



Food Law Basics

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**£104
Billion**



16,300 people
hospitalised due to food borne
illness

Assimilated Regulation (EC) No. 178/2002



Regulation 178/2002



A European Union internal market measure



Farm to fork



Draws on English Law concepts



Provides for a "foundational" general food safety requirement



What is food?

Article 2

- "For the purposes of this Regulation, 'food' (or 'foodstuff') means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.
- 'Food' includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water..."

Who is a food business operator?

Article 3

- 'Food business' means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food;
- 'Food business operator' means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control;"

**R (Rasool) v Tower
Bridge Magistrates
[2013]**



Placing on the market

Article 3

- "‘placing on the market’ means the holding of food ... for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves;"

INJURIOUSNESS

In determining whether any food is injurious to health, regard 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 on subsequent generations;
- (b) to the probable cumulative toxic effects;
- (c) to the particular health sensitivities of a specific category of consumers ...

Food safety

Article 14

- "Food shall not be placed on the market if it is unsafe.

Food shall be deemed to be **unsafe** if it is considered to be:

- (a) injurious to health;
- (b) unfit for human consumption."

Intended use
R v Archer [1983]



This is about
regulatory
responsibility – not
about commercial or
contractual liabilities

Responsibility

Article 17

- "Food ... business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods ... satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met."



Traceability

Article 18

- "Food ...business operators shall be able to identify any person from whom they have been supplied with a food, ... a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food...

...

- Food ...business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. "

Incidents: withdrawal and recall

- Article 19
- "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 safe, it shall immediately ... 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 ..."
- Where the product may have reached the consumer, the operator shall ... inform the consumers of the reason for its withdrawal, and if necessary, recall from consumers products already supplied to them"

R v Cadbury 2007 – Birmingham
Magistrates fined Cadbury £1 Million for food offences including a failure to promptly inform the authorities of salmonella incident



Food Safety Act 1990

Section 9

- "...where, on ... inspection, it appears to the authorised officer that any food fails to comply with food safety requirements

...

- The authorised officer may either—
 - (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—
 - (i) is not to be used for human consumption; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
 - (b) seize the food and remove it in order to have it dealt with by a justice of the peace;"

R (Food Standards Agency) v Brent Justices [2004]



- A district judge decided food which had been seized under s.9 Food Safety Act was fit for human consumption and released it for sale.
- On judicial review, the Administrative Court held that the district judge had misunderstood her powers. If a food was seized because it failed to comply with food safety requirements (including being mislabelled), it must be condemned.



Food Safety and Hygiene (England) Regulations 2013

Regulation 19(1)

- "...any person who contravenes or fails to comply with any of the specified EU provisions commits an offence.
- Schedule 2 sets out specified EU provisions, including various Articles of Regulation 178/2002
- person guilty of an offence under these Regulations is liable —
 - (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both."

Due diligence defence



- Accused can avoid liability if they prove that they took all reasonable precautions and exercised all due diligence to prevent the commission of the offence and the offence was caused by another person, not under their control.
- Accused must demonstrate, on the balance of probabilities, that they implemented an effective system to prevent the offence and ensured its proper operation (see **Tesco v Nattrass** [1972] held that store manager was "another person")
- **R (Tesco Stores) v City of London Corporation** [2010] the court emphasised that a mere "paper scheme" without proper enforcement would not suffice.
- Accused must not know, and must not reasonably have been expected to know, that their actions or omissions would constitute an offence.



Sentencing

Courts assess culpability, harm, financial circumstances, and mitigating/aggravating factors. Early guilty plea might secure reduced fine.

For Organisations:

- Maximum penalty: Unlimited fine.
- Fine linked to turnover; must have substantial economic impact.
- Ancillary orders may be imposed (e.g. Hygiene prohibition order or director disqualification)
- Courts consider financial realities, including parent company resources (subject to evidence).

For Individuals:

- Maximum penalties: Unlimited fine and/or up to 2 years' imprisonment.
- Sentencing options: Fines, custodial sentences, community orders.



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Birmingham City Council

ANY QUESTIONS?



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