

D. J. Jukes

# Food Legislation of the UK

A concise guide

Third edition

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## Food Legislation of the UK

For my wife Helen and our daughters Camilla, Polly,  
Verity and Kezia

## Important

Readers should note that this Guide is not a legal document and, whilst every care has been taken in its preparation, no responsibility can be accepted for problems arising from its use.

## Acknowledgements

The inspiration for this Guide came from the original work of David Pearson whose *Concise Guide to UK Food Legislation* was published in May 1976.

I would welcome comments from readers on the content, presentation and relevance of any of the topics covered (or left out).

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This Guide has been designed to cover the legislative controls under which food technologists have to work in the United Kingdom. The much smaller original document was prepared to provide students of the then National College of Food Technology at Reading University with sufficient detail of the legal standards they would need when working as technologists in industry. It has grown considerably since then, as this third published edition demonstrates. Its publication illustrates that a wide range of people require information on the laws and regulations applied to food and food processing.

The selection of regulations for inclusion has been difficult and readers should note that the Guide does not provide a comprehensive list of all the regulations affecting food and food production. In particular, a distinction has been drawn between the requirements for food products, which are mostly covered, and the requirements for agricultural produce, which are not. Thus for example, grading standards for vegetables and eggs are not included. A further distinction is made between food regulations of interest to the industry as a whole, and those complex regulations affecting one particular section. As an example of this, the EC Wine Regulations have not been included. Regulations affecting all industry and not specifically food production are also not included.

It should be noted that the Guide is based on the Regulations for England and Wales. Whilst most of the Regulations for Scotland apply the same standards, certain details may be different. Appendix 1 should be consulted for further details. A similar situation affects the Regulations for Northern Ireland.

As with any attempt to simplify legal matters, it is likely that in the process certain requirements or exemptions will have been dropped. It is important that readers appreciate that the Guide is not a legal document and that for full details of the legal requirements the Acts and Regulations must be consulted.

Legislation is constantly changing. This Guide gives the legal requirements at the time of writing. Any changes that occur prior to printing but after the preparation of the main text will be included in Appendix 6. It is therefore suggested that readers check Appendix 6 prior to using the Guide.

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## 2 UK food law

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In the United Kingdom, as elsewhere, legislation controlling food has two principal aims – the protection of the health of the consumer and the prevention of fraud. In addition there is legislation which has an economic motive (tariffs, taxes, quotas, etc.) which provide economic benefits to an industry but which do not usually involve the technologist. The two principal aims are achieved in the UK by a combination of primary legislation (the Acts) and more detailed secondary legislative measures (the regulations or orders). The Acts usually contain general prohibitions, which, when interpreted and enforced by the courts, provide general consumer protection. The scientific and technical requirements of food production require more detailed controls. The Acts therefore also contain the authorisation for Ministers, subject to specified parliamentary approval, to issue detailed regulations. It is these which form the main bulk of this book.

While this book is meant as a guide to the technical requirements of legislation, it is necessary to put it into the context of the legislative structure in the UK. It is therefore important to discuss briefly some of the more important aspects of the application of food law in the UK.

### Primary legislation

In England and Wales, the primary legislative powers are now contained in the 'Food Safety Act 1990'. This new Act updated the primary legislation for England, Wales and Scotland. For Northern Ireland, very similar controls are contained in the 'Food Safety (Northern Ireland) Order 1991'. Only very brief details of the Act are given in this book and readers are strongly urged to obtain an actual copy of the Act.

The Act states that food should not be 'rendered injurious to health' and should comply with certain specified 'food safety requirements'. General consumer protection is contained in a section which requires food to be of the 'nature or substance or quality demanded by the purchaser' and another which makes it an offence for food to be falsely described or to have a misleading label. There are numerous provisions providing for more detailed controls to be applied by regulations and these can cover a wide



range of topics: composition, labelling, processing, packaging, hygiene, microbiological standards, novel foods etc.

Enforcement powers are detailed and enable enforcement officers to enter premises to inspect the business to ensure compliance with the various controls. If they suspect a failure to comply, food can be seized, instructions can be issued to improve the premises ('improvement notices') and, in extreme cases, the business can be prevented from operating ('emergency prohibition notice') pending a court hearing.

Failure to comply with the provisions of the Act is a criminal offence and courts have significant penalty powers. An opportunity is provided for a food business to defend itself by using certain statutory defences provided by the Act. In particular, provision is made for a defence if the person charged can show that they 'took all reasonable precautions and exercised all due diligence'. However, this requires the presentation of sufficient information to convince the court that the requirements have been met. It is not an easy defence to operate. For example, what is 'reasonable' will vary from one business to another depending on the size of the operation and the potential hazards of the products.

A number of other Acts apply to food products and therefore require consideration. In particular the 'Weights and Measures Act 1985' (a consolidation of previous Acts) has many provisions which apply to food. Other Acts have to be considered and are listed in Section 3.3. Special mention should be made of the 'Food and Environment Protection Act 1985' which contains provisions enabling the prohibition of food sales where health hazards may exist and for the control of pesticides (and their residues). This had been a gap in the previous legislation.

## Regulations

The vast majority of the detailed technical requirements for food products are contained in the regulations issued by Ministers and laid before Parliament. In most cases the regulations are passed unless Parliament specifically votes against them. In other cases draft regulations may have to be presented to Parliament a number of days before the actual regulations are published and, in a few cases, Parliament has to positively approve the regulations. Prior to the Food Safety Act 1990, since there were three separate Acts covering the UK there had to be three separate sets of regulations issued on any particular subject. For most products this does not present any difficulty since the technical requirements are identical and only certain administrative provisions may differ. However, for historical reasons the legislation on milk for Scotland has evolved slightly differently and certain technical standards are different from those specified for England and Wales. Provisions for food hygiene which include certain registration requirements also differ. The situation has now been improved

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to the extent that England, Wales and Scotland now can have a combined Regulation. Details are given in Appendix 1 of those regulations which are similar and those which contain some differences in detail.

Depending upon the requirements of the primary legislation, some of the secondary powers are issued as 'Orders' rather than 'Regulations'. For England, Wales and Scotland these are all published as Statutory Instruments (SI) with a reference number indicating the year of publication and the number assigned to the particular SI. The equivalent regulations for Northern Ireland are generally issued in a separate series known as the 'Statutory Rules of Northern Ireland'. Due to the difficult legislative position in Northern Ireland, certain measures (including primary legislation) are being published as Statutory Instruments. It is therefore important to check which series is involved when quoting a reference number.

## Development of regulations

Before issuing regulations, Ministers are usually required to consult with those organisations which may be affected by them. Thus, when a Minister proposes to make a regulation, a press notice is issued and the proposed regulation is sent for comment to manufacturers, retailers, consumer groups and a number of professional bodies representing technologists, enforcement officers, councils, etc. Only when this consultation is complete will the Minister decide on the final form of the regulations.

For matters which require more extensive or formal scientific consideration a number of independent committees have been established to advise the Ministers. The principal one for food is the Food Advisory Committee (FAC) which was constituted in 1983 by combining two previous committees (the Food Standards Committee (FSC) and the Food Additives and Contaminants Committee (FACC)). When requested to study a particular topic, the FAC invites comment from interested parties and often asks other committees to give advice on certain specialised subjects. The publication of a report by the committee is often used as the basis for future regulations. A full list of published reports is given in Appendix 2.

## Compositional standards

One of the methods used to prevent consumer fraud is to ensure that products described by a particular name conform to certain standards. When standards are set for a particular name then that name is known as a 'reserved description' and can only be used for products conforming to the set standard. When someone buys that product the legislation ensures that the consumer is buying a set standard and hence a satisfactory product.

Compositional standards were originally permitted by the Food and Drugs Act of 1938 but the stimulus for such standards was provided by the need for controls during wartime rationing. Many of these were continued after the war and additional compositional standards were added. Some rather obscure products were included in this category (mustard, curry powder and tomato ketchup for example) as well as some of the staples of the British diet (flour, bread and sausages). During the 1950s and 1960s compositional controls were considered the most useful way of providing consumer protection.

Soon after the UK joined the European Common Market in 1973 further regulations were issued covering compositional standards for a number of products (cocoa and chocolate, sugar products, fruit juices and nectars) some of which had never previously had a UK standard. However, more recently the emphasis has been to restrict the number of compositional standards to a number of basic products and enable manufacturers to produce a broad spectrum of goods. Consumer protection is maintained by more stringent labelling requirements. This trend is demonstrated by the revocation, in 1990, of the legal standards for mustard, curry powder and tomato ketchup.

## Additives

The use of most additives in food products is controlled by regulations which adopt the 'positive list' system. Under this system only those additives positively listed in the regulations which perform the function (antioxidant, colour, etc.) defined by the regulations are permitted for food use. Provision is made in the definitions to cover the case of additives having a number of different functions. When it is considered necessary to restrict the use of a particular additive, the regulations also contain provisions which limit the foods in which the additive may be used, and the levels of usage.

All additives are subjected to a number of evaluations prior to being positively listed. Within the UK, the initial assessment is on the basis of any technical need for the additive and is conducted by the FAC. If they are satisfied that the additive does serve a useful purpose, then they ask the advice of other committees and in particular the Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT). These committees examine all the evidence relating to the toxicological evaluation of the additives before advising on their safety for food use.

All major categories of additives are controlled by specific regulations and most minor categories have been incorporated into the 'Miscellaneous Additives in Food Regulations'. The most recent controls, those on flavourings, were applied in 1992. In this case, given the great number of chemicals involved, a 'positive list' has not been established and the

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Regulations contain a 'negative list' which places restrictions on a few substances known to be hazardous.

### Contaminants

The controls on specific contaminants in the UK are of a limited nature. Government policy has been to monitor and, when necessary, agree a voluntary policy of eliminating contamination at source rather than establishing numerous different levels for different contaminants in different foods. Only where a hazard has been sufficiently great or where the contaminant is widespread have controls been introduced. Thus, maximum arsenic, lead and tin levels have been introduced by regulation and, very recently, maximum aflatoxin levels on nuts and nut products sold to the ultimate consumer have been imposed.

The control of pesticide residues has also been by a monitoring process. Detailed regulations have now been issued in line with EC requirements and using the powers in the 'Food and Environment Protection Act'.

It is important to note that prosecutions can be brought under the Food Safety Act on the basis that a product is injurious to health and that, in establishing this fact, non-statutory limits (internationally recommended limits for example) can be used as evidence in the court. It is then up to the court to decide whether to accept the evidence as valid.

### Processing and packaging

Under this category are included certain specific regulations inappropriate elsewhere. Examples include irradiation, permitted since January 1991, and controls on quick-frozen foodstuffs (implementing an EC Directive). Controls on packaging materials have also been established to prevent any harmful substances becoming incorporated into food.

### Labelling

Labelling requirements for food products can be very complex. Certain products have their own regulations which incorporate labelling provisions. Most food products though are subject to the 'Food Labelling Regulations 1984' (as amended). Any changes to these regulations can have quite major consequences for the whole food industry. The current regulations have been fully effective for several years now but major amendments have been made in the last four years. The changes introduced by the 1984 Regulations and the amendments have provided consumers with much detailed information. Further amendments are thought likely in the near

future and the opportunity may be taken to introduce a new consolidated set of Regulations.

## Hygiene and health

The maintenance of satisfactory hygienic practices is ensured by the various food hygiene regulations. While these are the most used regulations in terms of food prosecutions, the vast majority of cases are against small retailers, restaurants and catering establishments. The regulations have certain specific requirements but in most cases they establish the general principles and it is for the enforcement authorities and the courts to interpret the requirements.

Associated with hygiene are the various regulations governing public health with regard to milk handling, poultry and meat inspection and the various import controls to prevent the spread of certain specific animal and human health hazards. The possibility of the spread of disease from country to country has always been a risk. Even within the UK powers exist to control food movements and, in particular, Northern Ireland has certain powers to restrict the import of food from the mainland of England, Wales and Scotland. These controls have been relaxed but it is wise to check the current position with the Northern Ireland authorities.

Where it has been considered important to prevent the spread of disease by incorporating a heat treatment step in the processing of food, standards have been incorporated in regulations. Thus a number of different heat treatments are permitted for milk so as to eliminate pathogenic organisms. Other products with similar controls are milk-based drinks, cream, liquid egg and ice-cream. Where appropriate, these are covered in this book in association with the relevant compositional standards.

Microbiological standards for food products are another area in which the UK has believed that statutory limits are usually inappropriate. As with contaminants, the emphasis has been on monitoring and ensuring hygienic practices rather than establishing limits for specific products. However, many European countries do have such statutory standards and it is possible that the UK will eventually have more. It is worth noting that both the 'Natural Mineral Waters Regulations' and the 'Milk (Special Designation) Regulations' do incorporate certain microbiological limits.

## Weights and measures

Although the subject of weights and measures legislation is vast and mostly beyond the scope of this book, there are two aspects which do regularly affect the food technologist. These are the controls on specified weights (prescribed weights) which restrict pack sizes on a number of food products

to certain set weights and the 'Packaged Goods Regulations' which apply an average weight system to most food products. Weights and measures legislation is the responsibility of the Department of Trade and Industry.

## Enforcement structure

Enforcement of food legislation in the UK has, since its start in the late nineteenth century, been the responsibility of local authorities. Each local authority employs trained personnel to ensure that a wide range of Acts and Regulations (including food) are enforced. The two major types of trained officers involved in food work are the Environmental Health Officer (EHO) and the Trading Standards Officer (TSO). Veterinary supervision is also required in certain areas where animals enter the food system (e.g. inspection at time of slaughter).

Environmental health officers usually have responsibility for enforcing those aspects of food law which have a hygiene or health basis. Their main area of work is therefore the enforcement of the food hygiene regulations and the controls on unfit food contained in the Food Safety Act. Trading standards officers are involved in the enforcement of a wide range of controls on all types of trading. Thus for food they usually have authority relating to composition and labelling. Qualified Trading Standards Officers are also the inspectors for the weights and measures legislation.

The structure of local government in the UK is very varied and thus the administration of food law varies throughout the country. For the non-metropolitan parts of England and Wales, trading standards are allocated to the county councils while the environmental health controls are allocated to the district councils (there being a number of districts in each county). In the metropolitan areas, where there are no counties, both responsibilities are covered by the metropolitan district councils (or for London, the borough councils). For Scotland, trading standards are covered by the regional councils and environmental health by the districts. In Scotland there is an important difference in that since April 1983 responsibility for food composition and labelling has been a district matter (and hence enforced by Environmental Health Officers). For Northern Ireland, food law administration is the responsibility of a number of Group Public Health Committees. Imported food arriving in the UK is usually inspected initially by officers employed by the Port Health Authority, although inspection may be delayed until the food arrives at its destination. Assisting in the work of the enforcement officers is the public analyst who is usually appointed by the county council to provide official analysis of sampling taken by the officers. Their analysis, usually chemical or physical, is then used as the prime evidence in any prosecution relating to composition of food. Microbiological examination of food is undertaken by food examiners who are required to be qualified to certain minimum standards.

The concept of microbiological 'examination' was introduced for the first time in the Food Safety Act 1990.

With the very varied structure of local government and the enforcement of legislation at a local level there has always been scope for a different degree of enforcement around the country. Thus, even if a food label has been agreed by one trading standards department, those in another part of the country could still object to it. The need for uniform interpretation and application of the law is therefore important. To help achieve this trading standards departments and environmental health departments are all represented on a national body – the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS). This organization provides a valuable forum for discussion among TSOs and EHOs and hence helps to ensure that the law is applied in a uniform way. In particular they have established a system where most companies only have to deal with one local authority (the 'home authority') and any complaints are referred to that authority for investigation. It must be stressed though that it is possible for any trading standards department to bring a prosecution against any product sold in its area and it is for the courts to decide what the law actually requires.

The need for stronger central guidance on the execution, by enforcement officers, of their responsibilities was accepted when the Food Safety Act was passed. Section 40 of the Act provides the Minister with the authority to issue codes of recommended practice. Several have now been issued and are listed in Appendix 3.

Prior to the formation of LACOTS another body had attempted to introduce certain nationally agreed standards in the form of codes of practice. The Local Authorities Joint Advisory Committee on Food Standards (LAJAC) produced a number of codes which are listed in Appendix 3. While LACOTS does not actually develop codes, it has accepted a number (also listed in Appendix 3) as being useful and circulated them to its members. These codes have no legal status but they do provide a guide which can be considered as evidence by a court in any prosecution.

## The European dimension

Since 1973, the UK has been a member of the European Communities (EC) and has therefore also been applying legislation agreed among the EC member states. European legislation is aimed at creating a common market in goods so that products produced anywhere in the Community can circulate within it unrestricted by both tariff and non-tariff barriers.

EC legislation applied to food usually takes two forms – the Regulation and the Directive. The Regulation is usually applied to primary agricultural products and is applicable to all member states at the same time. The vast majority relate to the Common Agricultural Policy and are involved with

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standards for intervention goods, tariffs applied to goods entering the Community and various production quotas. They are mostly beyond the scope of this book. The Directive has been widely used to try to create a market free of non-tariff barriers. Thus, differences in technical standards contained in national legislation hinder the movement of goods between member states. By agreeing common standards, these barriers are removed. Directives require implementation by each member state before they become law. Thus a large number of the UK regulations listed in this book contain standards agreed at a European level. A list of the main European legislation on food products is given in Appendix 4.

With the completion of the 'internal market' programme of the EC at the end of 1992, many more Regulations and Directives have been adopted. Some of these have been incorporated into UK legislation. Some have still to be adopted within the EC – progress on agreeing the new controls on additives has been particularly difficult. Many changes are still likely before a true internal market will exist. There remains constant pressure for new and amended controls. Technologists, and others, must remain vigilant in a constantly changing control system.



## 3.1 Food Safety Act 1990

## 3.1

Note: This Act is generally applicable to England, Wales and Scotland. For Northern Ireland, see:

Food Safety (Northern Ireland) Order (1991/762)

Details are given of those Sections which are particularly relevant to food processing.

### *Part I Preliminary*

#### Section 1 Meaning of 'food' and other basic expressions

Definition of 'food':

1) In this Act 'food' includes

- a) drink;
- b) articles and substances of no nutritional value which are used for human consumption;
- c) chewing gum and other products of a like nature and use; and
- d) articles and substances used as ingredients in the preparation of food or anything falling within this subsection.

2) In this Act 'food' does not include

- a) live animals or birds, or live fish which are not used for human consumption while they are alive;
- b) fodder or feeding stuffs for animals, birds or fish;
- c) controlled drugs within the meaning of the Misuse of Drugs Act 1971; or
- d) subject to such exceptions as may be specified in an order made by Ministers: (i) medicinal products within the meaning of the Medicines Act 1968 in respect of which product licences within the meaning of that Act are for the time being in force; or (ii) other articles or substances in respect of which such licences are for the time being in force in pursuance of orders under section 104 or 105 of that Act (application of Act to other articles and substances).

Also included are definitions of 'business', 'commercial operation', 'contact material', 'food business', 'food premises', 'food source' and 'premises'.