

Organisations

Breach of food hygiene and food safety regulations

England

Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

The General Food Regulations 2004 (regulation 4)

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

except for regulation 4(b) of the General Food Regulations 2004: £20,000 fine

STEP ONE: Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a **degree of weighting** to make an overall assessment.

Culpability

Very high	<ul style="list-style-type: none"> • Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> • Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by regulators, employees or others ○ allowing breaches to subsist over a long period of time • Evidence of serious, and/or systemic failings within the organisation to address risks to food safety
Medium	<ul style="list-style-type: none"> • Offender fell short of the appropriate standard in a manner that falls between descriptions in “high” and “low” culpability categories • Systems were in place but these were not sufficiently adhered to or implemented
Low	<ul style="list-style-type: none"> • Offender did not fall far short of the appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to secure food safety although they were inadequate on this occasion ○ there was no warning indicating a risk to food safety • Failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1	<ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on an individual(s) including where supply was to groups that are vulnerable
Category 2	<ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • Regulator and / or legitimate industry substantially undermined by offender's activities • Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health • Consumer misled regarding food's compliance with religious or personal beliefs
Category 3	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled about the specific food consumed, but little or no risk of actual adverse health effect

STEP TWO: Starting point and category range

Having determined the category, the court should identify the relevant table for the offender on the page below. There are tables for different sized organisations.

At step two, the court will be required to focus on the organisation's turnover or equivalent to reach a starting point for a fine within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

Offenders which are companies, partnerships or bodies delivering a public or charitable service are expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. If adequate accounts are not produced on request, see paragraph 1.
3. *For local authorities, police and fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via www.monitor-nhsft.gov.uk. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

Annex F

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step three, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

Where a defendant organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large

Turnover or equivalent: £50 million and over

	Starting Point	Range
Very high culpability		
Category 1	£1,200,000	£500,000 - £3,000,000
Category 2	£500,000	£200,000 - £1,400,000
Category 3	£200,000	£90,000 - £500,000
High culpability		
Category 1	£500,000	£200,000 - £1,400,000
Category 2	£230,000	£90,000 - £600,000
Category 3	£90,000	£50,000 - £240,000
Medium culpability		
Category 1	£200,000	£80,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£20,000 – 100,000
Low culpability		
Category 1	£35,000	£18,000 - £90,000
Category 2	£18,000	£9,000 - £50,000
Category 3	£10,000	£6,000 - £25,000

Medium

Turnover or equivalent: between £10 million and £50 million

	Starting point	Range
Very high culpability		
Category 1	£450,000	£200,000 - £1,200,000
Category 2	£200,000	£80,000 - £500,000
Category 3	£80,000	£40,000 - £200,000
High culpability		
Category 1	£200,000	£90,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£18,000 - £90,000
Medium culpability		
Category 1	£80,000	£35,000 - £190,000
Category 2	£35,000	£14,000 - £90,000
Category 3	£14,000	£7,000 - £35,000
Low culpability		
Category 1	£12,000	£7,000 - £35,000
Category 2	£7,000	£3,500 - £18,000
Category 3	£3,500	£2,000 - £10,000

Small

Turnover or equivalent: between £2 million and £10 million

	Starting point	Range
Very high culpability		
Category 1	£120,000	£50,000 - £450,000
Category 2	£50,000	£18,000 - £200,000
Category 3	£18,000	£9,000 - £80,000
High culpability		
Category 1	£50,000	£22,000 - £200,000
Category 2	£24,000	£8,000 - £90,000
Category 3	£9,000	£4,000 - £35,000
Medium culpability		
Category 1	£18,000	£7,000 - £70,000
Category 2	£8,000	£3,000 - £35,000
Category 3	£3,000	£1,500 - £12,000
Low culpability		
Category 1	£3,000	£1,400 - £12,000
Category 2	£1,400	£700 - £7,000
Category 3	£700	£300 - £3,000

Micro*

Turnover or equivalent: not more than £2 million

	Starting point	Ranges
Very high culpability		
Category 1	£60,000	£25,000 - £120,000
Category 2	£25,000	£10,000 - £50,000
Category 3	£10,000	£5,000 - £18,000
High culpability		
Category 1	£25,000	£10,000 - £50,000
Category 2	£12,000	£4,000 - £22,000
Category 3	£4,000	£2,000 - £9,000
Medium culpability		
Category 1	£10,000	£3,000 - £18,000
Category 2	£4,000	£1,400 - £8,000
Category 3	£1,400	£700 - £3,000
Low culpability		
Category 1	£1,200	£500 - £3,000
Category 2	£500	£200 - £1,400
Category 3	£200	£100 - £700

* **Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006* the maximum sentence magistrates may pass on summary conviction is a £5,000 fine. The *General Food Regulations 2004* are only in force in Wales. The maximum sentence on summary conviction for offences under *regulations 4(a) and 4(c) – (e)* is a £5,000 fine, and under *regulation 4(b)*, a £20,000 fine.

Annex F

The table below contains a **non-exhaustive** list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good food safety / hygiene record • Self-reporting, co-operation and acceptance of responsibility
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction 	
Other aggravating factors include	
<ul style="list-style-type: none"> • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Established evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor food safety or hygiene record • Refusal of free advice or training 	

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences.

The court may adjust the fine upwards or downwards, including outside the range.

Full regard should be given to the totality principle at step 8.

STEP THREE: check whether the proposed fine based on turnover is proportionate to the **overall means of the offender**

General principles to follow in setting a fine

The court should finalise the fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to enable the court to assess the economic realities of the company and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors.

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

STEP FOUR: consider other factors that may warrant adjustment of the proposed fine

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

STEP FIVE: Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP SIX: Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP SEVEN: Compensation and ancillary orders

Compensation and ancillary orders

Compensation

Where the offence results in the loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Hygiene Prohibition Order

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3)

Where a food business operator is convicted of an offence under the Regulations and the court thinks it is proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order, the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

(These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006.)

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.

STEP EIGHT: Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on Totality.

“The total fine is inevitably cumulative.

The court should determine the fine for each individual offence based on the seriousness of the offence* and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways this can be achieved.

For example

- *where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed on the other offences.*
- *where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.*

Where separate fines are passed, the court must be careful to ensure that there is no double counting. ±

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

STEP NINE: Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

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