

Individuals

Breach of food hygiene and food safety regulations

England

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

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £5,000 fine

Wales

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

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £5,000 fine

The General Food Regulations 2004 (regulation 4)

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £5,000 fine and/or 6 months' custody
except for regulations 4(b): £20,000 fine and/or 6 months' custody

Offence range: Conditional discharge – 18 months' custody

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**Deliberate**

Where the offender intentionally breached, or flagrantly disregarded, the law

Reckless

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Negligent

Offence committed through act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no prior event or warning indicating a risk to health and safety
- failings were minor and not systemic

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.

Harm	
Category 1	<ul style="list-style-type: none"> • Serious adverse effect(s) on human health i.e. acute and/or chronic condition; and/or widespread impact
Category 2	<ul style="list-style-type: none"> • Adverse effect on human health (not amounting to Category 1) • High risk of an adverse effect on human health – including where supply was to groups that are particularly vulnerable to health issues • 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
Category 3	<ul style="list-style-type: none"> • Medium or low risk of an adverse human health effect • 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 refer to the starting points on the next page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 118.

Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. 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.

Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal. Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Category range
Deliberate		
Harm category 1	9 months' custody	Band F fine – 18 months' custody
Harm category 2	Band F fine	Band E fine – 9 months' custody
Harm category 3	Band E fine	Band D fine – 26 weeks' custody
Reckless		
Harm category 1	Band F fine	Band E fine – 9 months' custody
Harm category 2	Band E fine	Band D fine – 26 weeks' custody
Harm category 3	Band D fine	Band C fine – Band E fine
Negligent		
Harm category 1	Band E fine	Band D fine – Band F fine
Harm category 2	Band D fine	Band C fine – Band E fine
Harm category 3	Band C fine	Band B fine – Band C fine
Low culpability		
Harm category 1	Band C fine	Band B fine – Band C fine
Harm category 2	Band B fine	Band A fine – Band B fine
Harm category 3	Band A fine	Conditional discharge – Band A fine

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; therefore for these offences, magistrates may not pass a community order. *Regulation 4 of The General Food Regulations 2004* is in force in Wales but not in England. For offences under *regulation 4(a)* and *4(c)–(e)*, the maximum sentence on summary conviction is 6 months' custody and/or a £5,000 fine. For an offence under *regulation 4(b)*, the maximum sentence on summary conviction is 6 months' custody and/or a £20,000 fine.

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
<i>Statutory aggravating factor:</i>	No previous convictions or no relevant/recent convictions
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	Evidence of steps taken to remedy problem
Offence committed whilst on bail	Business closed voluntarily on discovery of problems in order to take remedial steps
<i>Other aggravating factors include:</i>	High level of co-operation with the investigation, beyond that which will always be expected
Motivated by financial gain	Good food safety/hygiene record
Deliberate concealment of illegal nature of activity	Effective food safety/hygiene procedures in place
Established evidence of wider/community impact	Self-reporting, co-operation and acceptance of responsibility
Breach of any court order	Good character and/or exemplary conduct
Obstruction of justice	Mental disorder or learning disability, where linked to the commission of the offence
Poor food safety or hygiene record	Serious medical conditions requiring urgent, intensive or long-term treatment
Refusal of free advice or training	Age and/or lack of maturity where it affects the responsibility of the offender
	Sole or primary carer for dependent relatives

STEP THREE**Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out in step three, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

General principles to follow in setting a fine

The court should finalise the appropriate level of 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.

Review of the fine

Where the court proposes to impose a fine it 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.

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.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

STEP FOUR**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 FIVE**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 SIX**Compensation and ancillary orders****Compensation**

Where the offence results in 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.

Ancillary orders

In all cases the court must consider whether to make ancillary orders. These may include:

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 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.)

Disqualification of director

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

STEP SEVEN**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 in which 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 for 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 if they are just and proportionate. If the aggregate amount is not just and proportionate the court should 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 EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

* s.164(2) CJA 2003

† s.164(3) CJA 2003

‡ R v Pointon [2008] EWCA Crim 513