envisage that high standards of animal health and welfare will act as an economic driver in the export market and in the growth of jobs and opportunities. Although farmer organisations would point to the absence of a level playing field when imported products are not subject to similar or even much more limited animal welfare standards. Bio-security measures as well as crisis management are also regarded as supportive to the goals set by the EU. Creating a suitable and sustainable regulatory structure will have to take account of the four pillars of the EU strategy outlined above.

Regulatory Theory

Regulatory choices may flow from defining the appropriate type of regulation by the adoption of some form of “ smart regulation” strategy, a term that describes the approach to regulation that seeks to engage with a variety of actors and policy making strategies. Gunningham explains how “ smart regulation” means involving government capabilities in “ harnessing the capacities of markets, civil society and other institutions to accomplish its policy goals more effectively with greater social acceptance and at less cost to the state”.¹⁵

Gunningham also argues that:

...the principles of smart regulation suggest the use of a broad range of policy instruments, which might include information or education, voluntarism, self- and co-regulation, market based instruments and direct regulation¹⁶.

¹⁵ *Ibid.*, p.6

¹⁶ *Ibid.*, See: N.A. Gunningham and P. Grabosky, *Smart Regulation: Designing Environmental Policy* Oxford: Oxford University Press, 1998.

Smart regulation may therefore seek to engage with regulatory issues through a problem based learning appraisal. A broad and inclusive range of actors are brought inside the regulatory system and this includes public participation on the basis of transparency in the decision-making process.

There are some difficulties in ensuring that “smart regulation” is appropriate for the regulation of animal health and safety. There may not be sufficient consensus between government and the industry and stakeholders over what is desirable and whether policy making is the appropriate choice for the problem defined by regulating animal health and welfare. The extent of consensus is variable across the various animal diseases. There may be contradictory versions of the same analysis and there may be public distrust over the entire regulatory framework as a result of ineffectiveness. While smart regulation may engage with all the key actors this may not result in a satisfactory outcome.

The experience of complex regulation and regulatory systems provides useful lessons. Rigid rule setting may not provide the most suitable strategies for animal health and welfare. Compliance and standard setting require a variety of solutions and the main reason why Defra is advancing the need for a regulatory body is the fact that it is difficult to engage with industry and retain the role of a government department¹⁷.

Gunningham makes some useful conclusions when considering the best way forward in selecting the most suitable regulatory structure:

In terms of meta-regulation, the perceived solution is to establish regulatory structures that strengthen the capability of individual institutions or enterprises for internal reflection and self-control¹⁸

How should the selection of the most appropriate regulatory system take place? Baldwin and Black argue that particular attention should be given to the problems of regulatory enforcement. Compliance and regulatory regimes that engage with compliance strategies are in need of continual adjustments and they admit that while smart regulation “is more holistic than responsive regulation” it suffers from the difficulties of escalating problems and a myriad of detail that may not always ensure consistency, fairness and accountability¹⁹. They argue that risk based regulation has become the norm in the United Kingdom and suggest that really responsive regulation manages to engage regulatory problems with a framework that is both flexible and sufficiently robust to address the needs of enforcement and compliance. Placing emphasis on enforcement and compliance gives really responsive regulation the appropriate framework for evaluation. This gives the regulatory the framework regime that is appropriate when addressing different strategies for assessing and monitoring as well as re-assessing the needs of society.

Reflexive decision –making is a crucial part of the regulatory system with various regulatory strategies dependant on the effectiveness of the regulatory system. This may also encourage best practice²⁰.

¹⁷ See: R. Baldwin and M. Cave, *Understanding Regulation* Oxford: Oxford University Press, 1999.

¹⁸ *Ibid.*, p15. Also see: R. Baldwin, “The New Punitive Regulation” (2004) MLR 67(3) pps. 351-83.

¹⁹ R. Baldwin and J. Black, “Really Responsive Regulation” (2008) 71(1) MLR 59-94.

²⁰ See: C. Scott, “Regulation in the Age of Governance: The Rise of the Post-Regulatory State” in Jacint Jordana and David Levi-Faur (eds.) *The Politics of Regulation* Cheltenham and New York, Edward Elgar, 2004. pps. 145-174.

The Defra Discussion Paper envisages two main possibilities: the creation of a statutory Advisory Non Departmental Public Body (NDPB) or the creation of an Executive NDPB or Non Ministerial Department (NMD).

1. The creation of a statutory *Advisory Non Departmental Public Body (NDPB)*; The idea of an advisory body provides advice on aspects of animal health and welfare to all the stakeholders. The example of such a body is the *Committee on Climate Change*. This is part of the UK emissions trading scheme. The Emissions Trading Authority was set up as a division within Defra with the intention that it would come within an independent statutory body. Thus it has a clearly defined remit and engages in the operation of the trading scheme applied as an economic instrument.
2. An alternative would be the creation of an *Executive NDPB or Non Ministerial Department (NMD)*;

This option involves building on the existing structure within Defra but “hiving off” to an independent regulatory body with its own enforcement powers the role and function necessary for developing animal health and welfare responsibilities. An example of such body is the Environment Agency. The Environment Agency is an independent corporate body with clear statutory powers and responsibilities under the section 1 of the Environment Act 1995. It has also overlapping jurisdiction as under section 38 it may be devolved Ministerial functions. The Environment Agency has responsibilities for waste management (including a National Waste Strategy), historically contaminated land, water resource management and pollution control. Its width of remit may make it a useful model for animal health and welfare.

The Food Standards Agency (FSA) is an interesting example of a non- ministerial department (NMDs). There are many parallels with animal health and safety. Recommendations and amendments in the law created the need for Food Safety to be undertaken by an external body to the sponsoring department. The development of the FSA came about from various influences. Professor Philip James was commissioned to look at food safety by Tony Blair, then opposition leader and his report proposed an agency modelled on the Health and Safety Commission²¹. The model of the Health and Safety Commission was dropped during the course of discussion. Building on the existing Food Safety Act 1990, the Government²² added the Food Standards Act 1999 that provided a comprehensive set of aims, objectives and targets. The 1999 Act came from a White Paper, *The Food Standards Agency: A Force for Change*²³. The background and history of the creation of the FSA is instructive²⁴ with intensive lobbying and bartering over the role of the FSA and how it might operate. The FSA has many of the enforcement and monitoring powers that provide a comprehensive view of food safety that includes animal feedstuffs as well as cooperation with the various devolved administrations in Scotland, Wales and

²¹ See P. James, *Food Standards Agency: an Interim Proposal* unpublished manuscript, 1997. The structure and functions of the FSA were outlined as part of the recommendations from the Aberdeen based Rowett Research Institute from research undertaken by Professor Philip James commissioned by the Rowntree Trust.

²² The enquiry undertaken by Professor Hugh Pennington in April 1997²² was also influential.

²³ Cm 3830 (27th January 1999). And also a draft bill in the Food Standards Agency: Consultation on Draft Legislation Cm.4249.

²⁴ There is an analysis of the setting up of the FSA in Wyn Grant, *Pressure Groups and British Politics* London: Macmillan, 2000 p.70.

Northern Ireland. There is an interesting model of stakeholder involvement in the provision of advice on food policy to ministers. Provision is also made for the inclusion of advisory committees that work with the different regions and also the devolved administrations. The powers, duties and responsibilities of the different economic regulators are set out in Appendix II(below), containing a *Summary of Regulators' Statutory Duties*.

Implementation strategy: timing and associated measures

One of the benefits of creating a 'regulatory state'²⁵, i.e., a system of governance in which regulation is a core mode of action, is that the fiscal implications are less than for other forms of government action. This is because the costs of regulation are shared with the regulated through a variety of formats. For example, in pesticides regulation, the costs of approval work are met through charging fees to those seeking registration and placing a levy on successful products. The underlying principle is 'the polluter pays' which can seem pejorative but reflects the need to provide mechanisms to prevent free riding so that those who follow good practice are not adversely affected by producers whose standards are less high. The actions of such producers can often adversely affect the reputation of an industry. In the case of livestock disease, transmission of the disease is a core issue.

The livestock industry in the UK currently faces challenging conditions. With the introduction of the Single Farm Payment the way in which subsidies are paid has changed and some livestock producers have been disadvantaged. Input costs have been increasing rapidly, particularly animal feed and fuel. There is never a good time to introduce necessary policy changes, and putting the proposals on hold is not an option as ministers have made clear, but the implementation of these measures will need sensitivity about their timing and introduction.

In particular:

- There is a need for measures that build confidence in the partnership between government and industry. There could be a window of opportunity to create a new relationship between government and the industry which would facilitate more effective strategies to deal with animal health and welfare issues.
- Sharing of costs should be balanced by enhanced opportunities for stakeholders in the livestock industry to participate in decision-making. In other words, new governance structures are required.
- There needs to be a through review of the Defra animal health budget in particular in terms of the development of a more coherent strategy in relation to different diseases.

²⁵ M. Moran, *The British Regulatory State* Oxford: Oxford University Press, 2003.

Conclusions

In considering the design and remit of a suitable regulatory structure account must be taken of defining its role and clarifying its objectives.

A good regulatory system must set high standards but also must be designed to secure the particular objectives to be achieved. In particular the regulatory structure ought to be able to detect undesirable behaviour, encourage good practice and develop adequate responses including enforcement tools and strategies that engage with the various stakeholders. The interests of the public, including the interests of animals, must be addressed in terms of animal health and welfare policy that protects human health and sets standards for animal health and welfare. It may be necessary for an animal perspective to be part of the regulator's role. The robustness of the design has to take account of differing tensions and at the same time engage in a need for flexibility.

It is best to begin with a list of aims and objectives that should be addressed in drawing up a suitable regulatory arrangement. Animal health and welfare has in the past not been well considered or adequately addressed. The economic dimension has made animal health a high priority but this may not be as clearly evident when it comes to welfare. A great deal of effort has been expended in creating strategy and policy while implementation and enforcement is badly addressed. It is essential that animal health and welfare should be considered together. Advising on and making policy should be considered in the context of implementation and enforcement. The regulatory literature is considerable but one principle that emerges is that a suitable regulatory structure should embrace strategic decision-making that is linked to an adequate system of resource management, information dissemination and the capacity to work with a wide range of stakeholders. This sets the goals and objectives in a highly idealised way and in many instances regulation may not meet these ideals. There is also the need for the creation of incentive mechanisms and an enforcement capability. In the case of animal health and welfare, public and private groups must be accommodated. In order to engage with the public interest priority must be given to achievable aims that provide legitimacy and respect for the regulatory system. The regulatory structure should endeavour to achieve adequate enforcement strategies that fall within existing resources. This may be achieved through the following approaches involving:

- setting regulatory objectives that are clear and realisable;
- providing adequate enforcement functions that are well co-ordinated;
- providing a means for testing and evaluating the effectiveness of regulation and reviewing strategies for improvement;
- monitoring compliance and enforcement and adjudicating success or failure;
- providing a coherent and responsive system of regulation that commands the support of the public and stakeholders;
- providing an adequate reporting systems and transparency in decision making.

The above list needs to be placed in the context of how regulation is currently perceived by Government and regarded by various stakeholders and commentators. The Hampton Review advocated the reduction in "red tape" and the end to over excessive rules. The Better Regulation Task Force, now the Better Regulation Council, has encouraged the regular implementation of

performance reviews including the use of Post Implementation Reviews to establish whether regulatory structures are adequate, have been properly implemented and have the effect intended. In addition there are guidance issued to ensure that regulatory impact assessment is appropriately assessed²⁶. The National Audit Office with independent audit functions and the statutory authority to carry out value for money examinations, has been highly critical of Departmental led systems of regulation that fail to undertake adequate systems of detection, surveillance and monitoring²⁷. There is an increased sensitivity about the effectiveness of regulation and regulatory bodies in the post-privatisation era of utility regulation²⁸. There is a need to consider how regulation takes account of risk assessment and analyses the relevant information to make judgements that inform policy makers and is responsive to stakeholders needs. This gives rise to the aspiration for fairness, consistency, accountability and is co-ordinated. There are many examples where this is required²⁹. These aspirations are in line with the Government's White Paper on *Modernizing Government*³⁰ that insisted on three aims for improving standards of public service namely that policy making is more joined up and strategic; that public service users, not providers are the focus by matching services more closely to people's lives and that delivering public services that are highly quality and efficient. Co-ordination and strategic thinking are an intrinsic part of how good regulation should work.

Appendix 1 The various bodies and stakeholders that are relevant to Animal Health and Welfare Strategy (AHWS) are:

Stakeholders;

Owners and users of animals;

²⁶ Better Regulation Executive, *Impact Assessment Guidance* Cabinet Office: London, 2007.

²⁷ National Audit Office (NAO) *Fisheries Enforcement in England* HC 563 Session 202-3 NAO Report, London: Stationery Office, 2003.

²⁸ B. Morgan and D. Yeung, *An Introduction to Law and Regulation* Oxford: OUP, 2007

²⁹ J. Black, "Enrolling Actors in Regulatory Processes: Examples from UK Financial Service Regulation" [2003] PL 62. Also see: NAO, *The Financial Services Authority: A Review under s.12 of the Financial Services and Markets Act 2000* London: Stationery Office, 2007.

³⁰ Cm 4310 (1999).

There is a general duty of care on the owners and users of animals and this is enforceable in practice and in law.

Consumers and users of animal products;

Consumer choice and public interest as well as media attention applies to this group.

Private Vets and Veterinary Practices

Animal Health (formerly The State Veterinary Service)

Central Government (Defra);

Aims are to develop policies and co-ordinate a national approach. Charged with EU responsibilities, policy making and related functions

Local Authorities;

Enforcement powers to ensure that legislation is effectively enforced and provides information and community support for animal welfare that seeks to establish high standards.

England Implementation Group (EIG)

An independent advisory group charged with the responsibility of monitoring the operation of AHWS. It also is involved in monitoring the Animal Welfare Delivery Strategy (AWDS). There are equivalent activities in Scotland and Wales. There is a separate jurisdiction for Northern Ireland.

EIG is most likely to work through a sub group to ensure implementation of the AWDS.

There are 13 members of the group and a secretary, the latter is provided by Defra and it meets at least six times per year. EIG intends to:

Publish an Implementation Plan and monitor the delivery of the AWDS;

Give advice to CVO and Ministers;

Investigate topics that fall within the scope of the AWDS

Animal Health

An executive agency to ensure that farmed animals in GB are healthy, disease free and well cared for.

Government Veterinary Surgeons (GVS) and Animal Health (formerly the State Veterinary Service)

Government vets work with government departments to ensure that the Government Veterinary Service delivers high quality information and advice. There is a Chief Veterinary Officer who acts as an advisory capacity to

government. There is a GVS-Steering Group that provides input into the role of the CVS. This includes various agencies as follows:

Central Science Laboratory;
Centre for Environment, Fisheries and Aquaculture Science (CEFAS);
Department for Environment, Food and Rural Affairs (Defra);
Department for International Development (DfID)
Food Standards Agency (FSA)
Home Office (HO)
Meat Hygiene Service (MHS)
Ministry of Defence (MoD)
Scottish Executive (SEERAD)
State Veterinary Service (SVS), now Animal Health from 1st April 2005.
Veterinary Laboratories Agency (VLA)
Veterinary Medicine Directorate (VMD)
Welsh Assembly Government (WAG)
Department for Agriculture and Rural Development for Northern Ireland (DARDNI).
Meat and Livestock Commission

There is a Working Group on Vets and Veterinary Services.

UK Responsibility and Cost Sharing Consultative Forum

Arising out of the England only Joint Industry/Government Working Group (JIGWIG) there is a UK consultation forum:

This forum brings together representatives of the following:

Defra
SEERAD Scottish Executive Environment and Rural Affairs Department
DARD Department of Agriculture and Rural Development
WAG Welsh Assembly Government

NFU Includes England, Wales and Scotland representatives
CLA Country Land and Business Association
FUW Farmers Union of Wales
UFU Ulster Farmers' Union
NIAPA Northern Ireland Agricultural Producers Association
SRPBA Scottish Rural Property and Business Association

Other stakeholders include

Intensive sectors pigs and poultry
Extensive sectors cattle and sheep
Dairy
Vets
Consumers

Markets/ auctioneers
Finance banks etc
Food processors including abattoirs
Retailers including large supermarkets.
Pharmaceutical companies engaged in providing veterinary products

Animal Welfare Movement:
RSPCA
Badger Trust

Enforcement Powers

Local Authorities: this comes under Local Authorities Co-ordinators of Regulatory Services (LACORS).

Common informers ie members of the public
Defra

Animal Health mainly for farmed animals

The Police

RSPCA

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Appendix II

Summary of Regulators' Statutory Duties

Statutory Duties	Ofcom	Ofwat	ORR	Ofgem	CAA	Postcomm	FSA finance	TPR	OFT	FSA Food	AHW ³¹
Protect interests of consumers	√	√	√	√	√	√	√	√	√	√	√
Vulnerable groups	√	√	√	√		√				√	√
Promote Competition	√	√	√	√		√	√	√	√		√
Market innovation	√						√				√
Market investment	√		√		√					√	
Maintain security of supply				√							
Competition of the UK							√				√
Good regulatory practice	√			√						√	√
Develop self-regulation	√									√	
Public awareness	√						√	√	√	√	√
Impact assessment	√			√			√				
Advice to the government					√	√			√	√	√
Protect interest of citizens	√									√	√

³¹ Animal Health and Welfare Proposed Regulatory Agency.