businesscompanion
trading standards law explained

# Food sampling by authorised officers

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**This guidance is for Scotland**

Local authorities are required to enforce the provisions of the Food Safety Act 1990, as well as regulations made under it and other Acts. Food composition and labelling is controlled by these pieces of legislation and makes certain things criminal offences.

For example, it is an offence to sell food that:

- is not of the nature, substance or quality demanded by the purchaser
- contains banned substances
- has a misleading description
- has the potential to injure someone

Food should always be of the quality the consumer is expecting to receive; low quality food is permitted as long as the customer knows that is what they have paid for.

## Enforcement action

Enforcement action will often come after formal food samples have been taken ('food' means both food and drink).

Formal samples may be taken for various reasons, including:

- investigation of consumer complaints
- routine sampling during an inspection

If a sample is incorrect, there are several possible outcomes:

- a verbal warning

- the serving of an Improvement Notice
- a local authority letter of caution
- prosecution

An Improvement Notice will require the person receiving it to take specified corrective action within a certain time. Failure to comply with the Notice is a criminal offence.

The action taken will depend upon a number of factors, including:

- severity of the offence
- steps taken by the business to have avoided the commission of the offence
- level of cooperation with the local authority

## Sampling procedures

Procedures for sampling are strictly controlled by specific regulations and codes of practice. This legislation gives authorised officers the power to purchase or take food samples at all reasonable hours; in other words, when the business is operating and staff are on the premises. Failure to allow an authorised officer to take a sample could lead to the commission of an obstruction offence.

Formal food samples will generally consist of either:

- one or more food items mixed together and split into three identical parts
  or
- multiple food items that are distributed between the three parts of the sample, with the food items themselves kept whole

The method of sampling will depend on the product and what is being tested for.

The three parts are distributed as follows:

1. selected and retained by the person in charge where the sample is taken
2. submitted by the officer to a public analyst for analysis
3. stored safely as a reference sample in case of a dispute

The reason for the division of samples is to allow potential defendants the opportunity to have their own sample portion analysed if the results from the public analyst reveal a problem. If you have manufactured or altered the food, or applied a description to the food that is being tested, you may be responsible for any criminal offence. If you are a retailer that is only selling food in the same state in which it was supplied to you, your supplier or the manufacturer may be the responsible person.

The sample portion kept by you is very important and should be stored safely until you receive notification of the analytical results.

It is important that you do the following:

- keep a record of where the sample is stored, so that it can be found easily in the future
- ensure that the best recommended storage conditions are used (see 'Storage of sample portions' below)
- inform your head office (if applicable) that an official sample has been taken
- if the local authority informs you of a problem with the part of the sample it took, you may wish to test the sample (if you have suitable facilities) or have the sample tested by an independent party
- if the sample is sent for independent analysis, you must ensure that clear details are given of the

test required and storage conditions (if required), and that the storage during transport to the laboratory is appropriate

If there is a dispute over the analysis, the final portion is sent to the laboratory of the Government Chemist, which has the final say on the result.

The sampling officer must check the Primary Authority Register to find out if the business has a Primary Authority partnership. If a partnership exists, the officer must notify the Primary Authority about any proposed enforcement action; if the local authority fails to make the notification, the Primary Authority may block the proposed enforcement action. See our guide 'Primary Authority' for more information on these partnerships.

## Storage of sample portions

Where you are given a portion of a sample to retain, you should keep this frozen or stored at ambient temperature, depending on whether the product is likely to deteriorate. As a rule, fresh food such as meat and dairy products will need to be kept in the freezer. Dried products such as rice, spices, nuts and other goods stored at room temperature should continue to be stored as per the instructions on the packaging to prevent deterioration.

Occasionally you may be given specific instructions by the sampling officer, and you should follow their guidance.

## Single-part samples

A three-part sample will be taken whenever possible. In some circumstances, however, the sampling officer will need to take a single-part sample. Where a single-part sample has been taken, there will be no part for you to retain.

Examples of when a single-part sample will be taken include:

- where the purpose of the test would not allow for storage of further portions - for example, when testing to see if meat has been previously frozen
- where there is too little sample to divide, as to do so would mean that there is not enough in each part for it to be tested
- complaint samples

A complaint sample is when a member of the public complains about a food that they have purchased (perhaps it caused an allergic reaction or was not as described) and the officer takes the remaining food as a sample. Complaint samples are never divided and are submitted for analysis in the state that they were received. The sampling officer must notify you that the sample has been submitted for analysis and may visit you to take a further three-part sample from your remaining stock.

## Further information

Food Standards Scotland: Food Law Code of Practice

## Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

> In Scotland, food labelling laws are not generally enforced by Trading Standards services, but rather by Environmental Health. However, we have included In-depth Guides on food for Scotland in order to provide more comprehensive guidance.

## In this update

No major changes.

Last reviewed / updated: December 2025

### Key legislation

- Food Safety Act 1990
- Contaminants in Food (Scotland) Regulations 2013
- Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013
- Food Information (Scotland) Regulations 2014

### Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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