

Food Brokers Questions & Answers

This question and answer document supplements the food brokers factsheet, which aims to help food brokers understand their obligations under food law, including the need to register as a food business.

This question and answer document provides more in depth information and provides good practice advice which businesses may wish to consider as part of their due diligence systems.

1. What is the difference between a broker and an agent?

The FSA's view is that the role of a food broker is quite distinct to that of an agent. Food agents act as a representative of a Food Business Operator (FBO) without any authority to trade in their own name and do not take legal or physical possession or custody of the food at any time. The ownership of the food rests with the FBO who has engaged the services of the agent at all times. An agent could work on behalf of a number of businesses.

Although there are a myriad of trading styles across this business sector, the key is to determine who has legal ownership of the food. This position is normally made clear in the contractual terms between the two parties. Invoices should under company law¹ also identify the legal name and address of the seller of food, as well as the buyer. These documents may be used to meet traceability requirements under EC Regulation 178/2002 and the enhanced traceability requirements of Commission Regulation 931/2011 for food of animal origin.

The following is an illustrative example of the difference between a food broker and a food agent:

Food broker: Xtra Supplies Ltd is a food broker that sources food from manufacturers and then supplies it to a national wholesaler chain. The food broker solely works from an office and the food is transported directly to the wholesaler from food manufacturers using the wholesaler's storage and distribution network. Because Xtra Supplies Ltd takes legal ownership of the food, they are an FBO, even though they may never take physical ownership of the food.

Food agent: Alternatively, if Xtra Supplies Ltd only ever acts as an agent for the wholesaler, for example to facilitate negotiations between the FBOs, and the transactions are all carried out in the wholesaler's name, such that they never take ownership of the food themselves, then they are an agent and not an FBO.

¹ The Companies (Trading Disclosures) Regulations 2008

2. When is an FBO regarded as an importer?

Importers are those businesses that bring food into the European Union (EU) from third countries. A third country is the term used by the European Commission to define any country of the world that is **not** one of the 28 EU member States and EEA-EFTA States (European Economic Area - European Free Trade Association) (namely, Iceland, Liechtenstein, Norway). An up to date list of member states of the EU can be found here: http://europa.eu/about-eu/countries/index_en.htm

A business which only trades in food from other member states is not importing food and should not be described as an importer.

Importers have increased responsibilities for the legal compliance of the food which are not covered in this Guidance. Further information on imports can be found here:

www.food.gov.uk/business-industry/imports

3. My main business is a broker but I also import food and act as an agent for another food business, what should I register as?

You should indicate all the food activities the business undertakes on the registration form, both 'broker' and 'importer'. If you also repack food, for example if you break bulk food down into smaller units, then also indicate 'packer'. Acting as an agent of another FBO does not itself require registration, though there will be many principles in this Guidance that an agent should be aware of.

4. I export food where can I find more advice about this?

More information for exporters can be found here:

www.food.gov.uk/business-industry/exports

5. Why is there a focus on food brokers now?

The horsemeat incident in 2013 'exposed' the complexity of supply chains and identified a lack of clarity in this area. The Elliot Review into the Integrity and Assurance of Food Supply Networks – Interim report December 2013, identified food brokers as 'being a highly vulnerable link in the supply chain'².

It is clear that the horsemeat incident in particular has driven up standards within the industry with shorter and more direct supply chains and customers demanding higher auditing standards of brokers and agents.

²Chapter 2.5.16. www.gov.uk/government/uploads/system/uploads/attachment_data/file/264997/pb14089-elliott-review-interim-20131212.pdf

The British Retail Consortium (BRC) Global Standard for Agents and Food Brokers was released in January 2014 and the latest version of BRC Global Food Safety Standard BRC Issue 7 was expanded to include food fraud measures and an assessment of the business's internal and external vulnerability to fraud. The BRC Global Standard for Storage and Distribution is being revised for publication later in 2016. Other standards include International Featured Standard (IFS) brokers certification.

The International Meat Trade Association (IMTA) has also produced a guide on preventing food fraud which provides a wealth of measures which businesses can take to protect their business and strengthen supply chains. This is available on request at www.imta-uk.org

6. Is the horsemeat incident the only reason for an increased focus on food brokers?

No, past incidents such as the illegal colour dye, known as Sudan 1 to IV, also demonstrated how long supply chains could be, with multiple brokers within a food chain, resulting in food safety risks and complex and expensive product recalls. See <http://www.foodnavigator.com/Policy/Illegal-red-colour-sparks-massive-recall-in-UK>

7. Where are the hygiene requirements laid down in law?

The food hygiene regulations for your business are:

- Regulation (EC) No. 852/2004, Annex II, on the hygiene of foodstuffs
- In England, the Food Safety and Hygiene (England) Regulations 2013
- In Northern Ireland, the General Food Regulations (Northern Ireland) 2004 No.505 and the Food Hygiene Regulations (Northern Ireland) 2006 (as amended)
- In Wales, the General Food Regulations 2004 No.3279 and the Food Hygiene (Wales) Regulations 2006 (as amended)

Regulation (EC) No. 852/2004 sets out the basic hygiene requirements for all aspects of your business, from your premises and facilities to the personal hygiene of your staff. One of the key requirements of the law is that any food you make, pack or sell is safe to eat and, where necessary, you have written procedures to ensure this. The Regulations are designed to be flexible, so these **food safety management procedures** can be in proportion to the size of your business and the type of work you do. This means that food brokers which do not handle or transport food will have very simple procedures and records. These food safety management procedures must be based on the principles of Hazard Analysis and Critical Control Point (HACCP). You must:

- keep up-to-date documents and records relating to your procedures; and

- review your procedures if you change what you produce or how you work

In practice, this means that you must have procedures in place to manage microbiological, chemical or physical food safety 'hazards' in your business. You must write these procedures down, update them as needed and keep records that can be checked by your local authority. You should ensure the procedures cover what to do in the event of a food incident. A food incident is where concerns about actual or suspected threats to the safety or quality of food require intervention to protect consumers - See more at:

www.food.gov.uk/business-industry/food-incidents

8. I have a procedure on what to do in the event of an incident - What else could I do?

It is good practice to test your systems and personnel from time to time to ensure you are able to carry out an effective withdrawal of unsafe food. For example assume that you receive a complaint about the safety of a food product, perhaps your biggest line, can you identify everyone you supplied with the product? Does the size of the batch purchased match the total amount supplied?

Consider signing up to Food Standards Agency Food Alerts as this will ensure you are updated about current matters affecting the food supply chain and alert you to potential hazards in your own business:

www.food.gov.uk/about-us/subscribe

9. Tell me more about traceability

You must record details of those who supplied you with every batch of food as well as any businesses that you supply.

Traceability records should include the address of the suppliers and business customers, nature and quantity of products, and the date of the transaction and delivery. This requirement does not mean that businesses necessarily need a dedicated traceability system. It is likely that you already retain this type of information for accounting purposes. It is the need to produce information that is important, not the format in which it is kept.

Bear in mind that the information may need to be made available in a short time frame in order to facilitate an effective recall/withdrawal of unsafe food.

Good Practice

To aid traceability it can be helpful to record the batch number or durability indication (where applicable). This may help to limit the extent of a recall/withdrawal and therefore the impact on the business. Consider implementing an industry-recognised food safety management standard, such as BRC Global Standard for Agents and Brokers, or ISO 9000 or SALSA for small businesses (Safe and Local Supplier Approval).

You could test the system from time to time, for example randomly choose a date in the previous year and determine which food products were supplied by you to your customers on or about that date. Can you ascertain the name and address of who supplied you with each batch? Can you also ascertain to whom you sold them?

It's a good idea to possibly retain copies of labelling (scanned in and stored with invoices).

All food businesses must withdraw, and/or recall, food from the market if it is not in compliance with food safety requirements and notify the competent authorities (their local Authority and the Food Standards Agency), and collaborate with these authorities on action they should take to avoid or reduce the risks posed by the food.

See Taskforce factsheet on Principles for preventing and responding to food incidents:

www.food.gov.uk/sites/default/files/multimedia/pdfs/taskforcefactsheet23mar07.pdf

10. What labelling information should be provided with food?

General food labelling requirements are laid down in Regulation (EU) No. 1169/2011. This includes business to business information requirements in article 8. For prepacked food this includes:

1. **Name of food** – This is not the brand name but a description that accurately describes the food.
2. **Durability indication** – Either a use by or best before date.
3. **Storage Conditions** – This ensures the food remains safe through the supply chain and the quality does not deteriorate.
4. **Name and Address** of the responsible Food Business Operator (usually the manufacturer or importer).
5. **Ingredients** – A list of ingredients in descending order by weight. Genetically modified food must be identified.

6. Allergens – It is particularly important for people who are allergic to certain food stuffs such as nuts, egg, fish, mustard, that where any of the 14 allergenic ingredients are present in the food that these are identified clearly on labelling. Prepacked food must emphasis this in the ingredients list. More detailed information and resources about the allergens and labelling can be found here: www.food.gov.uk/business-industry/allergy-guide
7. Instructions for use - if applicable.
8. Quantity and Batch or lot numbers – to aid traceability

At business to business level this information may be provided in product specification and/or commercial documents and the top 4 pieces of information, highlighted in bold in above, must also appear on the external packaging of the food.

Where you are supplying non prepacked food eg from bulk containers, you must provide sufficient information to enable food business such as a manufacturer or wholesalers further down the chain to meet their obligations under food law (art 8(8)) This is likely to include at least the name of the food, durability indication, storage conditions and also the presence of any of the 14 allergenic ingredients.

Good Practice

Obtain a copy of the labelling prior to purchase and check that it has the required information listed above. Record this check. Keep this information with your traceability records as it may help identify the food should you need to do so in the future.

Specific labelling requirements also apply to meat, fish, irradiated products, genetically modified foods. More information is provided here:

www.gov.uk/food-labelling-and-packaging/overview

11. What are Compositional standards?

Whilst all food must be 'as described' there are certain specific food products that have additional compositional rules applied, such as restrictions on ingredients that can be used in the product or the amount of certain ingredients, for example:

- jam must have a minimum fruit content,
- meat products have a minimum meat content for example a pork sausage at least 42% pork.
- Flour must be fortified with certain vitamins and minerals.

A good source of Guidance on Trading Standards law can be found on a dedicated website called 'Business Companion', supported by the Chartered Trading Standards Institute and the Department for Business, Innovation and Skills (BIS). There is a dedicated section on Food and Drink which can be found here: <http://www.businesscompanion.info/en/quick-guides/food-and-drink>

Good Practice

You can ask your suppliers to provide you with written assurances that the food meets any specified legal requirements in relation to compositional standards. Ask if they carry out any tests/analysis to ensure it meets specification and to supply you with a copy of these test results.

When dealing with new suppliers, consider having your own analysis carried out until you have gained confidence in them.

12. What is a novel food?

Access to worldwide markets and innovation are key elements of the food industry but it cannot be assumed that because a foodstuff is sold in third countries that it is allowed to be placed on the market in the EU. Novel foods are those that do not have a long history of consumption in the EU (namely before 1997) and must undergo a risk assessment process to ensure it is safe for consumption. Examples of novel foods include Clinoptilolite and Acacia rigidula. Once a novel food has been authorised, its use may be restricted to certain uses, such as bread making for chia seeds or to certain forms such as Raspberry ketone extracts. If you are offered an unusual food item it might be novel. For more information see here: <http://www.food.gov.uk/science/novel/unauthorised>. This webpage includes a link to the European novel food catalogue which has a search facility.

13. What do you mean by chemical contamination risk?

This includes a wide range of both natural and man-made chemicals that can contaminate food at any stage of supply chain. Natural chemicals include nitrates found in green leafy vegetables and mycotoxins (produced by some moulds) that grow on crops such as cereals. Man-made chemicals include:

- Residues, such as pesticides and veterinary medicines from treating food producing animals.
- Pollutants from emissions in the environment such as dioxins and metals.
- By products of processing, such as acrylamide present in starchy foods after cooking at high temperatures.

Legislation will often set maximum limits for the presence of the above chemicals which can only be detected through analysis. All food business operators in the

supply chain must ensure the food, including those to be used as an ingredient, complies with Commission Regulation (EC) No. 1881/2006.

http://ec.europa.eu/food/safety/chemical_safety/contaminants/index_en.htm

Good Practice

You can ask your suppliers to provide you with written assurances that the food meets chemical contamination limits. If it is product with a known contamination risk, ask if your supplier has carried out any tests/analysis to ensure it is within maximum limits.

When dealing with new suppliers, consider having your own analysis carried out until you have gained confidence in them. The analyst will be able to give you advice on the types of chemical to test for.

14. What are the requirements for food packaging?

Appropriate packaging must be used to pack and store food to maintain its safety, durability and quality. For example some ingredients will degrade if exposed to moisture or light and their shelf life will be reduced. Food contact materials (FCM) can also be a source of contamination, as chemicals can migrate from materials into the food they come into contact with. FCM includes packaging, storage containers, food manufacturing equipment, even household kitchen equipment and utensils. Under Regulation (EC) No. 1935/2004, any Food Contact Materials must not endanger the safety of the food nor adversely affect the composition or taste of the food. It also provides requirements regarding their labelling and traceability which applies to businesses throughout the supply chain including brokers. Plastic, ceramics and active and intelligent materials (known as AIM) for example all require a Declaration of Compliance with certain mandatory information.

www.food.gov.uk/business-industry/manufacturers/contaminants-fcm-guidance/about-the-regulations

15. What do I need to know about food fraud?

Food fraud is committed when food is deliberately placed on the market, for financial gain, with the intention of deceiving the consumer or another food business. Although there are many kinds of food fraud the two main types are:

1. the sale of food which is unfit and potentially harmful, such as:
 - recycling of animal by-products back into the food chain
 - illegally slaughtered or stolen meat
 - packing and selling of beef, poultry and fish with an unknown origin
 - knowingly selling goods which are past their 'use by' date
 - using industrial dyes such as sudan 1 in food.

2. the deliberate mis-description of food, such as:

- products substituted with a cheaper alternative, for example, farmed salmon sold as wild, Basmati rice adulterated with cheaper varieties and almond powders bulked up with peanut.
- making false statements about the source of ingredients, i.e. their geographic, plant or animal origin.

Good Practice

To avoid being a victim of food fraud and putting consumers health at risk you could review your purchasing controls:

1. What checks does the business carry out on their food suppliers? Approved suppliers list, audited by business, questionnaires.
2. What information is obtained about the food prior to purchase? Do you obtain product specifications, Certificates of analysis, labelling, and other documentation.
3. Are trade samples of the food received? Are these tested, retained? Does the business carryout any sampling.

If you are offered food which is unusually cheap or from unrecognised sources, be suspicious and ask more questions.

The Food Standards Agency has set up the National Food Crime Unit (NFCU) to detect and deter food criminality such as serious or complex food fraud. If you have information please email the National Food Crime Unit at:

Foodcrime@foodstandards.gsi.gov.uk

The NFCU, with Food Standards Scotland, published the first Food Crime Annual Strategic Assessment in March 2016. You can access this document here:

www.food.gov.uk/news-updates/news/2016/15017/the-food-standards-agency-fsa-has-today-published-the-first-assessment-of-food-crime-in-the-uk