

This Information for Business leaflet is intended to provide basic advice to Food Business Operators (FBOs) on how the defence provisions of the Food Safety Act 1990 works and how businesses can help themselves to meet their defence.

Food Law and Trading Standards

Authorised officers from Nottinghamshire County Council Trading Standards and Environmental Health Officers from the local borough or district council have the power to enter and inspect all FBOs business premises at reasonable hours in the execution of their duties. Trading Standards Officers deal with the composition, labelling and packaging of food and check that ingredients are legal and any claims are truthful. They inspect a range of premises including manufacturers and retailers, can take samples and evidence in pursuit of an investigation. They also provide guidance to businesses to help them comply with legislation.

The Food Safety Act 1990

In many criminal cases, it is necessary to prove that the person charged had an intention to do something wrong. This is also known as “mens rea” or guilty knowledge.

There are other laws, including the Food Safety Act and many other consumer protection laws, which have a simple prohibition against doing something wrong. There is no need for the prosecution to show that it was not your intention or that you were unaware of the law. This is called “strict liability” and a court would have sufficient evidence to convict. This provision is potentially unfair as it does not take into account the circumstances of the case. To address this, the Food Safety Act contains a defence to persons and businesses which are charged with an offence under the act. This is commonly known as the “due diligence” defence and is based on the principle that a person charged will not be guilty of an offence if the court is satisfied that they took “all reasonable precautions” and exercised “all due diligence” to prevent the offence occurring.

It also recognises that the offence may have been caused by the act or default of another person and that there may be another party who is actually responsible.

A substantial body of case law has built up over the years, which assist officers in giving pertinent advice to help businesses produce legally compliant products.

What does “all reasonable precautions” actually mean?

The most important point to make is that sitting back and doing nothing is unlikely to help you meet your defence. However the steps that are taken will be appropriate to the nature and size of the business – it would not be reasonable for a small scale baker to have a quality system which mirrors that of a national bakery.

What Do I Need To Consider?

The following is advice only. It is worth noting that a HACCP system will assist you but will not take into account risks such as labelling errors or compositional standards. It is advisable to undertake a thorough review of all aspects of the business to establish a control system which will assist in achieving compliance in all areas of legislation. The following list is not exhaustive and is intended as a guide only. Only the courts can interpret statutory legislation with any authority.

1. The system must be under the directing mind of the enterprise and the responsibilities of those concerned should be stated.
Example - this includes any directors or sole traders.

2. The precautions and checks to be taken depend upon the size and nature of the business including the risk that the product presents if it is non-compliant.
Example - producers of "free from" type foods will need to take extra care in their manufacturing processes to ensure that claims are truthful.
3. Reliance cannot be placed on warranties or on general assurances from suppliers. Example - a verbal assurance is not adequate and any documents should be reviewed to ensure that they are still relevant.
4. The system should be written down with adequate instructions and training for staff should be given and recorded. Checks on the system should be also be recorded.
Example: documented recipes and work instructions.
5. Any reasonable precautions which can be taken should be actioned and the system should be both pro-active and re-active. Example: it is reasonable to check durability dates on ingredients and ensure that only products with a suitable date are purchased as ingredients.
6. Complaints by consumers should be recorded and any trends should be addressed.
7. The system should cover all aspects of the business which is subject to the Food Safety Act and any associated regulations.

Please note: you are required by law to have a product recall system and have traceability of your ingredients and products. Please see our other information sheet for further information.

It is recommended that FBOs address the issue of their statutory defence in order to prevent non-compliant products being placed on the market.

Successful prosecutions and convictions can result in a loss of reputation, sales and costs incurred by any penalties that a court imposes. The maximum penalties under the Act are an unlimited fine and or six months imprisonment.

This leaflet is a brief summary of the law regarding due diligence. It is not an authoritative document on the law and is only intended for guidance. For further details or clarification contact the Trading Standards Service.

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