**History of Food Law: The 19th Century**

**30 June 2013**

**Food Law:**

[The 19th Century](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century)

It helps to understand at the outset the aims and objectives of food law, which have remained fairly consistent over time, and how we came to have the system that today regulates the production, distribution and sale of food.

Since time immemorial food has been exploited and adulterated, but early attempts at legislative control, which started in the thirteenth century, were ineffective in protecting the consumer.

… to look back nostalgically and assume, for example, that the bread which formed the staff of life was home-baked, or, if bought, was wholesome and nutritional, is romantic nonsense. By the 1840s home baked bread had died out among the rural poor; in the small tenements of the urban masses, unequipped as these were with ovens, it never existed. In 1872 Dr. Hassall, the pioneer investigator into food adulteration and the principal reformer in this vital area of health, demonstrated that half of the bread he examined had considerable quantities of alum. Alum, while not itself poisonous, by inhibiting the digestion could lower the nutritional value of other foods.

The list of poisonous additives reads like the stock list of some mad and malevolent chemist: strychnine, cocculus inculus (both are hallucinogens) and copperas in rum and beer; sulphate of copper in pickles, bottled fruit, wine, and preserves; lead chromate in mustard and snuff; sulphate of iron in tea and beer; ferric ferrocynanide, lime sulphate, and turmeric in chinese tea; copper carbonate, lead sulphate, bisulphate of mercury, and Venetian lead in sugar confectionery and chocolate; lead in wine and cider; all were extensively used and were accumulative in effect, resulting, over a long period, in chronic gastritis, and, indeed, often fatal food poisoning. Red lead gave Gloucester cheese its 'healthy' red hue, flour and arrowroot a rich thickness to cream, and tea leaves were 'dried, dyed, and recycled again.'

As late as 1877 the Local Government Board found that approximately a quarter of the milk it examined contained excessive water, or chalk, and ten per cent of all the butter, over eight per cent of the bread, and 50 per cent of the gin had copper in them to heighten the color.[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote1sym)

So it is not in the least surprising that at the start of the nineteenth century the adulteration of food was common place but throughout the early part of the century the systematic adulteration of food took hold:

Food adulteration is essentially a phenomenon of urban life, and its historical origins cannot be traced back earlier than the city states of the classical world. As soon as there emerged a consuming public, distinct and separated from the producers of food, opportunities for organised commercial fraud arose.[2](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote2sym)

The loss of connection between people and the source of their food is not of recent origin as we these days tend to think. The result for early Victorians was that there was hardly a food to be had that was not in some way adulterated. Bread, wine, beer, spirits, olive oil,[3](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote3sym) cheese, pickles, anchovies, mustard, confectionery, and the list goes on, were all found to be adulterated often in ways having a serious adverse impact on health. The use, for example, of copper was widespread and anchovies were dyed red with lead oxide. A 12 year study published in 1848 concerning the adulteration of food found not a single loaf of bread subjected to analysis that was unadulterated.[4](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote4sym) There was also a good chance that what was not adulterated was quite likely counterfeit, in particular tea, coffee and pepper.

Occasionally an adulterant may have been relatively harmless; the use of potatoes in bread reduces the nutritional value but is otherwise a case in point. This was all driven by the profit motive, either to sell a premium product with a lower cost of production, or a lower cost product in the wider market provided by a growing working class that could not afford high prices.

It is generally accepted that 1820 marked a turning point in progress towards the statutory regulation of the quality of food offered for sale. This was the year in which Frederick Accum, a celebrated German chemist resident in London at the time, published his[*Treatise on Adulterations of Food, and Culinary Poisons*](http://www.gutenberg.org/files/19031/19031-h/19031-h.htm).[5](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote5sym) Accum catalogued the adulteration of virtually all food and drink on sale. The fact that food, particularly in the cities, was commonly adulterated with a wide range of substances, some at best benign while others were deadly poisonous, came as no real surprise. Bee Wilson, who chronicled 200 years of food swindles, put her finger on the reason why Accum’s *Treatise*made such an impact:

Accum’s genius was to make readers see that ‘swallowing swindling’ really was ‘too serious for a joke’. That he managed this was due in part to the times in which he lived – times when the possibilities for adulterating food multiplied as science and industry grew – and in part to his own outstanding talents as a publicist. Accum was the perfect commentator on this new rash of skulduggery, since he was a man whose passion was the science and industry of modern Britain, who nevertheless saw that science and industry could be used to do damaging things to food.[6](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote6sym)

The rise of the nineteenth century chemist made the detection of the adulteration of food a practical possibility and the clear demonstration that the presence of adulterants was widespread in food gave rise to pressure for legislative action. In 1858, in what became known as the ‘Bradford lozenge scandal’ 200 people were poisoned and 20 died after swallowing lozenges which the manufacturer intended to adulterate with plaster of Paris but mistakenly used arsenic.[7](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote7sym) The resulting public uproar provided the impetus needed for Parliament to legislate.

The objectives of food law became two-fold: protecting the health of the consumer and the protection of honest traders.

Early attempts in 1860 and 1872 proved not very effective. It became clear, however, to the Government of the day that Britain’s growing reputation for adulterated food and being a nation of swindlers threatened its export market.[8](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote8sym) This provided the further impetus needed for more significant legislative progress. The [Sale of Food and Drugs Act 1875](http://www.legislation.gov.uk/ukpga/1875/63/contents/enacted)[9](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote9sym) followed which established important principles and became the foundation of modern food law. The meaning of ‘food’ was defined:

The term "food" shall include every article used for food or drink by man, other than drugs or water.[10](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote10sym)

The 1875 Act further provided that:

No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser.[11](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote11sym)

The definition of ‘food’ and other provisions of the 1875 Act were not without their problems, but, importantly, offences under the 1875 Act were of strict liability, meaning the proof of a guilty knowledge or intent was not required to secure a conviction. Attempts were made in amending legislation shortly afterwards to address some of the early problems encountered.[12](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote12sym)

While the Sale of Food and Drugs Act 1875 sought to address the chemical contamination of food, the Public Health Act 1875, passed in the same year, introduced basic controls concerned with the biological contamination of food, including the inspection, seizure and destruction of unfit food.[13](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote13sym)

[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote1anc) Anthony S. Wohl, *Endangered Lives: Public Health in Victorian Britain*, Harvard UP, 1983[2](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century" \l "sdfootnote2anc) John Burnett, *Plenty and Want: A Social History of Food in England from 1815 to the Present Day*, 3rd edition, Routledge, 1989, p86 [3](http://www.artisanfoodlaw.co.uk/history-of-food-law/19th-century/history-of-food-law-19th-century#sdfootnote3anc) The adulteration of olive oil has proved to be intractable to this day as clearly documented by Tom Mueller, *Extra Virginity: The Sublime and Scandalous World of Olive Oil*, Atlantic Books, 2012

**History of Food Law: The 20th Century**

**7 September 2013**

**Food Law:**

[The 20th Century](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century)

Throughout the twentieth century numerous consolidating and other statutes often dealing with specific foods were passed. The development of science meant it was to play a bigger role in the food industry. The focus began to shift from adulterants to the use of additives, preservers and improvers.

At the same time advances in the science of bacteriology led to the identification of a number of organisms responsible for outbreaks of food poisoning. This was accompanied by the development of a parallel strand of public health legislation. The Public Health (Regulations as to Food) Act 1907 paved the way for public health regulations.

There were […] Orders made under the Milk and Dairies (Amendment) Act 1922 which was directed at the prevention of milk-borne tuberculosis, by empowering Local Authorities to issue licences to milk producers to sell milk designated as certified, pasteurized, tuberculin tested etc. and laying down the conditions under which these licences could be granted. These Orders provided the first example of a direct application of specific bacteriology to food legislation. Other Orders relate to the sanitation of dairies and equipment used in the handling, conveyance and distribution of milk.[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote1sym)

The Food and Drugs Act 1938 was the first legislation to combine food specific legislation with public health measures. The 1938 Act made food poisoning notifiable across the country, introduced penalties for false or misleading labels and advertisements, and the power to make regulations governing the composition and labelling of foods.

The Food and Drugs Act 1955 consolidated developments since 1938 and remained in force until repealed by the Food Act 1984, which made no substantial new change.

Meanwhile, the United Kingdom had become a member of the European Economic Community (EEC) in 1973. The [European Communities Act 1972](http://www.legislation.gov.uk/ukpga/1972/68/contents) both incorporated EEC food law into UK domestic law and gave greater powers to ministers to make regulations[2](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote2sym) to ensure compliance with EEC law.

A number of landmark cases brought before the European Court of Justice about this time involved foodstuffs and a fuller account is given in the [Introduction to European Union Law](file:///C:\Users\Gerry\Documents\Artisan%20Food%20Law\Legal%20Content\B1%20History%20of%20Food%20Law\xxxxxxxxxxxxxxxxx).

The Government had indicated that a review of food law would take place even before the Food Act 1984 Act was passed. The Government’s view was that the same food legislation should cover England, Scotland and Wales. Furthermore, the then legislative framework was inadequate to cope with modern food manufacturing methods. A consultation document[3](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote3sym) and a White Paper[4](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote4sym) followed and the [Food Safety Act 1990](http://www.legislation.gov.uk/ukpga/1990/16/contents) was the result. An attempt was made during the passage of the legislation to establish a ‘Food Safety Agency’ similar to the Health and Safety Commission but this was rejected by the Government.

The 1990 Act applied to England, Scotland and Wales (most also applies to Northern Ireland[5](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote5sym)). The 1990 Act added to core food safety provisions new controls over food businesses and premises, emergencies and new powers to regulate food sources, novel foods, genetically modified food and food contact materials. The introduction of the 1990 Act was overseen by the Implementation Advisory Committee with representation from various relevant professional bodies. The Committee’s main task was to prepare codes of practice to be issued under [section 40 of the 1990 Act](http://www.legislation.gov.uk/ukpga/1990/16/section/40) and take EU legislation into account. The emphasis was on self-regulation and the 1990 Act created a [defence of due diligence](http://www.legislation.gov.uk/ukpga/1990/16/section/21)[6](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote6sym) making it in the interests of food manufacturers to have appropriate systems in place to bring to attention any problems in the production process.

The 1990s was a decade dominated by food scares, in particular the recognition in 1996 of the transmission, by means of the consumption of contaminated beef, of Bovine Spongiform Encephalopathy (BSE) to humans as variant Creutzfeld-Jakob Disease (vCJD), a fatal and incurable brain infection.

In the EU food law had been built upon the framework for the Common Agricultural Policy and measures adopted in the development of the internal market. The advent of the Maastricht Treaty in 1992 which added new treaty provisions concerning the protection of human health,[7](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote7sym) consumer protection[8](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote8sym) and the environment[9](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote9sym) against a background of major food scares provided strong impetus for the developments which were to take place at both a national and EU level.

In 1997, towards the end of a decade of crises in the food system, the[James Report](http://archive.food.gov.uk/maff/archive/food/james/cont.htm)[10](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote10sym) identified three main weaknesses in the administrative structure regulating the food system:

1. The conflict faced by the Minister for Agriculture, Fisheries and Food is such that a new body which separates the role of protecting public health and safety from that of promoting business was required.
2. The fragmentation and lack of co-ordination between the different bodies involved in food policy and in the monitoring and control of food safety.
3. The enforcement of food law is uneven throughout the UK. Regulations under the Food Safety Act 1990 are enforced to varying standards from authority to authority.

The outcome was the [Food Standards Act 1999](http://www.legislation.gov.uk/ukpga/1999/28/contents) which gave rise to the Food Standards Agency as the UK body with primary responsibility for food safety. Ministerial responsibility rests with the Secretary of State for Health and the devolved administrations in Scotland, Wales and Northern Ireland.

Meanwhile a Commission Green Paper[11](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote11sym) was published in 1997 with stated aims which included launching a public debate on food legislation. Following the BSE food scare EU rules on the traceability of products of bovine origin were introduced, similar rules for other animal products were then under consideration and traceability was to gain greater prominence in EU food law.

[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/20th-century/history-of-food-law-20th-century#sdfootnote1anc) Henry Yellowlees, ‘Food Safety: A Century of Progress’ in MAFF,*Food Quality and Safety: A Century of Progress*, HMSO, 1976. p63

**History of Food Law: The 21st Century**

**20 February 2013**

**Food Law:**

[The 21st Century](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century)

The food scares of the 1990s, none more so than the outbreak of Bovine Spongiform Encephalopathy (BSE) in beef, highlighted the Commission’s inability to respond quickly and effectively in the emerging crisis. BSE is “commonly regarded as the ‘trigger’ for the reform of [the then] existing legislation and the establishing of new regulatory institutions across Europe.”[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote1sym) Whilst the incidence of BSE was considerably higher in the UK in the years since 1987, cases throughout Europe resulted in an EU wide response.[2](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote2sym)

Greater consistency, flexibility and speed of response has been achieved since 2000 through the much greater use of regulations, which are directly effective in all Member States at the same time, in place of directives which had been the main vehicle for the implementation of EU food law in the past.

The EU food law framework itself was established by the general food[Regulation (EC) 178/2002](http://www.food.gov.uk/multimedia/pdfs/1782002ecregulation.pdf) which provides the basis for assuring a high level of protection of human health and consumers’ interests in relation to food, taking account of the diversity in the supply of food, including traditional products, whilst ensuring the effective functioning of the internal market.

The Regulation sets out general principles governing food and feed, particular attention being given to food and feed safety, at both the EU and national levels. It applies to all stages of the production, processing and distribution of food excluding production for private domestic use or consumption. The development of EU law is more fully described in the section on [European Union Law](file:///C:\Users\Gerry\Documents\Artisan%20Food%20Law\Legal%20Content\B1%20History%20of%20Food%20Law\xxxxxxxxxxxxxxxxx).

In the years which followed significant areas of law have been reformed. [Directive 2004/41/EC](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0041:EN:NOT) undertook the wholesale repeal of the overwhelming majority of earlier hygiene legislation, some 16 directives. Food hygiene is now governed by three central regulations: [Regulation (EC) 852/2004](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0852:EN:NOT) on foodstuffs, [Regulation (EC) 853/2004](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0853:EN:NOT) for food of animal origin and [Regulation (EC) 854/2004](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0854:EN:NOT) on controls on products of animal origin intended for human consumption.[3](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote3sym)

A further area of reform has been in food labelling. The food information to consumers Regulation (EC) 1169/2011 comes substantially into force on 13 December 2014 and for the time being Directive 2000/13/EC remains in force. Regulation (EC) 1169/2011 taken with Regulation (EC) 1760/2000, which covers the labelling of beef and beef products, together form the core EU horizontal labelling legislation, but there are a further 11 vertical directives and regulatory provisions concerning compositional standards, labelling and associated criteria.[4](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote4sym)

The role played by the general food Regulation (EC) 178/2002 in the development of food law and, in particular, hygiene and labelling was clearly significant. The Regulation was a “major pioneering piece of EU food law and in many ways the ‘high water mark’ of the food safety agenda”[5](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote5sym) and provided the basis for addressing coherence in, for example, defining ‘food’ and the adoption of common terms.[6](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote6sym) More delegation to the Commission[7](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote7sym) and the greater use of regulations in place of directives have undoubtedly provided greater certainty, transparency and consistency, they can also be more swiftly changed to accommodate new situations.

There have also been major developments in the areas of organic production,[8](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote8sym) genetically modified foods[9](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote9sym) and nutrition and health claims[10](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote10sym) where more information may be found in the appropriate section of Artisan Food Law.

Meanwhile, in the UK we have witnessed the developing role of the Food Standards Agency and the way it has sought to work with local authorities, although it now seems likely that Scotland will, following the recommendations of the [Scudamore report](http://www.scotland.gov.uk/Publications/2012/04/6141/0), in particular that food safety should not be divorced from nutrition and labelling, soon have a new agency which brings these responsibilities under one roof. In England these are spread across the Food Standards Agency, Defra and the Department of Health. The FSA having been slowly stripped of these and other responsibilities since 2010.

In early 2013 the Food Safety Authority of Ireland identified quantities of horse meat in processed beef products. The scandal which then unfolded resulted in the withdrawal of millions of products from supermarket shelves across Europe. The FSA has been widely criticised for failing to spot the problem much earlier. It remains to be seen what impact this latest food scare will have on the future of the FSA. The only certainty is that food traceability will be firmly on the political agenda for some time to come.

The longer term shift in the agenda for the development of EU food law has moved into what some see as going beyond food safety and having a greater focus on nutrition. Raymond O’Rourke predicts a more diverse future development of the law and sees:

… changes in the CAP, the market for organic food products, the Slow Food movement’s desire to protect traditional food production methods and food cultures as being those “forces” moving EU food law in a new direction.[11](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote11sym)

The new Common Agricultural Policy was in the closing stages of being finalised in spring 2013. It remains to be seen how extensive are any changes made. The Commission’s original proposals were widely welcomed, more recent events, however, suggest the final result will be otherwise.[12](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century#sdfootnote12sym)

There also remain a number of areas of food law that are left to the discretion of Member States to determine whether and, if so, how to regulate the production, distribution and sale of food. More recently the spotlight has fallen on raw or unpasteurised drinking milk, one such area of food law, following the FSA’s decision to review controls governing the availability of raw drinking milk and its high profile prosecution of Selfridges department store in London and an East Sussex raw milk producer for the sale of raw milk from a vending machine.

[1](http://www.artisanfoodlaw.co.uk/history-of-food-law/21st-century/history-of-food-law-21st-century" \l "sdfootnote1anc) Tim Knowles, Richard Moody and Morven G McEachern, ‘European Food Scares and their Impact on EU Food Policy’, *British Food Journal*, 2007, Volume 10, Number 1, p53