

# **The Food Safety Act 1990 and you : a guide for the food industry from H.M. Government.**

## **Contributors**

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# THE FOOD SAFETY ACT 1990

## AND YOU



## A Guide for the Food Industry

FROM H.M. GOVERNMENT

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## WHERE TO GO FOR HELP AND ADVICE

There are a number of sources of expert advice on the Food Safety Act 1990. Your first port of call should normally be the environmental health or trading standards department of your local authority. Information and advice should also be available from trade organisations. In some circumstances, it may be necessary to take legal advice.

A number of useful addresses are to be found on Page 22.



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## FOREWORD

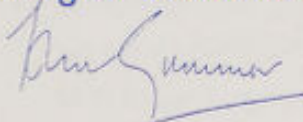
Our food industry is a vital part of the United Kingdom's economic and social fabric. Now this major industry is to be subject to an important new piece of legislation – the Food Safety Act 1990.

The Act is a significant step forward for UK food law, and introduces a number of crucial changes in the way in which the law protects the consumer. In addition, a number of new regulations will be made under the Act and these will further enhance the safety of the food chain.

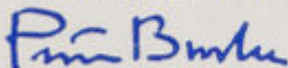
This booklet summarises the new law and indicates what is required of food businesses. The information it contains applies to everyone involved in the food industry – no matter how small their business. The booklet should not be treated as an interpretation of the law. It does, however, outline its main provisions.

The booklet should be read by employees, managers and owners of food businesses as well as others involved in the supply of food to the public on a commercial basis.

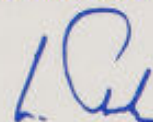
The food industry has the main responsibility for ensuring the protection of its customers. The overwhelming majority of food companies and those who work in them are fully committed to high standards of food safety. But all have a part to play, and some companies will have to invest in higher standards if they are to satisfy their customers and the law.



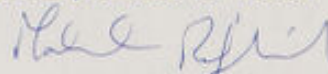
John Gummer MP  
Minister of Agriculture, Fisheries and Food



Peter Brooke MP  
Secretary of State for Northern Ireland



Kenneth Clark QC MP  
Secretary of State for Health



Malcolm Rifkind QC MP  
Secretary of State for Scotland



David Hunt MBE MP  
Secretary of State for Wales

## THE FOOD SAFETY ACT 1990

### ● What is the Food Safety Act 1990?

The Food Safety Act 1990 is a wide ranging law which strengthens and updates the law on food safety and consumer protection in the food sector throughout Great Britain. The Act **builds** on previous food safety laws but contains a number of **new features**, which are highlighted in this booklet.

A separate but similar law applies to Northern Ireland and this booklet is a general guide to both. People who need more detailed information on particular matters, especially legal interpretation, should seek expert advice, some sources of which are given on the contents page and Appendix 1.

### ● Who does the Act affect?

Although the Act will affect every man, woman and child in the country it is particularly relevant to everyone working in the production, processing, storage, distribution and sale of food, no matter how large or small their business. This includes self-employed people and non-profit making organisations.

### ● What does the Act aim to achieve?

The aims of the Act are:

- to continue to ensure that all food produced for sale is **safe** to eat and not misleadingly presented;
- to strengthen legal **powers** and **penalties**;
- to enable this country to fulfil its role in the **European Community**, and the Single Market;
- to keep pace with **technological change**.

### ● When did the Food Safety Act come into force?

**Most of the provisions of the Act came into force on 1 January 1991.**



This guide highlights the main provisions of the Act and some of the major regulations made under it.

Since 1 April 1992 food law has also applied to Crown premises, for example prisons and restaurants in public museums, although certain limited exemptions remain, such as the private residences of Her Majesty the Queen.

## ● What does the Act cover?

*The Act covers a broad range of commercial activities relating to food itself; to the sources from which food is derived, such as crops and animals; and to articles which come into contact with food ('contact materials'), ranging from wrappings like cling film to manufacturing plant such as mixing vats.*

But bear in mind that you will not find detailed technical rules on any of these in the Act itself, since the Act gives the Government powers to make regulations on matters of detail.



## ● What does the Act mean by 'food'?

In law, the word 'food' has a wider meaning than in everyday use, and covers:

- anything used as a food ingredient;
- animals eaten live, such as oysters;
- drink;
- products like slimming aids and dietary supplements;
- water used in food production or drawn from the tap in the course of a food business - but not the quality of drinking water up to the point of supply, which is controlled under the Water Industry Act 1991.

The word 'food' does **not** cover animal feed or medicines.

## ● How does the Act affect 'food sources'?

The Act covers crops and live animals, known as 'food sources', and the derivation of food from them. This means that now food law will affect farmers much more directly than it has done in the past.



Under the Act, most farmers are considered to be running food businesses. An exception is those who simply rear animals and sell them live. As food businesses, farms are subject to the improvement and closure procedures outlined on Pages 13-15.

Regulations on registration now mean that some farms must be registered with their local authority. However, there are exemptions, further details of which are available from local environmental health departments.

Enforcement officers have been given the right to **inspect** food sources where appropriate. In particular, regulations to control veterinary medicine residues in animals, meat and meat products apply to **all** livestock farmers, whether or not they are food businesses.

Inspectors have powers to take action on-farm where they find that:

- illegal growth-promoting hormones or unlicensed substances have been used; or
- maximum residue limits in meat have been exceeded through farmers failing to observe 'withdrawal' periods prior to slaughter when all medications should cease.

Maximum residues for pesticides have been set in regulations under the Food and Environment Protection Act 1985. These standards may also be relevant to prosecutions for the main offences under the Food Safety Act (see Pages 5-7).

## ● What are the 'commercial operations' covered by the Act?

The Act covers all the operations involved in selling, possessing for sale, delivering, preparing, labelling, storing, importing and exporting food.

It does **not** cover food prepared in the home for **domestic purposes**. But it does extend to activities which might not normally be regarded as 'commercial'. Since the Act makes it an offence to **sell** any food which fails to meet safety requirements, it applies not only to major retailers but also to small restaurants and cafes and to food sales at charity fund-raising events.

It is intended that the **occasional** preparation of food for



organisations like charities should not be subject to a regular programme of visits by enforcement officers. Advice has been issued to enforcement officers on how to apply the Act in this area and those organising charity events may wish to contact their local environmental health department for advice.

Ministers are able to extend the definition of 'sale of food'. But this power will not be widely used. It is there to make it possible to implement European Community law, which sometimes covers non-commercial situations such as the giving of food to elderly people.

Ministers are also able to extend the law to the handling of food on ships and aircraft for consumption by passengers or crew.

## ● What does the Act mean for food importers?

Food importers still have to comply with the Imported Food Regulations 1984. They are also covered by all the main offences outlined on Pages 5-7. Enforcement authorities have the full range of powers to deal with suspect imported food.

Like UK manufacturers, importers have to take all reasonable precautions and **exercise all due diligence** to avoid committing an offence. They cannot rely solely on warranties provided by someone beyond the jurisdiction of the courts of Great Britain (please see Pages 16-17).

### THE MAIN OFFENCES

## ● What are the main offences under the Food Safety Act?

The main offences are:

- selling, or possessing for sale, food which does not comply with food safety requirements;
- rendering food injurious to health;
- selling, to the purchaser's prejudice, food which is not of the nature, substance or quality demanded;
- falsely or misleadingly describing or presenting food.





## ● What are the 'food safety requirements'?

The food safety requirements are that food – **not only for retail sale but throughout the food chain** – must not:

- have been rendered **injurious to health**;
- be **unfit**; or
- be **so contaminated – whether by extraneous matter or otherwise - that it would be unreasonable to expect it to be eaten.**

The first two requirements are long established.

- Food would be **injurious to health** if it was of a kind that would harm a substantial part of the population. It could be injurious even if the harm was cumulative or only became apparent over a long period of time.

An example might be botulism in a manufactured food. An ingredient which manifested itself in intolerance in only a few individuals would not be covered.

- Food would be **unfit** if it was putrid or toxic or if, for example, it contained a dead rodent. Meat would be considered unfit if it was taken from animals slaughtered in a knacker's yard.
- Food would be **so contaminated that it would be unreasonable to expect it to be eaten** if, for example, it contained substantial antibiotic residues, or a rusty nail, or perhaps significant quantities of undesirable solvent residues.



## ● What is meant by 'rendering food injurious to health'?

As well as being an offence to sell food which is harmful to health, it is also an offence intentionally to do anything which would make food harmful either by adding something to it or removing something from it. And even if the person responsible did not know that this would be the result, they would still have committed an offence. For example, choosing a heat treatment which is inadequate and which results in food sold being injurious would be an offence.



## ● When is food 'not of the nature, substance or quality demanded'?

It has long been an offence to sell food which is not of 'the nature, substance or quality demanded by the purchaser', to the prejudice of the purchaser.

This description covers such things as a product sold as haddock but which is in fact cod, fruit not of the variety requested, stew with too little meat in it or milk with too much fat, sheep's milk yogurt made with cows' milk or cola served instead of diet cola.

## ● What does the Act mean by the 'purchaser' of food?

The 'purchaser' of food can range from a customer at a supermarket to one company buying from another. Purchasers can be 'prejudiced' if they are sold food which is inferior in nature, substance or quality to that they demanded. This applies even if the food is bought for someone other than the purchaser.

## ● How can food be 'falsely or misleadingly described or presented'?

This offence can occur when statements or pictorial material concerning food are **untrue**. The offence also covers material that is **correct** but given such emphasis that the purchaser is led to the wrong conclusion. And, as a result of the new Act, this applies at all points in the food chain.

Besides the general offence of falsely or misleadingly describing or presenting food, there are also detailed regulations relating to the labelling of food. These are contained in the Food Labelling Regulations 1984.



## ENFORCING THE ACT

### ● Who enforces the Act?

The Act can be enforced by both central and local government but the day-to-day work of enforcement is the responsibility of local authorities. Central government may sometimes become involved in certain emergency situations (please see Page 15). Members of the State Veterinary Service may be involved in enforcement on farms and in slaughterhouses, for example in enforcing regulations on veterinary residues.

### ● What is the role of central government?

The main role of central government is to formulate food policy and to negotiate on food law in the European Community.

Central government is also responsible for overseeing the work of the local authorities. Most commonly, it advises them on enforcement, particularly through the issuing of statutory Codes of Practice. For instance, one code advises local authorities how to assess potential risks to determine the frequency with which certain types of premises should be inspected. The Codes have been developed in consultation with the relevant interested parties and the first were issued early in 1991. To find out what Codes are available, and where they can be obtained, please contact the relevant Government Department listed in Appendix 1.

In the unlikely event that consumers are affected by a local authority's failure to carry out its responsibilities, the Act gives central government the power to intervene - for example, by directing another authority to take over a specific task.

### ● What is the role of local government?

Local authorities are responsible for enforcing the law in two main areas. Their trading standards officers deal with the labelling of food, its composition and most cases of chemical contamination; environmental health officers deal with hygiene, with cases of microbiological contamination of foods, and with food which, for any reason including chemical contamination, is unfit for human consumption.

In the non-metropolitan areas of England and Wales, trading



standards work is carried out by the county councils and environmental health work by the district councils. The London boroughs and the metropolitan authorities carry out both functions. In Scotland, all food law enforcement is carried out by the environmental health departments of district and island councils. In Northern Ireland, this work is undertaken by the environmental health departments of district councils.

Throughout the United Kingdom, public analysts and food examiners (please see Page 10) form an integral part of the enforcement team.

## ● How is the Act enforced?

*Food law provides that:*

- officers can **enter** food premises to investigate possible offences;
- officers can **inspect** food to see if it is safe;
- officers can **detain** suspect food or **seize** it and ask a Justice of the Peace (JP) - or in Scotland, a magistrate or the Sheriff - to **condemn** it.

Enforcement officers must be given reasonable information and assistance.

## ● What powers of entry do enforcement officers have?

To carry out their duties, enforcement officers must be able to enter premises to see what is happening there. Officers therefore have the right to enter any premises within their authority's area. **They also have a new power to enter any business premises in the country.** However, in practice, they only use this power when following up offences which have occurred in their own area.

Officers may inspect premises, processes and records and may copy any relevant records and take samples of food for later analysis. They may also take their own visual records, such as still photographs and videos. In appropriate circumstances, for example when an initial request for entry has been refused, officers can apply to magistrates for a warrant.





## ● What is meant by 'premises'?

The definition is very broad. It covers the obvious buildings where food is prepared or sold, such as food processing plants, supermarkets or restaurants. It also covers farms and vehicles used for transporting or delivering food, and road-side and market stalls.

## ● Are there limits on powers of entry?

Officers may only exercise powers of entry while investigating whether there has been a breach of the law or otherwise in carrying out the work of their authority - and they must carry evidence of their identity.

Officers may only enter premises at reasonable times, for example if they are pursuing an outbreak of food poisoning, when a shop is open or when food is being prepared on the premises. They must give at least 24 hours' notice if they intend to enter houses which are only used as private dwellings.

If officers enter premises which are unoccupied but secure, they must not leave those premises less secure.

## ● Are there any safeguards against the improper disclosure of information?

Officers commit an offence if they abuse their privileged position by revealing trade secrets learnt in the course of an official visit, unless the disclosure is made in the proper course of their duties.

## ● Can enforcement officers take samples of food?

The law enables enforcement officers to take samples of food for analysis, microbiological examination or other investigation. Samples may also be purchased from food premises or may be received from a member of the public complaining about food from a particular business.

Analysis and microbiological examination of food are carried out by public analysts and food examiners respectively. Both must have qualifications as set out in regulations made by Ministers.



## ● What happens if enforcement officers find suspect food?

Enforcement officers may inspect, at any reasonable time, any food which has been sold or is intended for sale. They may suspect that the food does not comply with the food safety requirements, that it may cause food poisoning or some other disease. If so, they may issue the owner with a **notice** requiring it to be kept in a specific place and not to be used for human consumption while they investigate.

Alternatively, they may feel that no investigation is needed and simply **seize** the food and have it removed to be dealt with by a Justice of the Peace (JP).

If they take the first course, the officers have up to 21 days to carry out their investigations. If they conclude that the food was in fact safe, they must withdraw their notice and restore the food to its owner. If their opinion is that the food is not safe, they must seize the food and put the matter to a JP. When officers do this, they must tell the person in charge of the food what is happening. The person in charge need not be its owner; it may, for example, be a manager or a canteen supervisor.

When food has been seized and a hearing takes place before a JP, it may well be that someone will face criminal proceedings. In such a case, that person can make representations and call witnesses.

If a JP decides that food is unsafe, he may order it to be **destroyed** or otherwise disposed of, and the owner may be ordered to meet the expenses incurred in disposal.

A court will presume, in the absence of proof to the contrary, that if part of a batch of food fails to meet food safety requirements, then **the whole batch fails**. So, for example, if officers find that a shop is selling pies which are unsafe, they can seize not only those pies but also any others in the batch, and ask a court to condemn them all. A batch of food would normally be made at one time and place and under constant conditions. Regulations now require batches to be identified in some way.





## ● What happens if food is seized but then not condemned?

If food detained by an enforcement officer, or seized and not eventually condemned by a JP, has deteriorated, then the owner is entitled to **compensation** equal to the food's **loss in value**. If the local authority and the owner of the food cannot agree on the amount of compensation, the dispute must be settled by arbitration.

## DEALING WITH AN UNSATISFACTORY BUSINESS

## ● What powers are there to deal with unsatisfactory premises?

The Food Safety Act gives enforcement officers powers to close unsatisfactory premises or to require improvements to be made.

*If an officer believes that a food business does not comply with hygiene or food processing regulations, he may issue an **improvement notice** (please see Page 13).*

*If a business is convicted of a breach of hygiene or processing regulations and the court feels that public health is at risk, it will impose a **prohibition order** which closes all or part of the business (please see Pages 13 and 14).*

*If an officer believes that a business gives rise to an imminent risk to health, he may close it by issuing an **emergency prohibition notice**. The matter will then be put to a court (please see Pages 14 and 15).*

*If a court finds that a business gives rise to an imminent risk to health, it will impose an **emergency prohibition order** to close the business (please see Page 15).*





## ● What does an improvement notice involve?

An improvement notice is imposed on a business which an enforcement officer considers does not comply with either food hygiene or food processing regulations. It requires the proprietor to put matters right. It is an **offence to fail to comply** with an improvement notice but it is possible to appeal against its imposition (please see Page 18).

The form of an improvement notice is set out in regulations and contains four specific points:

- the reasons for believing that the proprietor of the business is not complying with food hygiene or processing regulations;
- the ways in which the regulations are being breached;
- the measures to be taken to put matters right;
- the time allowed for making improvements (which will be at least a fortnight).

Proprietors are not required to take the precise steps set out in an improvement notice. They may take different action, so long as the end result is the same, but may want to check with the enforcement officer anyway.

## ● What does a prohibition order involve?

Businesses which are a danger to the public can be closed down wholly or partially by means of a prohibition order.

The first step is for the local authority to succeed in **prosecuting** the proprietor for a breach of the food hygiene or food processing regulations. In some cases, the proprietor may have been issued with - and have failed to observe - an improvement notice. If the court then decides that the business puts public health at risk, it must issue a **prohibition order**.

A prohibition order would deal with one of three things, depending on the nature of the risk to health:

- if the risk is due to a particular process or treatment, the order would prohibit use of that process or treatment;
- if the risk is due to the way that premises are constructed or to the use of particular equipment, the order would prohibit use of those premises or the equipment;
- if the risk is due to the condition of premises or equipment, the order would prohibit their use.



The court also has the powers to ban the proprietor or manager of the business from running another food business, either of any kind or of a particular kind. This type of prohibition is left to the discretion of the court since the person before them may not be solely or even partly to blame for the defects in the business.

A copy of a prohibition order would be served by the enforcement authority on the proprietor or manager of the business concerned. If the order specifically refers to the premises, it would be fixed prominently on those premises.

It is an offence knowingly to breach a prohibition order.

## ● How is a prohibition order on a business lifted?

To get a prohibition order on a business lifted, the proprietor or manager must apply to the enforcement authority for a certificate stating that enough has been done to ensure that the business can operate without risk to the health of the public.

Once the certificate has been applied for, the enforcement authority must reach a decision within a fortnight and must issue a certificate, if that is their decision, within a further three days. If the authority refuses a certificate, it is possible to appeal to a magistrates' court to have the order lifted (please see Page 18).

## ● How is a prohibition order on a person lifted?

To get a prohibition order on a person lifted, that person can apply to the court. However, such an application cannot be made earlier than six months after the imposition of the order or three months following a previous application.

## ● What does emergency prohibition involve?

When a business presents an **imminent risk** of injury to health, enforcement officers can serve an **emergency prohibition notice**, without prior reference to a court. The premises, or some specific part of them, are then closed. A copy of the notice should be fixed to the premises in a conspicuous position. Anyone removing the notice



or knowingly breaching its terms commits an offence.

Once a prohibition notice has been served, the enforcement officer must apply to take the matter before a magistrates' court within three days. And, at least **one day** before making this application, the officer must serve notice on the proprietor of the business of his intention to do so.

If the court agrees that there is an imminent risk of injury to health, it will make an **emergency prohibition order**, which supersedes the emergency prohibition notice - the two cannot be in force at the same time.

An emergency prohibition order cannot be made against a person.

The arrangements for lifting an emergency prohibition order are the same as for a prohibition order.

## EMERGENCY CONTROL ORDERS

### ● What are emergency control orders?

There may be times when public health cannot be protected simply by closing an individual business - for example, if a business is producing unsafe food which has already been distributed around the country. Closing the business would prevent more contaminated food reaching the market but it would not remove the food already in circulation.

The Food Safety Act gives the Government powers to make emergency control orders which would **require** the necessary steps to be taken to remove the wider threat to health - steps which many firms would take in any case to protect public health and their own good names.

These powers are in addition to existing provisions which have worked well and which will continue.

Emergency powers are provided for in Part I of the Food and Environment Protection Act 1985 to deal with circumstances in a particular geographical





area which may jeopardise the safety of food.

The Government has voluntary arrangements for issuing hazard notices. These inform the media and local authority environmental health departments of any contamination of food which immediately threatens public health. Where possible the food industry is contacted before hazard notices are issued.

## LEGAL PROCEEDINGS

### ● What is the legal defence of 'due diligence'?

Under the Food Safety Act, there are **two** defences which apply to the main offences described so far in this booklet. The **principal one** is the defence of '**due diligence**'.

The defence of 'due diligence' is designed to balance the proper protection of the consumer against defective food with the right of traders not to be convicted of an offence they have taken all reasonable care to avoid committing. The result should be to encourage all concerned to take proper responsibility for their products.

This defence enables someone to be acquitted of an offence if they prove that they 'took all reasonable precautions and exercised all due diligence to avoid committing that offence'. Although the burden of proof lies with the defendant, they need not establish their case beyond all reasonable doubt. They need only persuade the court that their case is made out on the balance of probabilities.

The courts will decide what is reasonable in each case and will take account of all the facts in that case. For example, a small business might not be required to undertake all the precautions which would be expected of one of the major retailers.

Part of the 'due diligence' defence may be to show that someone else was at fault. This must be done seven days before the hearing or, if the defendant has already appeared before the court, within one month of that appearance. However, anyone intending to make such a claim must tell the prosecutor in advance.



Previous food laws enabled a **written warranty** to be pleaded as a defence. A warranty is no longer an absolute defence. However, it might still form part of a 'due diligence' defence.

## ● What is 'deemed due diligence'?

Food traders are able to plead a modified form of 'due diligence' whereby defendants can be **deemed** to have exercised due diligence. But these 'deemed' defences are not available to manufacturers and importers, nor do they apply to the offence of rendering food injurious to health.

## ● Can retailers of 'own label' products offer the defence of 'due diligence'?

Yes. Retailers of 'own label' products can be deemed to satisfy the 'due diligence' defence if they can prove that:

- the offence was **someone else's fault** (so long as that person was not under the defendant's control as an employee would be) or resulted from their relying on information supplied;
- they made **reasonable checks** on the food or reasonably relied on checks made by the supplier;
- they had no **reason to suspect** that they were committing an offence.

## ● Can retailers of 'branded' goods offer the defence of 'due diligence'?

Yes. Retailers of 'branded' goods can be deemed to satisfy the 'due diligence' defence if they can prove that:

- the offence was **someone else's fault** (so long as that person was not under the defendant's control as an employee would be) or resulted from their relying on information supplied;
- they could **not reasonably have been expected to know** that they were committing an offence.





## ● What other legal defences are there?

Besides 'due diligence', the only other defence specified by the Act applies to defendants who had no reason to suspect that publishing an advertisement in the course of their business would amount to an offence. However **regulations** made under the Act can set their own defences.

## ● Is there an appeals procedure against actions under the Food Safety Act?

Yes. Anyone running a business can appeal to a magistrates' court or, in Scotland, to the Sheriff:

- if they disagree with an enforcement officer's decision to serve an improvement notice;
- if an enforcement authority refuses to issue a certificate lifting a prohibition order or an emergency prohibition order;
- if an authority closes a business by refusing, cancelling, suspending or revoking a licence;
- if regulations give the right of appeal.



When there is the right of appeal, this will be made clear in a written notice of the enforcement authority's decision, which will also give the period during which an appeal may be brought. This will normally be one month but may be shorter in the case of an appeal against an improvement notice.

In the case of an appeal against an improvement notice, the court not only has the choice of **cancelling or confirming the notice**, it can also make **changes to the notice**. This is because an improvement notice may require several changes and the court may feel that some are justified while others are not. Indeed, the person appealing may only wish to challenge certain conditions.

A prosecution for failing to comply with an improvement notice cannot proceed if an appeal against that notice is still pending.

If people appealing to a magistrates' court are unhappy with its decision, they have the right of further appeal to the Crown Court.



This is the case both where a magistrates' court has dismissed an earlier appeal and where they have made a decision – such as the imposition of a prohibition order – which is disputed.

## ● What penalties can be imposed under the Food Safety Act?

In individual cases, the level of penalties is for the courts to decide but, in general, the Food Safety Act has considerably **increased the maximum penalties available to the courts.**

For most offences, Crown courts may send offenders to **prison for up to two years** and/or impose **unlimited fines.**

Magistrates' courts may impose a fine of **up to £2,000 (£5,000 from October 1992)** per offence and a **prison sentence of up to six months.**

For the first three of the main offences described on Pages 5-7, the maximum fine a magistrates' court may set for each offence is **£20,000.** There are also penalties for obstructing an enforcement officer.

In Scotland equivalent penalties may be imposed by the Sheriff.

Regulations made under the Act will set their own level of penalties which will not exceed those above.

## ● Are there any other penalties for selling unsafe food?

Yes. Businesses which sell unsafe food may have to pay compensation to consumers who have been injured by that food. There are three ways in which this can come about:

- if the consumer successfully sues for civil damages under common law;
- if the consumer successfully obtains damages under the Consumer Protection Act of 1987 or comparable Northern Ireland legislation. This covers manufactured food but not unprocessed agricultural produce;
- if the criminal courts make an order requiring a convicted offender to pay compensation to a person who has suffered loss or injury as a result of the criminal act.



## REGULATIONS

### ● Does the Food Safety Act stand alone?

No. Many of the key provisions in food law are contained in regulations. Particularly important are the Food Labelling Regulations 1984 (as amended), the Food Hygiene (General) Regulations 1970 (as amended), the Imported Food Regulations 1984 (as amended), the Food Premises (Registration) Regulations 1991, and various regulations on milk and dairies, food composition, and the use of food additives and packaging materials. A list of regulations currently in force is available from MAFF, SOAFD, and DHSS Northern Ireland.

### ● Do food premises need to be registered?

Yes. Regulations, now require that most premises used by food businesses on 5 or more days within 5 consecutive weeks must be registered with the local authority in whose area they are located. This allows the authority to identify the number and type of food premises in their area and target their enforcement action effectively. The Regulations contain exemptions for premises already covered by registration schemes in other food legislation and some low-risk premises.

Details of these exemptions can be obtained from the local authority. Most food businesses must also register any premises where vehicles and stalls used for transporting or selling food are normally kept.

However, this is not a major task. The proprietor has only to complete a straightforward form. There is no charge for registration and the local authority cannot refuse to register premises. New businesses must register at least 28 days before they intend to open so as to enable enforcement officers to visit their premises to advise on matters of hygiene.

Many organisations with no permanent food premises of their own, such as voluntary groups like the Women's Institute or charitable and social organisations are not affected by registration. However, premises owned or controlled by voluntary or charitable organisations (unless these are permanent premises where only dry goods are stored there for sale) will have to be registered, as will short-term events where catering is provided over several days.



## ● Will people handling food need training in hygiene?

Yes. Regulations will require food businesses to instruct, train and supervise their staff in food hygiene in a way commensurate with the job they do. Detailed regulations will be made following consultation with all interested parties.

## ● How does the Food Safety Act deal with new foods and processes?

The Act contains powers to make regulations covering the sale and importation of 'novel foods', that is foods which are new or have only rarely been eaten in this country. There is a system of positive approvals for foods resulting from genetic modification.

Furthermore, particular types of food premises may be required to be licensed.

They will have to meet specific conditions in order to gain that licence. Failure to maintain such conditions may lead to the licence being withdrawn - effectively closing the business until it satisfied the requirements. This form of arrangement already operates in the dairy sector.

Premises where food is irradiated are subject to licensing.

Inspectors appointed by central government check food irradiation plants before approval is given and regularly thereafter.





## SOME USEFUL ADDRESSES

MAFF The Food Safety Directorate, Ministry of Agriculture, Fisheries and Food, Room 303a, Ergon House, 17 Smith Square, London SW1P 3HX.  
Tel: 071-238 6550

DH Department of Health, Eileen House, 80-94 Newington Causeway, London SE1 6EF.  
Tel: 071-972 2000

SOAFD Scottish Office Agriculture & Fisheries Department, Pentland House, 47 Robb's Loan Edinburgh EH14 1TW.  
Tel: 031-556 8400

WO Welsh Office, PHF2, Cathays Park, Cardiff CF1 3NQ.  
Tel: 0222 823336

DHSS/NI Department of Health and Social Services (NI), Annexe A, Dundonald House, Upper Newtownards Road, Belfast BT4 3SF.  
Tel: 0232 76939

CA Consumers Association, 2 Marylebone Road, London NW1 40X.  
Tel: 071-486 5544

NCC National Consumer Council, 20 Grosvenor Gardens, London SW1W 0PH.  
Tel: 071-730 3469

IEHO Institution of Environmental Health Officers, Chadwick House, Rushworth Street, London SE1 0RB.  
Tel: 071-928 6006

REHIS Royal Environmental Health Institute of Scotland, Virginia House, 62 Virginia Street, Glasgow, G1 1TX.  
Tel: 041-552 1533

ITSA Institute of Trading Standards Administration, 4/5 Hadleigh Business Centre, 351 London Road, Hadleigh, Essex SS7 2BT.  
Tel: 0702 559922

LACOTS Local Authorities Co-Ordinating Body on Food and Trading Standards, PO Box 6, Token House, 1A Robert Street, Croydon CR9 1LG.  
Tel: 081-688 1996

BRITISH RETAIL CONSORTIUM Bedford House, 69/79 Fulham High Street, London SW6 3JW.  
Tel: 071-371 5185

FDF Food and Drink Federation, 6 Catherine Street, London WC2B 5JJ.  
Tel: 071-836 2460

NFU National Farmers Union, 22 Long Acre, London WC2E 9LY.  
Tel: 071-235 5077

BHA British Hospitality Association, 40 Duke Street, London W1M 6HR.  
Tel: 071-499 6641

RAGB Restaurateurs Association of Great Britain, 190 Queens Gate, London SW7 5EU.  
Tel: 071-581 2444



## KEY PROVISIONS OF THE FOOD SAFETY ACT 1990

### PART I: PRELIMINARY

**Section 1** defines 'food' and other basic expressions such as 'food business', 'food premises' and 'food source'. **Section 2** extends the meaning of sale to include food supplied in the course of a business and **Section 3** sets out presumptions for food items found on some food premises but not obviously intended for sale.

**Section 4** specifies which Ministers have various functions. **Section 5** establishes what authorities are food authorities and who are their authorised officers. **Section 6** establishes who enforces the provisions of the Act and enables Ministers to take over particular functions in specific cases.

### PART II: MAIN PROVISIONS

**Section 7** describes the offence of rendering food injurious to health and **Section 8** sets out the offence of selling food that does not comply with food safety requirements. This is food that has been rendered injurious to health, which is unfit for human consumption or is so contaminated that it would not be reasonable to expect it to be used for human consumption. **Section 8** also states that if any part of a batch of food does not comply with food safety requirements, the whole batch is presumed not to comply unless the contrary is proved.

**Section 9** gives powers to inspect, seize and condemn food suspected of not complying with food safety requirements. **Section 10** provides for the issuing of improvement notices where it is suspected that regulations have been breached. **Section 11** provides for prohibition orders where there is a risk of injury to health and **Section 12** provides emergency prohibition powers. **Section 13** gives Ministers power to make emergency control orders prohibiting commercial operations in relation to food when there is an imminent risk of such food causing injury to health.

**Section 14** makes it an offence to sell food which is not of the 'nature or substance or quality' demanded by the purchaser and **Section 15** creates an offence of falsely describing, advertising or presenting food.

**Section 16** enables Ministers to make regulations implementing a wide range of food safety and consumer protection measures. Examples might include food composition and the presence of residues in food sources (such as live animals), microbiological standards, food processes or treatments and hygienic conditions and practices. **Schedule 1** contains further provisions which may be included in regulations under **Section 16**. **Section 17** enables Ministers to make regulations to fulfil Community obligations. **Section 18** provides regulation-making powers for Ministers to control novel foods and to cover special designations for milk. **Section 19** enables regulations to be made about the registration and licensing of food premises.

**Section 20** enables an enforcement authority to 'by-pass' the immediate offender and to prosecute the real offender. **Section 21** gives a defence if defendants can prove that they took all reasonable precautions and exercised all due diligence to avoid committing an offence. The defendant is deemed to have satisfied the due diligence defence in certain circumstances. These deemed due diligence defences are not available to a defendant who manufactured or imported the food. **Section 22** contains a special defence for businesses who publish an advertisement in good faith.

**Section 23** enables local authorities to provide training courses for food handlers. **Section 24** allows enforcement authorities to provide facilities for cleansing shellfish.



**Section 25** allows Ministers to obtain information and samples from food businesses. **Section 26** enables regulations and orders to include certain provisions.

#### PART III: ADMINISTRATION AND ENFORCEMENT

**Sections 27 to 30** deal with the appointment of public analysts, the provision by local authorities of facilities for microbiological examination of food and the arrangements for procuring and analysing samples. **Section 31** concerns regulations on sampling.

**Section 32** sets out who may enter premises to enforce the Act and explains what they can do while on premises. It also makes unauthorised disclosure of information obtained when using such powers an offence. **Section 33** makes it an offence intentionally to obstruct an authorised officer or to provide false or misleading information.

**Section 34** provides time limits for prosecutions. **Section 35** sets out the penalties for offences. **Section 36** provides that someone in authority in a corporate body is liable for prosecution where they are proved to have acted negligently or consented to the alleged offence. **Sections 37 to 39** provide for appeals against decisions of an enforcement authority or magistrates' court or, in Scotland, to the Sheriff.

#### PART IV: MISCELLANEOUS AND SUPPLEMENTAL

**Section 40** enables Ministers to issue codes of practice to food authorities on the execution and enforcement of legislation, and to issue directions as to specific steps to be taken to comply with a code. Ministers must consult interested organisations before issuing codes. **Section 41** allows the Minister to require food authorities to make returns to the Minister. **Section 42** enables the Minister to appoint another authority to act in place of a defaulting authority.

**Section 43** provides for the temporary continuation of a registration or a licence on the death of its holder. **Section 44** provides that an officer of a food authority should not be held personally liable for his actions if he acted in good faith.

**Section 45** enables Ministers to permit or require enforcement authorities to impose charges. **Section 46** specifies that expenses incurred by an authorised officer of an authority shall be met by that authority. **Section 47** provides for chairmen of tribunals to be paid with money provided by Parliament.

**Section 48** specifies that Ministers' powers to make regulations and orders shall be subject to Parliamentary scrutiny and requires Ministers to consult interested organisations before making the majority of regulations and orders.

**Sections 49 and 50** set certain requirements for the form and service of documents.

**Section 51** amends Part I of the Food and Environment Protection Act 1985 so that it can be used to deal with any circumstances likely to be a hazard to people's health if they eat affected food. **Section 52**, together with **Schedule 2**, amends provisions of the Food Act 1984 relating to markets, sugar and cold storage.

**Section 53** defines terms used in the Act. **Section 54** provides for the Act to apply to Crown premises subject to special arrangements and certain exemptions. **Section 55** amends the Water Act 1989 to extend its controls on the quality of water used for domestic purposes to cover water used in food production. **Section 56** makes parallel provisions in respect of Scotland and amends the Water (Scotland) Act 1980. **Section 57** provides that the Act may be extended to any of the Channel Islands. **Section 58** provides for the application of the Act to territorial waters and designated areas of the continental shelf. **Section 59** introduces **Schedules 3, 4 and 5** (amendments, transitional provisions, savings and repeals). **Section 60** enables the new legislation to come into force (subject to certain exceptions) when Ministers choose.



## FOOD HYGIENE – TEN GOLDEN RULES

- 1 ALWAYS wash your hands before handling food and after using the toilet.
- 2 TELL your boss at once of any skin, nose, throat or bowel trouble.
- 3 ENSURE cuts and sores are covered with waterproof dressings.
- 4 KEEP yourself clean and wear clean clothing.
- 5 DO NOT SMOKE in a food room. It is illegal and dangerous. Never cough or sneeze over food.
- 6 CLEAN as you go. Keep all equipment and surfaces clean.
- 7 PREPARE raw and cooked food in separate areas. Keep food covered and either refrigerated or piping hot.
- 8 KEEP your hands off food as far as possible.
- 9 ENSURE waste food is disposed of properly. Keep the lid on the dustbin and wash your hands after putting waste in it.
- 10 TELL your supervisor if you cannot follow the rules. DO NOT BREAK THE LAW.



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