

FOOD SAFETY LEGISLATION CHANGES FOR 2005

Food Safety Act 1990 (Amended Regulations) 2004 – waiting for a date that this applies from.

These now take in to account the public consultation requirements of Article 9 of the EU Regulations 178/2002. **Public Consultation, Article 9 – *There shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.***

FOOD is defined as - ***any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.*** It includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It does not include feed, live animals unless they are prepared for placing on the market for human consumption, plants prior to harvesting, medicinal products, cosmetics, tobacco & tobacco products, narcotics or psychotropic substances, residues and contaminants.

Due to these changes it will also automatically apply to other legislation that uses the Food Safety Act definition.

General Food Regulations 2004

Provides new enforcement powers and definitions to apply from **1 Jan 05** (these obligations are set under Regulation 178/2002 of European Legislation. These are Article 14, 16 (only the part that relates to food), 18 (relating parts to food business operators and 19. These are in addition to The Food Safety (General Food Hygiene) Regulations 1995.

New definitions:

Food Business – *any undertaking, whether for profit or not, or whether public or private, carrying out any activities related to any stage of production, processing and distribution of food.* This therefore includes most businesses; primary producer, importers, manufacturers, wholesalers, distributors, transporters, retailers and catering outlets.

Food Business Operator – *the natural or legal person responsible for ensuring that the requirements of food law are met within the food business under their control.*

There are new food safety requirements, there are 9 sections to this. This replaced Section 8 of the Food Safety Act 1990. It applies to the sales and supplies including one-off sales and supplies free of charge. It is not just limited to food business operators; its aim is to protect public health by covering all eventualities, except private domestic consumption and home producers e.g. baking cakes for charity events on an occasional basis.

1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - a. injurious to health; (e.g. contamination with pathogenic micro-organisms, the presence of chemicals compromising the safety of a product or the presence of glass)
 - b. unfit for human consumption. (e.g. putrefied meat or beer containing non-toxic coolant introduced by accident)
3. In determining whether any food is unsafe, regard shall be had:
 - a. to the normal condition of use of the food by the consumer and at each stage of production, processing and distribution, and
 - b. to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.
4. In determining whether any food is injurious to health, regards shall be had:-
 - a. not only to the probable immediate and/or short term and/or long term effects of that food on the health of a person consuming it, but also in subsequent generations;
 - b. to the probable cumulative toxic effects;
 - c. to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.
5. In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.
6. Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe.
7. Food that complies with specific Community provisions governing food safety shall be deemed safe insofar as the aspects covered by the specific Community provisions are concerned.
8. Conformity of a food with specific provisions applicable to that food shall not bar the competent authorities from taking appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal from the market where there are reasons to suspect that, despite such conformity, the food is unsafe.
9. Where there are no specific Community provisions, food shall be deemed to be safe when it conforms to the specific provisions of National Food Law of the Member State in whose territory the food is marketed.

Presentation

This applies additionally to Section 14 and 15 of the Food Safety Act 1990. Without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food, including their shape, appearance or packaging, the packaging material used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers.

Traceability

Food business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed. To this end, such operators shall have in place systems and procedures that allow for this information to be made available to the competent authorities on demand.

Food business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand.

They must maintain appropriate records to be able to do this, the length of time the records need to be kept for is still under consideration, Europe thinks 5 years, this is inappropriate for short shelf life products and therefore we may need to be more flexible. It does not require internal traceability e.g. a cake manufacturer does not need to be able to specify which batch of flour went into which cakes. It applies to **all** food businesses in the food chain. Delay of information may occur when the supplier is from third countries. No requirement for businesses outside EU. Retailers are not required to keep records of sales to the final consumer. Wholesalers supplying to retail outlets are required to keep records. Retailer supplying to another retailer should also have systems in place where possible.

Responsibilities for food: Food Business Operators

1. If a food business operator considers or has reason to believe that a food which it has imported, produced, processed, manufactured or distributed is not in compliance with the food safety requirements, it shall immediately initiate procedures to withdraw the food in question from the market where the food has left the immediate control of that initial food business operator and inform the competent authorities thereof. Where the product may have reached the consumer, the operator shall effectively and accurately inform the consumers of the reason for its withdrawal, and if necessary, recall from consumer's products already supplied to them when other measures are not sufficient to achieve a high level of health protection.
2. A food business operator responsible for retail or distribution activities which do not affect the packaging, labelling, safety or integrity of the

food shall, within the limits of its respective activities, initiate procedures to withdraw from the market products not in compliance with the food safety requirements and shall participate in contributing to the safety of the food by passing on relevant information necessary to trace food, cooperating in the action taken by producers, processors, manufacturers and/or the competent authorities.

3. A food business operator shall immediately inform the competent authorities if it considers or has reason to believe that a food that it has placed on the market may be injurious to health. Operators shall inform the competent authorities of the action taken to prevent risks to the final consumer and shall not prevent or discourage any person from cooperating, in accordance with National Law and legal practice, with the competent authorities, where this may prevent, reduce or eliminate a risk arising from a food.
4. Food business operators shall collaborate with the competent authorities on action taken to avoid or reduce risks posed by a food that they supply or have supplied.

Specific guidelines on recall/withdrawal are being prepared with key stakeholders.

Enforcement – Regulation 3 of The General Food Regulations 2004

Competent authorities are those in the UK, including the Food Standards Agency, Port Health Authorities and Local (Food) Authorities. LACORS are also involved in traceability and will be putting together a team of advisors on this.

Enforcement Authorities – in relation to Article 14, 16, 18 & 19 are local authorities and port health. The FSA have some in relation to Article 14 and 19 but only in certain circumstances (e.g. recall, withdrawal like Food Alerts and Trade Alerts).

Offences to the above Articles – these are consistent with those currently in the Food Safety Act 1990. Regulation 4 of The General Food Regulations 2004 offences:-

Article 14(1), Article 16, Article 18 (2) or (3) and Article 19.

Regulation 5 sets out the punishment for offences:-

5 (1) A person guilty of an offence under Regulation 4 shall be liable-

- a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both;
- b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding 6 months or to both.

5 (2) In paragraph (1) above 'the relevant amount' means: -

- a) in the case of an offence under Regulation 4(a) (Article 14(1)) - £20,000
- b) in any other case, the statutory maximum.

There are still defences such as section 20 – offences due to fault of another person, Section 21 – due diligence etc. These are listed under Regulation 7.