



THE FOOD SAFETY ACT 1990 – A GUIDE FOR FOOD BUSINESSES

2009 Edition

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Summary

Intended audience:	The Guidance Notes are intended for food businesses.
Regional coverage:	The Guidance Notes are applicable to England, Scotland and Wales.
Legal status:	The Guidance Notes are intended to provide regulatory guidance on the Food Safety Act 1990.
Purpose:	The Guidance Notes provide guidance on the requirements of the Food Safety Act 1990 in the light of amendments to the Act and other relevant legislation.

REVISION HISTORY

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INTRODUCTION

Intended Audience

1. These Guidance Notes are aimed at food businesses.

Purpose and Legal Status of Guidance Notes

2. The Guidance Notes have been produced to provide informal, non-binding advice on the legal requirements of the Food Safety Act 1990 and should be read in conjunction with the legislation itself. The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that these Guidance Notes are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law. Businesses with specific queries may wish to seek the advice of their local enforcement agency, which will usually be the trading standards/environmental health department of the local authority. There is further relevant information on the Food Standards Agency website www.food.gov.uk.

Foreword

3. The safety of food is vital to all consumers and food businesses. Consumers must have confidence that the food they buy and eat will be what they expect, will do them no harm and that they are protected from fraud. The importance of this confidence cannot be underestimated for businesses.
4. Although food safety legislation affects everyone in the country, it is particularly relevant to anyone working in the production, processing, storage, distribution and sale of food, no matter how large or small the business. This includes non-profit making organisations.
5. As a food business, you should familiarise yourself with the Food Safety Act 1990 http://www.opsi.gov.uk/acts/acts1990/ukpga_19900016_en_1.htm which, although it has been changed substantially following the introduction of European food safety legislation, remains very important primary food safety legislation. It has provided the basis and a flexible framework for much domestic food law and applies to the whole of Great Britain¹. It concentrates on fundamental issues and leaves the detail to secondary legislation (which is not specifically covered in this guide).
6. This guide updates the previous guide “The Food Safety Act 1990 and You”, issued in 1996 and reprinted in 1997 and 1999. It focuses on the aspects of the Act which are of most significance to food businesses, i.e.
 - what the Act requires;

¹ Similar legislation exists in Northern Ireland, the Food Safety (Northern Ireland) Order 1991. FSA Northern Ireland is producing a separate guide to this order.

- the offences under the legislation and possible defences;
 - other actions which can be taken by food authorities;
 - possible defences to these actions.
7. We advise managers of **medium-sized and larger food businesses** to read the guide in detail and to make the information about the main offences known to all relevant staff. **Small businesses** should all note their responsibilities listed at the end of this introduction and use the rest of the guide to help them better understand these, and for reference about the defences to any legal action and the powers available to enforcement officers.
8. Since 1999 there have been significant changes in food safety law in the United Kingdom. In particular, the European Union (EU) adopted the General Food Law Regulation (Regulation (EC) 178/2002), which came fully into effect in 2005. This Regulation created new laws on food safety, traceability, withdrawal and recall of products. Offences for breaches of these laws have been put into effect in Great Britain by the General Food Regulations 2004, which has also made changes to the Food Safety Act 1990 itself. In addition, the Food Safety Act 1990 (Amendment) Regulations 2004 changed the definition of “food” in the Food Safety Act to bring it in line with Regulation (EC) 178/2002. Guidance Notes on the General Food Law Regulation (EC) 178/2002 were published in 2007. These are available at <http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/generalfoodlaw> . (small businesses may wish to refer in particular to the summary at paragraph 8 of those Guidance Notes).
9. Food hygiene requirements for businesses are made under powers given by the Food Safety Act 1990 and the European Communities Act 1972 rather than in the Act itself. These are dealt with separately under food law and are covered by the Food Hygiene Regulations 2006² (as amended). There is detailed guidance on food hygiene legislation at <https://www.food.gov.uk/enforcement/regulation/foodlaw>. Most hygiene enforcement provisions are now made under this legislation rather than the Act. Other legislation made under the Act is not covered in this guide.
10. This guidance concentrates on what the main provisions of the Act mean rather than what has to be done to set up a safe food system. It does not provide information on the requirement³ to operate a food safety management system based on HACCP (Hazard Analysis Critical Control Point) principles. Information on this and the Agency’s guidance to help small businesses comply with the requirement can be found at <http://www.food.gov.uk/foodindustry/regulation/hyqleg/hyqlegresources> .

² There are separate versions of the Food Hygiene Regulations 2006 in England (No.14), Scotland (No.3) and Wales (Welsh S.I. No.31 (W.5))

³ Article 5(1) of Regulation (EC) 852/2004

Summary of Responsibilities

11. The Act applies to all types of food businesses.
12. Your main responsibilities under the Act are:
 - to ensure you do not include anything in food, remove anything from food or treat food in any way which means it would be damaging to the health of people eating it;
 - to ensure that the food you serve or sell is of the nature, substance or quality which consumers would expect;
 - to ensure that the food is labelled, advertised and presented in a way that is not false or misleading.

THE FOOD SAFETY ACT 1990

MAIN AIMS, SCOPE AND DUTIES

What is the Food Safety Act 1990?

13. The Food Safety Act 1990 is wide-ranging legislation on food safety and consumer protection in relation to food throughout Great Britain.

What does the Act aim to achieve?

14. The main aims of the Act are:
- to ensure that all food meets consumers' expectations in terms of nature, substance and quality and is not misleadingly presented;
 - to provide legal powers and specify offences in relation to public health and consumers' interest; and
 - to enable Great Britain to fulfil its part of the United Kingdom's responsibilities in the European Union.

What is the scope of the Act?

15. The Act covers activities throughout the food distribution chain, from primary production through distribution to retail and catering.
16. The Act gives the Government powers to make regulations on matters of detail. The Food Standards Agency is the principal Government Department responsible for preparing specific regulations under the Act.

Does the Food Safety Act stand alone?

17. No. Regulation (EC) 178/2002 (the General Food Law Regulation), which now provides the basic framework for food law in the EU and UK, is also important food safety legislation and contains key provisions on food safety (Article 14), presentation (Article 16), traceability (Article 18) and withdrawal, recall and notification of unsafe food (Article 19). Details of where to find Guidance Notes for this Regulation, which should also be read, are at paragraph 8. There is a summary of all the general food law requirements at <http://www.food.gov.uk/foodindustry/regulation/foodlaw>.
18. The General Food Regulations 2004 and the Food Safety Act 1990 (Amendment) Regulations 2004 make substantial amendments to the Food Safety Act 1990:
- to implement the requirements of Regulation (EC) 178/2002 and
 - provide penalties for breaches of these requirements.

19. Many of the key provisions in food law are contained in regulations on more specific areas, which may be made under the powers given in the Food Safety 1990 or other legislation such as the European Communities Act 1972. Food businesses also have responsibilities under these regulations. Particularly important are Regulations dealing with:

- food labelling (e.g. the Food Labelling Regulations 1996);
- food hygiene (e.g. the Food Hygiene Regulations 2006)⁴;
- meat and meat products (such as those concerned with the examination for residues and maximum residue limits);
- food composition;
- novel foods;
- food additives; and
- packaging materials.

What does the Act mean by ‘food’?

20. Food” (or “foodstuff”) means⁵:

“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 drinking water after the point of compliance (which is generally when it comes out of the tap).

21. „Food” does not include:

- animal feed;
- live animals unless they are prepared for placing on the market for human consumption (e.g. oysters);
- plants prior to harvesting;
- medicinal products;
- cosmetics;
- tobacco and tobacco products;
- narcotic or psychotropic substances;
- residues and contaminants.

What activities are covered by the Act?

22. The Act covers operations involved in

- selling and possessing with a view to sale;
- free supply in the course of a business⁶;
- consigning and delivering;

⁴ See footnote 2.

⁵ The full text, which refers to specific legislation, is in Article 2 of Regulation (EC) 178/2002.

⁶ Under section 2(1)(a) of the Act, the supply of the food, otherwise than on sale, in the course of a business, shall be deemed to be a sale of the food.

- preparing;
- presentation and labelling;
- storing;
- transporting and
- importing and exporting food.

23. The Act does not in itself cover hygiene, on which there is separate legislation made using the powers given under the Act, or food prepared in the home for domestic purposes. It does cover food prepared by childminders in their homes for other people's children and extends to activities such as preparation of food in canteens, clubs, schools, hospitals, institutions and public and local authorities.

Does the Act affect farmers and growers?

24. Most farmers are considered to be running food businesses, which the Act describes as "any business in the course of which commercial operations with respect to food or food sources are carried out". As food businesses, farms are subject to the improvement and closure procedures outlined at paragraphs 79-82, and if farmers sell food directly to the consumer, they will be subject to the provisions relating to the sale of food.

What does the Act mean for food importers?

25. The European Union is a single market and therefore there are no import controls at borders on food being brought in from other Member States. However, importers of food from countries outside the EU have to comply with the requirements of EU food law or equivalent conditions.⁷ Imported food has to meet food safety and food hygiene requirements equivalent to those for UK-produced food and can be subject to checks by enforcement authorities at UK points of import and inland.

26. All imported food remains covered by all the main offences outlined in paragraph 27. Enforcement authorities, which in this case include port health authorities, have a range of powers to deal with suspect imported food. Therefore, like other UK food businesses, importers have to take all reasonable precautions and exercise 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.

What does the Act require food businesses to do?

27. In summary, food businesses must ensure that they comply with the Act by not:

- rendering food injurious to health (see paragraphs 30-33);
- selling food which is not of the nature or substance or quality demanded to the purchaser's prejudice (see paragraphs 34-35);

⁷ Article 11 of Regulation (EC) 178/2002

- falsely describing or presenting food (see paragraphs 36-38).

THE MAIN OFFENCES

What are the main offences under the Food Safety Act?

28. The main offences are:

- rendering food injurious to health (section 7 of the Act);
- selling, to the purchaser's prejudice, food which is not of the nature or substance or quality demanded (section 14); and
- falsely or misleadingly describing or presenting food (section 15).

29. The previous offence in section 8 of this Act of selling or supplying food not complying with food safety requirements no longer exists, owing to amendments in the General Food Regulations 2004 (as amended) as a result of Regulation (EC) 178/2002. **Please see the FSA Guidance Notes on Regulation (EC) 178/2002 referred to in paragraph 8 of this guide for the offence created under the General Food Regulations 2004 of failing to comply with Article 14(1) of Regulation (EC) 178/2002, i.e. placing unsafe food on the market.**

What is meant by 'rendering food injurious to health'? (section 7)

30. If a person renders (which means "makes") a food injurious to health:

- by adding an article or substance to it;
- using an article or substance as an ingredient in its preparation;
- abstracting (which means "taking away") any constituent from it; or
- subjecting it to any other process or treatment

then they are guilty of an offence.

An example of where a food would be rendered injurious to health by someone working in a food business adding an article or substance to it or using it as an ingredient in its preparation might be an additive, which had not been approved and which damaged the consumer's health. Removing (abstracting) a necessary preservative could make a food injurious to health.

In considering whether any food is injurious to health, you should look at:

- the probable immediate or short/ long-term effects of the food on the consumer;
- probable toxic effects including those where these result from a combination of substances in the food or the particular health sensitivities of a specific category of consumers where the food is intended for that category, for example when it contains an allergen.

31. So, adding excessive amounts of sugar to a product aimed at diabetics could

render the food injurious to health. The offence applies whether the act is deliberate or not (subject to the due diligence test described in paragraphs 45-50)

32. There is an overlap between this provision and the offence in the General Food Regulations 2004 (as amended)⁸ of marketing unsafe food. The offence in the Food Safety Act is only relevant, however, when the specific actions mentioned are applied to the food.

When is food ‘not of the nature or substance or quality demanded’? (section 14)

33. Any person who sells to the purchaser’s prejudice any food which is not of the nature, or substance, or quality demanded by the purchaser is guilty of an offence. The „purchaser“ of food can range from a customer at a shop, to one company buying from another. A person may be considered to be a „purchaser“ even if no money actually changes hands directly, e.g. winning

In practice:

“nature” covers a product sold as one thing, but which is in fact another, e.g. haddock sold as cod;

“substance” covers situations where the food contains foreign bodies (e.g. an insect) or damaging residues or where there is a statutory or other standard for a food and the substance falls below it, for example milk powder with below the minimum milk protein level. The necessary substance for particular products is set through compositional standards in commodity regulations for which separate guidance exists;

“quality” covers commercial quality, having regard to any statutory standards of composition in the food, so an example of food which would not be of the quality demanded would be a stale cake.

prizes in a raffle.

34. There are often overlaps between these three phrases and with the provision on unfit food in Article 14 of Regulation (EC) 178/2002. The offence only applies when the purchaser is “prejudiced”, which is when the food being not of the nature or substance or quality demanded is detrimental to them.

How can food be ‘falsely or misleadingly described or presented’? (section 15)

35. This section says that any person who labels or advertises food in a way that falsely describes it, or labels, advertises or presents food in a way which misleads as to its nature, substance or quality, is guilty of an offence. The offence can occur when statements are untrue or pictures of food are presented in a misleading way. The offence also covers material that is

⁸ Regulation 4(b)

correct but given such emphasis that the purchaser is led to the wrong

An example of where food might be misleadingly presented would be products which are not cream but which are presented in traditional cream cartons and displayed amongst them.

conclusion.

36. There is a further offence of misleading presentation in the General Food Regulations 2004, resulting from Regulation (EC) 178/2002. However, that offence only applies when the consumer is misled; the Food Safety Act offence would also apply both to where consumers and other businesses are misled. The Consumer Protection from Unfair Trading Regulations 2008 also creates offences for misleading actions or omissions and other unfair or aggressive commercial practices. Guidance on these Regulations is available at http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf
37. Besides the general offence of falsely or misleadingly describing or presenting food, there are also detailed regulations about the labelling of food. These are the Food Labelling Regulations 1996, as amended, and guidance on these is at <http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/foodlabelregsguid> .

What penalties can be imposed under the Act?

38. The courts decide the level of penalties depending on the circumstances of each case, but the Act sets the maximum penalties available to the courts.
39. For offences in England and Wales (other than obstruction and related offences), Crown courts may send offenders to prison for up to two years and/or impose unlimited fines.
40. Magistrates' courts may impose a fine of up to £5,000 per offence and/or a prison sentence of up to six months.
41. For offences under sections 7 and 14 of the Act, the maximum fine a magistrates' court may set for each offence is £20,000. There are also penalties for obstructing an authorised officer.
42. In Scotland, the Sheriff court has a maximum sentence of 12 months and there is a statutory maximum fine of £10,000.
43. Regulations made under the Act may set their own level of penalties which will not exceed those listed above.

DEFENCES TO THE OFFENCES UNDER THE FOOD SAFETY ACT 1990

What is the legal defence of ‘due diligence’?

44. There are two defences under the Food Safety Act which apply to the main offences described so far in this guide, and the principal one is the defence of „due diligence“.
45. „Due diligence‘ is a defence which is designed to balance the 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.
46. This defence is available where the person charged proves that they „took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control“⁹. Although the burden of proof lies with the person or company accused, they need not establish their case beyond all reasonable doubt. They need only persuade the court that they exercised due diligence on the balance of probabilities.
47. The courts will decide what „reasonable care“ in each case is and will take account of all the facts in that case. For example, a small business might not be required to undertake the same precautions which would be expected of one of the major retailers.
48. Part of the „due diligence“ defence may be to show that someone else was at fault. If this is claimed, the food business must give the prosecution information that will enable them to identify who was responsible for the offence. 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.
49. The defence of due diligence also applies to offences under the General Food Regulations 2004 and the Food Hygiene Regulations 2006.¹⁰

Can retailers of ‘own label’ products offer the defence of ‘due diligence’?

50. 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 normally would be) or resulted from their relying on information supplied by that person;

⁹ section 21(1) of the Act.

¹⁰ There are separate versions of the Food Hygiene Regulations 2006 for the different UK administrations, see footnote 2.

- they made reasonable checks on the food or reasonably relied on checks made by the supplier; and
- they had no reason to suspect that they were committing an offence.

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

51. 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 normally would be) or resulted from their relying on information supplied by another person; and
- they could not reasonably have been expected to know that they were committing an offence.
- In this instance the retailer is not required to have carried out reasonable checks of the food supplied to him.

What other defences are there?

52. Besides „due diligence“, the other defences specified by the Act are:

- i. where the commission of an offence was due to the act or default of another person; and
- ii. a defence for those charged with an offence related to the advertisements for sale of food, whose business it is to publish or arrange for the publication of such advertisements and who had no reason to suspect that publishing or arranging to publish an advertisement in the course of their business would amount to an offence. However, regulations made under the Act can set their own defences.

ENFORCING THE ACT

Who enforces the Act?

53. The day-to-day work of enforcement is, in the main, the responsibility of environmental health practitioners and trading standards officers from local (food) authorities. The Food Standards Agency enforces some regulations made under the Act (for example, licensing of irradiated food facilities) and has scope to become involved in certain emergency situations (please see paragraphs 86-87 – Food Alerts) or where a local authority fails to discharge its responsibilities under the Act.

What is the role of the Food Standards Agency (FSA)?

54. The Food Standards Agency oversees the work of the local authorities. Most commonly, it advises them on enforcement, particularly through the issuing of statutory Food Law Codes of Practice – separate codes of practice are available for England, Scotland, Wales and Northern Ireland. The Agency has also issued separate Practice Guidance documents to complement the Codes. For instance, the Codes advise local authorities on the timing and frequency of inspections for food businesses. The Codes and associated Practice Guidance are available on the Agency's website at <http://www.food.gov.uk/enforcement/enforcework/foodlawcop/>.

What is the role of Local Government?

55. Generally there are two main departments within local authorities who are responsible for enforcing food law.

Trading Standards

56. The principal responsibilities of trading standards officers are to ensure food is correctly and accurately labelled, that it contains legal ingredients and that any claims made are truthful. They also act on national food safety alerts and issue press releases to inform local businesses and consumers about product recalls or food alerts.

Environmental Health

57. The principal responsibilities of environmental health practitioners are hygiene, cases of microbiological contamination of foods, and with food which, for any reason including chemical contamination, is unsafe. They also act on national food safety alerts and issue press releases to inform local businesses and consumers about product recalls or food alerts.

Local Government in England

58. Generally in England, in two-tier authorities, trading standards work is carried out by the County Council food authorities and environmental health work by the District Councils. Where there is an imminent risk to public health, enforcement work is carried out by the District Councils in liaison with the County Council. In single tier authorities, food standards work is carried out by environmental health practitioners.

Local Government in Wales

59. In Wales, unitary authorities are responsible for both trading standards and environmental health functions.

Local Government in Scotland

60. In Scotland, all councils are unitary and most food law enforcement is carried

out by environmental health practitioners.

What are the roles of public analysts and food examiners?

61. Throughout the United Kingdom, public analysts and food examiners are appointed by local authorities to provide advice and carry out food analysis and examination in consultation with enforcement teams.

How is the Act enforced?

62. The Act provides that authorised officers of food authorities can:
- take samples of food and food ingredients;
 - enter food premises unannounced to investigate possible offences; and
 - inspect food to see if it is safe.
63. Officers may also detain suspect food or seize it and make an application to a Justice of the Peace (JP) in England and Wales. In Scotland permission must be obtained from a Sheriff by way of a summary application.
64. Authorised officers must be given the information and assistance which they reasonably require. More details of these powers are set out in the following paragraphs.

What powers of entry do authorised officers have?

65. To carry out their duties, officers have the right to enter any premises unannounced within their authority's area. They also have power, in certain circumstances, to enter food business premises anywhere in the country. However, in practice, they only use this power when following up offences which have occurred in their own area.
66. Authorised officers may inspect premises, processes and records and may seize or copy any relevant records and take samples of food for analysis or examination. 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 a JP/Sheriff for a warrant authorising the officer to enter the premises.

What is meant by 'premises'?

67. The definition of „premises“ in the Act is very broad. It includes the obvious buildings where food is prepared, stored or sold, such as food processing plants, supermarkets or restaurants. It also covers farms and vehicles used for transporting or delivering food, ships, aircraft, road-side and market stalls and also private dwellings if used by food businesses.

What are the limits to the authorised officers' powers of entry?

68. Authorised officers of a food authority may enter any premises within their authority's area to carry out an inspection and to ensure food legislation is not contravened. They must carry evidence of their identity.
69. They may also enter any business premises, whether within or outside their authority's area, to establish whether there is any evidence on the premises of any breach of the law which has occurred within their authority's area.
70. An authorised officer may enter premises at all reasonable hours, for instance if they are investigating an outbreak of food poisoning. However, they must give at least 24 hours notice of their intention to enter houses which are used only as private dwellings.

Can officers disclose all the information they find during a visit?

71. Authorised officers commit an offence if they reveal commercially sensitive information learnt in the course of an official visit, unless the disclosure is made in the proper course of their duties.

Can authorised officers take samples of food?

72. Authorised officers may 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.

What happens if authorised officers find suspect food?

73. Authorised officers may inspect, at any reasonable time, any food which has been sold or is intended for sale. If they suspect that the food does not comply with food safety requirements, whether or not this is during the course of an inspection, they may issue the food business operator with a notice requiring the food to be kept in a specific place and not to be used for human consumption while they investigate. This is called a decision to detain the food. Alternatively, they may feel that no investigation is needed and seize the food and have it removed to be dealt with by a JP, or a Sheriff in Scotland.¹¹
74. If they decide to detain the food, the officers have up to 21 days to carry out their investigations. If they conclude that the food is in fact not unsafe, they must withdraw their notice and restore the food to the food business operator. If their opinion is that the food is unsafe, they must seize the food and put the matter to a JP/ Sheriff. When officers do this, they must serve a Detention of Food Notice. When food is seized, written notification (Detention of Food

¹¹ When food has not been produced, processed or distributed in compliance with the Food Hygiene Regulations 2006 (see Footnote 2 about these Regulations in the different UK administrations), it is also treated as failing to comply with food safety requirements and can also be seized and detained.

Notice) of the seizure should be issued as soon as is reasonably practicable, which should include details of the type and quantity of the food seized, including any distinguishing marks, codes, dates etc. A Withdrawal of Detention of Food Notice should be served if evidence suggests that detained food may be released. A Food Condemnation Notification should be given to the person in charge of the food warning them that the officer intends to have the food dealt with by a JP/ Sheriff to apply for its condemnation.

75. When food has been seized and a hearing takes place before a JP/ Sheriff, it may well be that someone may later face criminal proceedings in relation to the food. In such a case, that person can make representations and call witnesses.
76. If a JP/ Sheriff decides that food is unsafe, they must order it to be destroyed or otherwise disposed of, and the owner of the food ordered to meet the expenses incurred.

What happens if food is seized but then not condemned?

77. If food detained or seized by an authorised officer is not eventually condemned by a JP/ Sheriff, but has deteriorated due to the time that has passed, 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.

What other powers may be used under the Act by authorised officers when inspecting food premises?

Improvement notices and prohibition orders

78. Improvement notices, which require food business operators to take specific measures in respect of their business, and prohibition orders, which prohibit processes or treatments of food or the use of particular premises or equipment, may be issued under the Food Safety Act 1990. However, in almost all cases these are now issued in the form of hygiene improvement notices and hygiene prohibition orders under the Food Hygiene Regulations 2006.¹²

Emergency prohibition orders and notices

79. If an authorised officer has evidence of an imminent risk of injury to health then the emergency prohibition procedure may be used under the Act. In this instance an emergency prohibition notice may be served on the food business operator followed by an application to a Magistrates court/ Sheriff for an emergency prohibition order.

¹² Improvement Notices and Prohibition Orders can still be issued under the Food Safety Act 1990 for breaches of the Animal By-Products (Identification) Regulations 1995, the Food (Control of Irradiation) Regulations 1990 and the Ungraded Eggs (Hygiene) Regulations 1990 – the latter no longer applies in Scotland.

80. An emergency prohibition order can close down part or the whole of a food business depending on the nature of the risk to health.
81. Emergency prohibition orders might be served on a food business operator, for example, where a process or treatment exists that introduces a genotoxic chemical (one that damages genes or chromosomes) into food, the effects of which may increase the risk of cancer in the future.
82. An alternative to issuing emergency prohibition orders is the use of voluntary procedures to remove an imminent risk to health. These apply when the business agrees that an imminent risk to health exists and offers to close voluntarily in discussion with an authorised officer.

What are emergency control orders?

83. 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.
84. The Act gives the Government powers to make emergency control orders. These are control measures to remove substantial threats to public health, e.g. prevention of distribution and sale of contaminated food. These are steps which many firms would take on a voluntary basis.

What are Food Alerts?

85. Where a risk is identified as a result of enforcement action taken by authorised officers, the Food Standards Agency may issue Food Alerts, which let other local authorities and consumers know about any specific problems associated with food and in some cases, provide details of specific action to be taken. Food Alerts are not issued under the Food Safety Act 1990, but the system has been set up by the Food Standards Agency under the Rapid Alert System for Food and Feed set down in Regulation (EC) 178/2002 and is included here because it is an additional enforcement measure to those specified above.
86. A Food Alert for Information advises the authorities that a product has been withdrawn or recalled by a company and no further action is required by them. A Food Alert for Action is issued when it is necessary to remove a food product from the market rapidly when it may pose an imminent risk to health. The specific actions required of the authorities are communicated in the Alert. All Food Alerts are placed on the Food Standards Agency's website at <http://www.food.gov.uk/enforcement/alerts/>. When a Food Alert relates to a product that has been imported into the UK or exported from the UK to other Member States or third countries, the Government issues a Rapid Alert System for Food and Feed (RASFF) notification to the European Commission.

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

87. Yes. Anyone running a food business can appeal to a Magistrates' court or, in Scotland, to the Sheriff:
- if an enforcement authority refuses to issue a certificate lifting an emergency prohibition order; or
 - if an enforcement authority closes a business by refusing, cancelling, suspending or revoking registration.¹³
88. 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.
89. If people appealing to Magistrates' court are unhappy with its decision, they have the right of further appeal to the Crown court or, in Scotland, to the Sheriff Principal or direct to the Court of Session. For instance, where a Magistrates' court/ Sheriff court has dismissed an earlier appeal or where it has made a decision - such as the imposition of a prohibition order - which is disputed.

¹³ Appeals can also be made against improvement notices, which can be issued under the Food Safety Act 1990 in the limited circumstances given in Footnote 12.

APPENDIX 1 - SOME USEFUL ADDRESSES

CENTRAL GOVERNMENT

Food Standards Agency
Aviation House
125 Kingsway
London WC2B 6NH
Tel: 020 7276 8000
e-mail: helpline@foodstandards.gsi.gov.uk
or find a particular topic at www.food.gov.uk/about-us/contact-us

Food Standards Agency (Northern Ireland)
10C Clarendon Road
Belfast BT1 3BG
Tel: 028 9041 7700
e-mail: infofsani@foodstandards.gsi.gov.uk

Food Standards Agency (Scotland)
St Magnus House
6th Floor
25 Guild Street
Aberdeen AB11 6NJ
Tel: 01224 285100
e-mail: Scotland@foodstandards.gsi.gov.uk

Food Standards Agency (Wales)
11th Floor
Southgate House
Wood Street
Cardiff CF10 1EW
Tel: 029 2067 8999
e-mail: Wales@foodstandards.gsi.gov.uk

Department for Environment, Food & Rural Affairs
Customer Contact Unit
Eastbury House
30-34 Albert Embankment
London SE1 7TL
Tel: 08549 335577
e-mail: helpline@defra.gsi.gov.uk

Department of Health
Customer Service Centre
Richmond House
79 Whitehall
London SW1A 2NS
Tel: 020 7210 4850

e-mail: dhmail@dh.gsi.gov.uk

CO-ORDINATING BODIES

Local Authorities Coordinators of Regulatory Services (LACORS)

Local Government House

Smith Square

London

SW1P 3HZ

Tel: 020 7665 3888

e-mail: info@lacors.gov.uk

Local Government Association

Local Government House

Smith Square

London SW1P 3HZ

Tel: 020 7664 3131

e-mail: info@lga.gov.uk

Northern Ireland Local Government Association

Unit 5B, Castlereagh Business Park

478 Castlereagh Road

Belfast BT5 6BQ

e-mail: Contacts at

www.nilga.org/Contact-Us.aspx

Convention of Scottish Local Authorities

Rosebery House

9 Haymarket Terrace

Edinburgh EH12 5XZ

Tel: 0131 474 9200

e-mail: carol@cosla.gov.uk

Welsh Local Government Association

Local Government House

Drake Walk

Cardiff CF10 4LG

Tel: 029 2046 8600

e-mail: Contacts at www.wlga.gov.uk/english/contact-us-form

PROFESSIONAL BODIES

Chartered Institute of Environmental Health

Chadwick Court

15 Hatfields

London SE1 8DJ

Tel: 020 7928 6006

e-mail: Contact at www.cieh.org/about_us/contact.html

Royal Environmental Health Institute of Scotland
3 Manor Place
Edinburgh EH3 7DH
Tel: 0131 225 6999
e-mail: contact@rehis.com

Royal Society for Public Health
3rd Floor, Market Towers
1 Nine Elms Lane
London SW8 5NQ
Tel: 020 3177 1600
e-mail: info@rsph.org.uk

Trading Standards Institute and Itsa Ltd
1 Sylvan Court
Sylvan Way
Southfields Business Park
Basildon
Essex SS15 6TH
Tel: 01268 582200
e-mail: institute@tsi.org.uk

INDUSTRY BODIES

British Hospitality Association
Queens House
55-56 Lincolns Inn Fields
London WC2A 3BH
Tel: 020 7404 7744
e-mail: bha@bha.org.uk

British Retail Consortium
2nd Floor
21 Dartmouth Street
London, SW1H 9BP
Tel: 020 7854 8900
e-mail: www.brc.org.uk/contact-us/ (use contact form)

Food and Drink Federation
6 Catherine Street
London WC2B 5JJ
Tel: 020 7836 2460
e-mail: generalenquiries@fdf.org.uk

National Association of Master Bakers
21 Baldock Street
Ware
SG12 9DH
Tel: 01920 468061
e-mail: namb@masterbakers.co.uk

National Farmers Union
Agricultural House
Stoneleigh Park, Stoneleigh
Warwickshire, CV8 2TZ
Tel: 024 7685 8500
e-mail: www.nfuonline.com/about-us/contact-us/ (use
contact form)

APPENDIX 2 - KEY PROVISIONS OF THE FOOD SAFETY ACT 1990

PART I: PRELIMINARY

Section 1 (as amended) says that „food“ has the meaning given in Regulation (EC) 178/2002.

Section 2 extends the meaning of sale to include food supplied in the course of a business.

Section 3 sets out that food items commonly used for human consumption or in the manufacture of food that are found on some food premises will be presumed to be intended for sale, or for the manufacturing of food intended for sale, until the contrary is proved.

Section 5 establishes which authorities are food authorities and who are their authorised officers.

Section 6 establishes who enforces the provisions of the Act and regulations made under it, and enables the Secretary of State or the Food Standards Agency to take over particular functions in specific cases.

PART II: MAIN PROVISIONS

Section 7 describes the offence of rendering food injurious to health. It has been amended by the General Food Regulations 2004 so that the criteria by which it is decided whether food is injurious to health are now those in Article 14 of Regulation (EC) 178/2002.

Section 8 originally set out an offence of selling food that does not comply with the food safety requirements, but it has been amended substantially. This section has largely been replaced by Regulation 4 of the General Food Regulations 2004. This makes it an offence not to comply with the food safety provisions of Article 14 of Regulation (EC) 178/2002.

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 specific legislation has been breached.

Section 11 provides for prohibition orders where there is a risk of injury to health.

Section 12 provides emergency prohibition powers where there is an imminent risk of injury to health.

Section 13 gives the Minister 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.

Section 15 creates an offence for describing, advertising or presenting food which falsely describes the food or is likely to mislead as to the nature or substance or quality of the 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.

Schedule 1 contains further provisions which may be included in regulations under **section 16**.

Section 17 enables Ministers to make regulations to fulfil European Community obligations.

Section 18 provides regulation-making powers for Ministers to control novel foods and genetically modified food, and to cover special designations for milk.

Section 19 enables regulations to be made about the registration and licensing of food premises (NB Registration is now covered by EC hygiene law).

Section 20 gives a defence where the commission of an offence is due to the act or default of another person, and allows enforcement authorities to prosecute that other person.

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 defence varies for a defendant who manufactured or imported the food.

Section 22 contains a special defence for businesses who publish an advertisement in the course of business who had no reason to suspect that an offence was being committed.

Section 23 enables local authorities to provide training courses in food hygiene for food handlers.

Section 24 allows enforcement authorities to provide facilities for cleansing shellfish.

Section 26 enables regulations and orders to include certain supplementary 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 provides powers to make regulations on sampling.

Section 32 sets out authorised officer's power to 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 in the magistrates' court or, in Scotland, to the Sheriff. There is also a further right of appeal to the Crown Court.

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 or the Agency to require food authorities to make reports and returns to the Minister with respect to how they have exercised their functions under the Act.

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 the Minister to make regulations 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.

Section 52, together with **Schedule 2**, amends provisions of the Food Act 1984.

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.

Section 56 amends the Water (Scotland) Act 1980.

Section 57 provides that the Act applies to the Scilly Isles and 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) on days appointed by the Minister.