



businesscompanion
trading standards law explained

Coronavirus bulletin



Business in Focus



Food



Food



Need to know:

The current picture

Advice from the Government on food and its packaging as a vehicle for coronavirus is that:

- The risk of catching the virus that causes COVID-19 from food is very low. This is because COVID-19 is a respiratory illness, not known to be transmitted by exposure to food or food packaging
- Any food handler who is unwell should not be at work
- Anyone handling food should wash their hands often
- The laws on hygiene, safety, composition, labelling, allergens, weighing, pricing etc. of food are still in place.

See our Business Companion Quick Guide on Food and Drink for more information <https://www.businesscompanion.info/en/quick-guides/food-and-drink>

As lockdown arrangements begin to ease, new regulations provide for changes which allow more businesses to trade. The latest update is here: <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

The Government's advice for food businesses on COVID-19 covers food packaging, social distancing in different food environments and managing employee sickness: <https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>

More detailed information for employers in England on social distancing in the workplace has been issued following the first easing of lockdown arrangements. A key element of this is for restaurants offering takeaway or delivery services. This latest guidance from the Government is a more comprehensive read: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19#overview>





The challenge of COVID-19

If you operate a food business at the moment you might be considering things like:

- The risks associated with long term running at or above peak capacity
- Personnel changes, shortages and operational implications of distancing measures
- Supplier, ingredient or distributor changes
- Operational or business use changes
- Mothballing all or parts of your operation
- Uncertainties about the extent of lockdown and planning for the future

Of course, this list is not exhaustive and the sector as a whole will be facing numerous challenges.

All legislation continues to apply to food businesses that are operating. Managing the risk of infection by COVID-19 (risks to your employees, contractors and agency staff, as well as your customers), requires you to carry out a risk assessment, just as you would for other health and safety related hazards. If you have fewer than 5 employees or are self-employed, then you don't need to write down your risk assessment, though it might help you make sure you've done a good job and will have sensible measures in place, if you do.

There is some helpful advice from the Health and Safety Executive on how to carry out a risk assessment, here: <https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

A risk assessment for COVID-19 means ensuring that Public Health England guidelines are met in your workplace:

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19>

You must also ensure that food handlers are fit for work and those that are in the shielded category can follow the NHS advice to self-isolate for the period specified.

Enforcement action may be used if necessary.

The impact of COVID-19 is being demonstrated by food-related stories hitting the headlines, for example, shortages of retail-packed flour and yeast as a result of home-baking becoming one of the top boredom-breakers of the time. Snack production and alcohol consumption are on the increase. Yet there is potential for food to be wasted, which need not be wasted; WRAP supports businesses to prevent waste <https://wrap.org.uk/food-drink>

The UK's significant reliance on imported food and the availability of seasonal migrant workers have been shown to be two key vulnerabilities. Bare shelves in recent weeks are thought to have been caused by stockpiling plus 'just-in-time' supply chains. This has been exacerbated by the closure of restaurants and pubs and other eat-in venues. Food banks traditionally set up to store and distribute ambient foods (pasta and tinned goods) have seen scarce supplies because of shortages in these very foodstuffs. Conversely, the significant fall in the number of cars on the road has freed up logistics. Meanwhile, a glut of food in the collapsed hospitality and wholesale sector could be welcomed in retail, providing its labelling, packaging and transport (etc.) can meet legal requirements.





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Diversification

A positive consequence arising from COVID-19 has presented welcome opportunities and support for changing the nature of food businesses into different kinds of food businesses. This diversification opportunity could help you to sustain your business during these unprecedented times.

Successfully diversifying means that you must evaluate, adapt and change to ensure that the risk of spreading COVID-19 is minimised while maintaining business continuity. For all of us it is important that food supplies are maintained during this time. Providing safe, nutritious food is also vital to reduce any additional burdens on the health service.

Whatever your rationale for changing the scope or scale or your offering as a food business, there is always plenty to think about. Things like food sourcing, manufacturing, production, packaging, labelling, transportation and sale always need careful planning to ensure consumer safety and compliance with the law.

COVID-19 adds brand new considerations too, largely because of the social distancing requirements in place.

Thankfully, there is lots of support available to businesses in meeting the challenge of diversification. This has been produced by a host of authors, including the Food Standards Agency, the Chartered Institute of Environmental Health, trade associations and food consultants; all of which are free to access – further information is included later on in this guide.

Pubs and restaurants

One of the most publicised events which has enabled swift diversification for some types of food business was the 17th March 2020 relaxation of planning rules for pubs and restaurants, for twelve months.

This means that premises that were not previously permitted to offer takeaways and deliveries because of planning restrictions in place, are now able to do so.

This applies only to hot food and drinks, not alcohol (existing licensing conditions remain in place for alcohol so an application for variation will need to be made for alcohol deliveries, if current conditions do not permit it).

<https://www.gov.uk/government/news/government-to-grant-permission-for-pubs-and-restaurants-to-operate-as-takeaways-as-part-of-coronavirus-response>

Equivalent measures are in place in Scotland:

<https://www.gov.scot/publications/corona-virus-covid-19---relaxation-of-enforcement-where-public-houses-and-restaurants-offer-a-takeaway-service-during-the-current-outbreak-chief-planner-letter-march-2020/>





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Take-aways and deliveries

Whether or not it was the relaxation in planning rules which has enabled you to diversify, important messages apply if you are considering starting to offer take-aways and deliveries for the first time during COVID-19.

You will need to think about how you will address things like social distancing measures between you, your employees, delivery drivers and customers as well as food storage and packaging issues. These include things like:

- How to take orders (not in person, but by phone or website) and payment.
- If online, be clear about what you are selling, the quantity, the price and all relevant allergen information. For allergens, see <https://www.food.gov.uk/safety-hygiene/allergy-and-intolerance>
- How you will store food and how you will deliver it – temperature controls, packaging, drop-off points
- The vehicles you will use for delivery – insurance, cleaning etc.
- Collection times and signage for take-aways.



New Government guidance for restaurants offering takeaway or delivery services has been produced following the first easing of lockdown arrangements. This is a comprehensive guide on many aspects, such as risk assessment, cleaning and PPE as well as signposting to many other relevant sources.

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>

When selling over the phone or online you are required to provide certain information about the product and your business. Cancellation rights may also apply. See our Business Companion Quick Guide on Distance Sales for further information: <https://www.businesscompanion.info/en/quick-guides/distance-sales>

If you are a new food business setting up, you must first register with your local authority before trading – this is a very simple process but it is a legal requirement. You can find your relevant local authority here: <https://www.food.gov.uk/contact/businesses/find-details/contact-a-food-safety-team>

If you are an existing food business thinking about starting up take-aways or deliveries, you must also talk to your local authority – including about the vehicles you intend to use – before you start. You will have either a HACCP procedure in place or will be following Safer Food Better Business (SFFB) – these should be reviewed and updated with your changes. Your local authority (Environmental Health) will be best placed to help you with any queries about this.





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Local authorities are working hard to provide food businesses in their areas with advice and support to keep them open for business and operating safely – some are operating dedicated COVID-19 web pages, phone lines and specific help for food businesses, using the expertise of their highly trained trading standards and environmental health experts.

This guide from the Chartered Institute of Environmental Health includes helpful information on allergens, self-isolating customers, packaging, delivery boxes, drivers and riders, laundry, safe cooking and hot holding, alcohol deliveries and many other aspects - it can be used in conjunction with your HACCP/SFFB documentation: <https://www.cieh.org/media/4070/covid-19-food-delivery-and-takeaway-guidance.pdf>

Advice from the Food Standards Agency is here: <https://www.food.gov.uk/business-guidance/food-safety-for-food-delivery>

For more detail on taking payments, managing customer data and selling age-restricted products online, the guidance from the Association of Convenience Stores is helpful: <https://www.acs.org.uk/advice/home-delivery>

Shield Safety Group has produced a free to access guide for food businesses converting to offering food take-aways and deliveries: https://try.shieldsafety.co.uk/takeaway-delivery-conversion/?utm_content=123468403&utm_medium=social&utm_source=twitter&hss_channel=tw-68955000

Talk to the Growth Hub in your area too – your hub will be

able to provide you with help and support on a host of topics relating to running a food business, including financial matters and HR issues as well as providing grants for machinery and equipment in some cases. There are 38 Growth Hubs which are public/private sector partnerships led by LEPs (Local Enterprise Partnerships) and are Government-backed. See <https://www.lepnetwork.net/local-growth-hub-contacts/>

And for Coronavirus Support from the LEP network: <https://www.lepnetwork.net/advice-and-support-for-business/>

Diverting supplies from wholesale to retail – labelling implications:

There is a glut of unwanted food destined (and labelled) for wholesale use in the catering/restaurant trade, which may not be used under currently restricted arrangements.

The food sector is working together and with DEFRA and CTSI to explore how this food might be diverted for sale directly to the consumer providing it meets safety and traceability requirements.



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Single use carrier bags

Temporary amendments

The legislation governing single use carrier bags has been temporarily amended to exempt bags used for online grocery deliveries as well as click and collect services. This temporary exemption is different across the UK as follows:



England

Single use plastic bags used for online food deliveries are exempt from the requirement to charge until 21 September 2020. You still need to charge for click-and-collect or collect-in-store orders, as well as for non-food products.

<https://www.gov.uk/guidance/carrier-bag-charges-retailers-responsibilities#charging-for-deliveries-and-click-and-collect-bags>



Scotland

Single use plastic bags used for goods delivered as part of a grocery delivery service, goods purchased using click-and-collect services and food or drinks purchased for delivery or collection as part of a takeaway food service are exempt from the requirement to charge until 1 October 2020.

<https://www.mygov.scot/carrier-bag-charge/>



Wales

Single use plastic bags used for grocery delivery or collection services are exempt from the requirement to charge until 8 July 2020.

<https://gov.wales/single-use-carrier-bags-charge-wales-amendment-regulations-2020>



Northern Ireland

Single use plastic bags used solely to carry goods supplied by a seller for home delivery as part of a grocery service are exempt from the requirement to charge until 30th September 2020 only.

<https://www.nidirect.gov.uk/articles/carrier-bag-levy>

<https://www.gov.uk/guidance/carrier-bag-charges-retailers-responsibilities#charging-for-deliveries-and-click-and-collect-bag>





What about food inspections by local authorities?

Food law still applies during the current COVID-19 pandemic. All food businesses are responsible for ensuring that:

- Food placed on the market is safe;
- Labelling, advertising and presentation of food is not misleading;
- Food business operators keep traceability records;
- Imported and exported food complies with relevant food law; and
- Food which is not compliant and has left their control can be withdrawn from sale

See our Business Companion Quick Guide on Food and Drink for more information <https://www.businesscompanion.info/en/quick-guides/food-and-drink>

Inevitably, there is currently some reduction in pre-planned (routine) inspections by environmental health and trading standards officers.

This is for a few reasons, namely the closure of many food businesses and because of the social distancing requirements which make inspection impossible.

It is also to free up these experts for other important roles, including providing advice and support to food businesses of all types that are trying their best to keep trading.

Responding to high risk issues and complaints of significant failings remains a priority for enforcement teams.



Closure of food businesses

Business required to close, including several types of food business are listed here:

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance#businesses-and-venues-that-must-remain-closed>

On 26th March 2020, new regulations came into force which mean that business closure can be enforced by environmental health and trading standards officers (with police support), if required.

Enforcement may be via the use of fixed penalties and prohibition notices, but these will be used as a last resort for those businesses refusing to close.





What about outdoor food markets and farmers markets?

Crowds gathering is the main concern. Your local authority may choose to close its markets as part of their measures to maintain social distancing.

See <https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>

Livestock markets and stalls selling food are not required to close by law and if continuing to trade, should follow relevant social distancing guidance.

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

If you are involved in running outdoor markets or trading from one, think about how you can sell products without encouraging crowds and also think about how you can keep your hygiene measures in place.

This is best achieved by taking orders online or by telephone in advance and pre-packing orders to limit face-to-face time in the market. Providing deliveries may be simpler.



What about supermarkets and corner shops?

Food retailers are likely to have the most to do, given that the nature of their operation means that employees and the public are on site together, indoors, so protections must be in place for both. Of course, this is as well as maintaining all the food safety requirements previously mentioned.

Recent weeks have seen the progressive development of in-house measures to support the social distancing requirements. Arrangements will need to be tailored according to individual stores and locations, but will commonly include:

- monitoring the number of customers within store and limiting access to avoid congestion
- implementing queue management systems to limit crowds gathering at entrances and maintain the 2 metres distance
- reminding customers to only buy what they need

Social distancing will be a key part of your risk assessment. Social distancing advice for different food environments is here: <https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>





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Preventing food waste

Unnecessary food waste may become an unfortunate consequence of COVID-19 as businesses struggle to use up or offload ageing stock and consumers fail to use up their own supplies at home. Pressures on food supply make it essential for food businesses to work as efficiently as possible to get food to people in need.

Despite best efforts, most food businesses generate food waste to some degree. However, if you have a good understanding of labelling and storage requirements relevant to the food you produce or sell, as well as access to tips from relevant industry guides, this might go some way to minimising food waste.

Best before

For most foods, the 'best before' date mark is appropriate. It relates to the quality of the food and is an indication of the period for which a food can reasonably be expected to retain its optimal condition. Retailers can sell food after the best-before date provided the food is safe to eat

Use by

For foods that are highly perishable 'use by' is the required form of date mark. These foods present a microbiological risk to the consumer if sold after the indicated date, and so this mark relates to the safety of the food. It is an offence for shops to sell food after its use-by date

Sell by

Products may be labelled with 'sell by' and 'display until' dates, but these are not required by law and are used mainly for stock control purposes within business premises. (There are different rules for eggs)

Redistributing food safely throughout the supply, manufacture and retail elements of the food chain can help everyone. Guidance jointly written by WRAP, the Food Standards Agency and DEFRA has been produced to help you make use of food labelling in a way that is compliant with food regulations AND ensures that more food can be consumed as intended after 'Best Before' dates, rather than wasted. A checklist is also available: http://www.wrap.org.uk/sites/files/wrap/Food_labelling_guidance.pdf

Note that this does NOT apply to foods labelled with a 'Use By' date!

Further guidance specifically for redistribution of food has been updated in April 2020: <https://wrap.org.uk/content/surplus-food-redistribution-labelling-guidance>





Food and pricing

It is well documented that early on, the measures imposed by the Government led to panic buying of some types of essential items, primarily food and medical products.

This, along with disruptions to supply chains as businesses navigate new ways of working has resulted in short-term shortages of these items at retail level.

As the law of supply and demand dictates, there have been price increases for sought-after items but also significant numbers of reports from consumers of 'price gouging' and profiteering – the illegal hiking up of prices.

Consumer protection laws do not regulate price levels or the amount of profit that a business can make on an item. They do, however, require prices to be clear and not misleading.

The Competition and Markets Authority (CMA) is the lead

enforcement agency and is actively investigating some allegations of 'price gouging.'

An open letter from the CMA to the pharmaceutical and food and drink industries has been published: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874240/COVID_19_Open_letter_to_pharmaceutical_and_food_and_drink_industries2.pdf

The CMA's approach to business cooperation in response to COVID-19, is here: <https://www.gov.uk/government/publications/cma-approach-to-business-cooperation-in-response-to-covid-19/cma-approach-to-business-cooperation-in-response-to-covid-19>



“Consumer protection laws do not regulate price levels or the amount of profit that a business can make on an item”





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Further information

The Government's Guidance for employers and businesses on coronavirus (COVID-19) is here:

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19>

