

CHAPTER 1 - APPLICATION OF FOOD SAFETY LEGISLATION TO THE MOD

INTRODUCTION

0101. The Food Safety Act (1990) (FSA) received Royal Assent on 29 Jun 90 and since that time various Regulations have been made under the Act or, if originating from the European Commission and not directly applicable, under the European Communities Act 1972. The Food Safety Act applies in England, Scotland and Wales and there is a separate, but similar, law in Northern Ireland. However, in 2004 the European Commission consolidated European food law and Member states were required to implement the directly applicable legislation arising from this consolidation. MOD establishments overseas are to comply with the laws of the country in which they are based, but, as with most UK law, they are to apply the 'Spirit' of the regulations where these are more stringent than those that apply locally.

FOOD LAW

0102. European food law, amendments were made to the FSA. From 11 January 2006 food quality and standards matters are dealt with under the FSA (1990) and food hygiene issues under the directly applicable European food law and the national implementing legislation. The implementing Regulations are:

- a. The Food Safety and Hygiene (England) Regulations 2013.
- b. The Official Feed and Food Controls (England) Regulations 2009.

The directly applicable European Regulations are:

- c. Regulation (EC) No 178/2002 laying down the general principles and the requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.
- d. Regulation (EC) No 852/2004 on the hygiene of foodstuffs.
- e. Regulation (EC) No 853/2004 laying down specific rules for food of animal origin.
- f. Regulation (EC) No 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- g. Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

0103. There are a number of offences under the food law:

- a. Selling food that is not of the nature, substance or quality demanded by the purchaser.
- b. Falsely describing, advertising or presenting food.
- c. Rendering food injurious to health.
- d. Selling food that does not comply with food safety requirements. This is food that has been rendered injurious to health (e.g. through contamination with food poisoning organisms) or which is unfit for human consumption.

- e. Contravening or failing to comply with any of the specified Community provisions (as indicated in The Food Safety and Hygiene (England) Regulations 2013).

0104. The definition of selling food includes food that is offered, displayed, advertised by, or in possession of, the food business. MOD catering operations fall within the definition of a food business.

REGULATION (EC) NO 852/2004 ON THE HYGIENE OF FOODSTUFFS

0105. This Regulation applies to any registered premises where the preparation, processing, storage or handling of food is undertaken. They detail key requirements in the following areas:

- a. **Structure.** Premises where food is prepared must comply with a series of structural, maintenance and cleanliness requirements. These are designed to protect food from physical contamination, permit good food hygiene practices and prevent external sources of contamination such as pests.
- b. **Hygiene.** There is a general requirement that any operation involving the preparation, processing, storage or handling of food is carried out in a hygienic way.
- c. **Hazard Analysis Critical Control Points (HACCP).** A manager of a food business shall identify any step in the activities of the food business that is critical to ensuring food safety, and ensure that adequate safety procedures are identified, implemented, maintained and reviewed. This procedure is designed to ensure compliance with Article 5 of Regulation (EC) 852/2004. The MOD HACCP system is shown in Chapter 3.
- d. **Infected Food Handlers.** Food handlers must inform their line manager if they or any member of their household are suffering from, or suspect that they may be suffering from, any infection that may be transmitted through food, e.g. gastro-intestinal infection. Infected lesions of skin, eyes, ears and mouth that may directly or indirectly contaminate food with pathogenic micro-organisms are also to be reported. Appropriate exclusion procedures are to be taken pending medical advice. See Chapter 4 for full details of MOD policy in this regard.
- e. **Training.** All food handlers must be supervised, instructed and/or trained in food hygiene matters commensurate with their work activity. Similarly, those responsible for the development and maintenance of the HACCP procedures or the operation of relevant guides should have received appropriate training. See Chapter 6 for further information.

THE FOOD SAFETY AND HYGIENE (ENGLAND) REGULATIONS 2013

0106. Regulation 30, Schedule 4 of these regulations contains national provisions relating to the temperature control of food. They detail limits for holding hot and cold food at temperatures designed to reduce the risk of bacteriological activity which may give rise to food poisoning. Such specific temperatures do not apply to ships and aircraft, but in accordance with the relevant Chapters in Annex II of Regulation (EC) 852/2004 appropriate foods must be kept at safe temperatures.

REGISTRATION OF FOOD BUSINESSES

0107. The purpose of registration is to inform Local Authorities of the existence of a food business and for them to have up-to-date information. Therefore, food business operators must register their establishments with their Local Authority in terms of Article 6(2) of Regulation (EC) No 852/2004 and notify that authority of any significant changes in their activities or the closure of any existing establishment. A copy of the registration form is at [Annex A](#) of this chapter. In addition to publicly funded messes, non-public bars and welfare outlets will also be included in the registration process. The Head of Establishment (HoE) is also to appoint an officer to oversee non-public

catering facilities. The officer is to be formally appointed as per [Annex B to this chapter](#). Vehicles used to transport food around unit sites do not have to be registered neither do RN Ships, Submarines and Military Aircraft. The registration procedure for MOD food premises will involve the completion of a simple form, which will then be sent to the Local Authority. It will be necessary for units to identify each of their food outlets, and to maintain a list of premises and the Officers in Charge.

0108. Food Law applies to any catering establishment, which, by definition, is ‘*an establishment where food is prepared on the premises for delivery to the ultimate consumer and is ready for consumption without further preparation*’. Penalties under food law vary according to the precise nature of the offence. The maximum on summary conviction is a fine of up to £20,000 or 6 months imprisonment, or both. In Out of Barrack situations (except established training camps where all the conditions of food law still apply), the legislation does not require the registration or routine inspection of premises. Due Diligence precautions (see Para 0110) for the prevention of food poisoning apply in all circumstances.

THE FOOD INFORMATION REGULATIONS 2014 REGULATION (EU) NO 1169/2011 ON THE PROVISION OF FOOD INFORMATION TO CONSUMERS

0109. These regulations detail measures required to protect purchasers and consumers from false or misleading information when purchasing food. The two most important provisions from the food hygiene viewpoint are those relating to indication of durability, and storage conditions or conditions of use:

a. Indication of Durability. Most pre-packed foods must be date marked. There are two types of date mark:

(1) “Use By” Date. Foods that are microbiologically perishable and may pose a risk to health must bear a “Use By” date. This is the more stringent of the two indicators of durability. It is to be noted that it is an offence to sell, or have in possession for sale, food bearing an expired “use by” date and for anyone other than the person originally responsible for applying the date mark to change it.

(2) “Best Before” Date. The majority of foods have a “Best Before” date, which indicates the period for which it might be expected to retain its specific properties if stored correctly. A “Best Before” date relates to the quality of food rather than safety.

b. Storage Conditions or Conditions of Use. Where particular storage conditions are required to maintain specific properties of food, e.g. “keep refrigerated” or “keep frozen”. These instructions must be stated on the label.

DUE DILIGENCE

0110. A key concept of food law is that of ‘Due Diligence’. This is essentially a defence in the event of prosecution and requires evidence that the person charged took all reasonable precautions and exercised all due diligence to avoid committing the offence. In effect, it enables an enforcement authority to “by-pass” an immediate offender and prosecutes the real offender. The defendant has to prove that due diligence has been exercised and this is where the importance of keeping records is crucial. HoEs are to incorporate food hygiene considerations into their routine inspection reports and they are to issue a food safety statement applicable to all catering outlets on the unit. An example Food Policy Statement is at [Annex C](#) of this chapter.

0111. In practice, the due diligence defence will consist of two stages:

a. 'To take all reasonable precautions' means that a system is in place to prevent an offence from occurring. Areas of consideration will include:

- (1) Food Safety Policy in accordance with Base/Unit/Stn Food Policy Statement.
- (2) HACCP.
- (3) Staff training programmes.
- (4) Available resources, e.g. technical, staffing, financial.

b. Secondly, exercising due diligence, which concerns day-to-day operation of the system. A court of law would usually require documented evidence that procedures were carried out at a relevant time and by an appropriate person. The usual requirements include details of the following:

- (1) Cleaning schedules.
- (2) Temperature monitoring e.g. dedicated transportation vehicles, temperature at time of receipt, cooking and service, and monitoring of freezers and refrigerators.
- (3) Documentation of any corrective action taken.
- (4) Documentation of supervisory checks.
- (5) Records kept up to date at all times and available for inspection by local authority enforcement officers.

APPLICATION OF FOOD LAW TO MINISTRY OF DEFENCE PREMISES

0112. Food law has applied to MOD premises since the removal of Crown immunity on 01 Apr 92. It is not possible for the Crown to be criminally liable if it fails to comply, but Local Authorities may request the courts to declare unlawful any act or omission by the Crown which constitutes a contravention of food law. The provisions of food law apply to Government servants, individual Service personnel and Civil Servants, who may be liable to prosecution if they contravene the law in the course of their duties. On MOD units with contract catering, or where CRL contractor operates a catering service from MOD premises, the HoE is responsible for ensuring that the buildings and equipment provided by the MOD comply with food law regulations. CRL contractor is responsible for all other aspects of food safety management such as food quality, food handling, staff training and the cleaning of food rooms. Penalties under food law vary according to the precise nature of the offence. The main penalties under the law, on summary conviction, are currently a fine up to £20,000 or 6 months imprisonment, or both.

0113. With effect from 18 Aug 03, Powers of Entry have been extended to LAEHOs permitting access to HM Ships and Submarines, and Aircraft. It is MOD policy that the legal standards contained in the above legislation, and the guidance laid down in the associated codes of practice and relevant industry publications, are to be adhered to wherever practicable. In field catering situations (except established training camps where all the conditions of food law still apply) the legislation does not require registration and routine inspection of premises; Due Diligence and relevant documentary evidence of procedures designed to prevent food poisoning apply equally.

0114. Food law specifically applies to Crown (including MOD) premises, as laid out in the statutory Food Law Code of Practice to which enforcement authorities shall have regard. MOD premises are classified as Group 3 Crown premises, which indicates that a LAEHO is not permitted unannounced entry. Ideally (3) three days notice is to be given, with the unit / ship

required to contact their respective Service EHO¹. This will allow previous reports on the unit / ship to be forwarded to the local Authority as background information. In the case of a food poisoning investigation, this need only take the form of a telephone call. LAEHOs inspecting MOD premises must be in possession of an ID card (preferably with a photograph), must comply with any security/health and safety arrangements in place, and are restricted to areas related to food storage and production only (this does not include kitchen areas where staff and others prepare food/beverages for their own consumption). They may take photographs only after permission, may seize samples or food as of right and require copies of relevant documentation.

0115. The following aspects of enforcement have been made under the Food Law Code of Practice in Relation to Crown Premises:

- a. As for all other food premises, LAEHOs are required to draw upon any reports, notices or letters, a distinction between those matters considered to be contraventions of food safety legislation, and those considered being advice.
- b. When issuing Hygiene Improvement Notice or Hygiene Emergency Prohibition Notice on a food business where the food business operator is the Crown, food authorities should delete all wording in the forms, which state that it is an offence not to comply with the notice.
- c. If enforcement action by the issue of notices is considered, they must be served on the appropriate person contravening the law. For example, structural contraventions may be seen to be the responsibility of the Crown, whereas procedural contraventions may be seen to be the responsibility of contract caterers working within the premises. If it is considered that the MOD is responsible, the notice will be served on the Secretary of State for Defence, copied to the HoE.
- d. LAEHOs can issue Hygiene Improvement Notices for simple breaches of the regulations, specifying the action to be taken and giving a period of time in which corrective action must be taken. Where it is considered that the health risk condition is fulfilled, LAEHOs can issue Hygiene Emergency Prohibition Notices. The LAEHO will then make an application to a Court to receive confirmation that the health risk condition is fulfilled. If such confirmation is forthcoming, the Court will issue a Hygiene Prohibition Order. Failure to comply with an Order can result in further Court action.
- e. In certain circumstances LAEHOs may issue Remedial Action Notices. The notice may prohibit the use of equipment or any process or, any part of the establishment. It may impose conditions on any process or reduce or stop any operation and require the detention of any food.

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¹ Contact details for the 3 Service EH organisations can be found in Chapter 2, para 0219.

CHAPTER 1 Annex A - MODEL APPLICATION FORM FOR THE REGISTRATION OF A FOOD BUSINESS ESTABLISHMENT

This form should be completed by food business operators in respect of new food business establishments and submitted to the relevant food authority 28 days before commencing food operations. On the basis of the activities carried out, certain food business establishments are required to be approved rather than registered. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact [the Food Authority] for guidance.

1. Address of establishment (or address at which moveable establishment is kept):

Post Code:

2. Name of food business (trading name):

Telephone No:

3. Full Name of food business operator:

4. Address of Food Business Operator:

Post Code:

Telephone No:

E-mail address:

5. Type of food business (Please tick ALL the boxes that apply):

- | | |
|---|--------------------------|
| Farm Shop | <input type="checkbox"/> |
| Staff restaurant/canteen/kitchen | <input type="checkbox"/> |
| Food manufacturing/processing | <input type="checkbox"/> |
| Catering | <input type="checkbox"/> |
| Packer | <input type="checkbox"/> |
| Hospital/residential home/school | <input type="checkbox"/> |
| Importer | <input type="checkbox"/> |
| Hotel/pub/guest house | <input type="checkbox"/> |
| Wholesale/cash and carry | <input type="checkbox"/> |
| Private house used for a food business | <input type="checkbox"/> |
| Distribution/warehousing | <input type="checkbox"/> |
| Moveable establishment e.g. ice cream van | <input type="checkbox"/> |
| Retailer | <input type="checkbox"/> |
| Market stall | <input type="checkbox"/> |
| Restaurant/café/snack bar | <input type="checkbox"/> |
| Food Broker | <input type="checkbox"/> |
| Market | <input type="checkbox"/> |
| Takeaway | <input type="checkbox"/> |
| Seasonal Slaughterer | <input type="checkbox"/> |
| Other (Please give details): | <input type="checkbox"/> |

6. Type of Business:

- Sole Trader
 - Partnership
 - Limited Company
- (If Limited Company, please complete 7. below)

7. Limited Company Name:

Company No:

Registered Office Address:

Post Code:

8. Number of vehicles or stalls kept at, or used from, the food business establishment and used for the purposes of preparing, selling or transporting food:

- 5 or less 6-10 11-50 51 plus

9. Water Supplied to the Food Business Establishment:

- Public (Mains) Supply Private Supply

10. Full Name of Manager (if different from operator):

11. If this is a new business:

12. If this is a seasonal business:

Date you intend to open:

Period during which you intend to be open each year:

13. Number of people engaged in food business (count part-time worker(s) (25 hrs per week or less) as one-half):

- 0-10 11-50 51 plus (Please tick one box)

Signature of Food Business Operator:

Date:

Name:

(BLOCK CAPITALS)

AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY CHANGES TO THE ACTIVITIES STATED ABOVE TO [THE FOOD AUTHORITY] AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S) HAPPENING.

NOTES ON REGISTRATION OF FOOD PREMISES:

What is registration?

1. Registration of certain premises used for a food business (including market stalls, mobile sales vehicles and other moveable structures) is required by law. Registration will allow local authorities to keep an up-to-date list of all those premises in their area so they can visit them when they need to. The frequency of the visits will depend on the type of business.

Who needs to register?

2. Under Article 6(2) of Regulation (EC) No 852/2004, food business operators must register their establishments, i.e. each separate unit of their food business, with the appropriate competent authority. Food establishments include restaurants, hotels, cafes, shops, supermarkets, staff canteens, warehouses, guest houses, market and other stalls, hot dogs and ice cream vans etc.

3. If you use vehicles for your food business in connection with permanent premises such as a shop, or warehouse you only need to tell the local authority how many vehicles you have. You do not need to register each vehicle separately. If you have one or more vehicles but no permanent premises, you must tell the authority where they are normally kept. Ships and aircraft do not have to be registered.

4. Anyone starting a new food business must register with the local authority at least 28 days before doing so.

5. The majority of premises will have to be registered. However, certain premises are exempt from registration, i.e. those to which Regulation (EC) No 852/2004 does not apply². You should contact your local authority for confirmation, if you think you might be exempt.

How do I register?

6. By filling in this form. Registration cannot be refused and there is no charge. The registration form must be sent to your local authority. The address can be found in the telephone directory. If the form is sent to the wrong address your application will not take effect until it is received at the proper place. If you use premises in more than one local authority area, you must register with each authority separately.

7. You must tick all the boxes, which apply to your business, answer all the questions and give all the information requested. Seasonal businesses operating for a certain period each year should give the dates between which they will be open in answer to question 9. If you have any questions your local authority will help you. It is an offence to give information, which you know is false.

What happens to the information given on the form?

8. The local authority will enter the details on its register. A register of addresses and the type of business carried on at each will be open to inspection by the general public. Records of the other information provided will not be publicly available.

Changes

9. Once you have registered with the local authority you only need notify them of a change of proprietor, a change in the nature of the business, the closure of the business or, if there is a change of the address at which moveable premises are kept. The new proprietor will not have to complete an application form³.

² For example, the direct supply by a producer of small quantities of primary products direct to the final consumer or, to local retail establishments directly supplying the final consumer and, those premises which require approval under Regulation (EC) No 852/2004. These latter premises include those producing foods of animal origin, such as meat products, fishery products, dairy products etc.

³ These notes are provided for information only and should not be regarded as a complete statement of law.

CHCPTER 1 Annex B – EXAMPLE OF FOOD SAFETY DOCUMENTATION FOR NON-PUBLIC CATERING FACILITIES

1. The Terms of Reference of the Officer IC include responsibility for ensuring that the food served does not constitute a risk to health. The Officer IC is to identify and, where reasonably practicable, eliminate food hazards.

2. Periodic inspections of premises are to be made by the Officer IC in order to check standards of food safety. The frequency of inspections is to be determined by the nature of activities undertaken. In particular, Officers IC are to ensure that:
 - a. An adequate standard of premises and equipment is provided, properly used and maintained.

 - b. Proper storage facilities, including refrigerators and freezers, are provided and maintained.

 - c. Hygienic working practices are observed by all food handlers.

 - d. Written information on possible hazards and the hygiene precautions to be observed following an appropriate risk assessment based upon the requirements in JSP 456; are readily available and with food safety notices displayed where necessary.

3. The Officer IC is responsible for seeking the advice of the Senior Catering Manager⁴ to ensure the correct interpretation of MOD requirements in relation to Food Law and Industry Guides to Good Hygiene Practice.

Date:

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⁴ For the RN this is likely to be the Logistics Officer (Catering); in the Army the Unit Catering Manager and in the RAF OC Catering Squadron/Flight.

CHAPTER 1 Annex C – EXAMPLE OF A UNIT FOOD SAFETY POLICY STATEMENT

1. Unit:shall comply with the requirements of the Food Law, subject only to the exceptions provided in the legislation for the Ministry of Defence as laid down in the Joint Service Publication (JSP) 456, Defence Catering Manual. All Service and Civilian Food Handlers, including Contract Staff, are required to participate in achieving this aim.
2. Every Food Handler on the strength of the Unit, attached to the Unit, or on temporary duty at the Unit, shall be adequately trained in Food Safety commensurate to their work activities and receive effective induction training prior to carrying out any food handling duties. A record of all training must be maintained for inspection. Food Handlers are also required to ensure that their personal hygiene and work practices do not contravene the requirements of the Food Law. The food handler responsible for the development and maintenance of HACCP procedures should receive adequate training in their application.
3. It is a fundamental principle of the Unit's Food Safety Policy, that personnel in charge of catering operations, including Non-Public facilities are responsible for ensuring that, high standards of food hygiene are maintained in their area of responsibility and that all precautions are taken to safeguard the health of their customers.
4. The overall responsibility for Food Safety in the Unit is vested in the Commanding Officer. Officers responsible for premises providing catering facilities are to ensure that the storage, preparation, cooking and service of food and drinks are carried out in accordance with MOD food safety requirements contained in JSP 456 Pt.2 Vol 3. All personnel are expected to inform the Officer responsible of any practice or occurrence that may present a risk to health.
5. This statement is to be brought to the attention of all food handlers working atand is to be exhibited on a prominent notice board in all premises with catering outlets.

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(Annual Review Date.....)