

Small Producers - Direct Supply - Food Hygiene Regulations

Introduction

This document has been created to assist small scale producers, such as farmers and crofters and small businesses, in understanding the food law and food hygiene requirements which apply to their circumstances. These small suppliers will often primarily supply food direct to the final consumer, or sometimes to local businesses, such as shops and restaurants. The food hygiene regulations which are applicable in these circumstances will be explained in this document as well as circumstances in which people and businesses may be exempt from these requirements.

However, it should be noted that this document does not place legal requirements upon parties nor should it be read as legal advice. It is not possible to cover every scenario and it is therefore advised that you also consult the relevant regulations in conjunction with this document to understand how they apply in your circumstances. You may also wish to seek your own independent legal advice. However, in the first instance you should speak to an environmental health officer (EHO) from your Local Authority for advice on producing, handling and supplying food. You can find contact details for your Local Authority here: [Contact - Local Authorities | Food Standards Scotland](#).

The hygiene requirements which apply to food production in Scotland are set out in European Union (EU) general food law and the EU food hygiene regulations. These EU regulations were retained as British law following the end of the transition period at 11pm on the 31st of December 2020. Therefore these regulations still apply to suppliers and producers of food in Scotland. The links to these regulations will take you to the EU exit web archive, which displays the regulations exactly as they were the day they were retained. This gives an accurate picture of retained law but it should be noted that, as the archive only displays the regulations as they were at the end of the transition period, any subsequent amendments to the law made in Scotland or the UK will not be included.

The key food hygiene regulations are as follows:

- [Retained Regulation 178/2002](#) (General Food Law)
- [Retained Regulation 852/2004](#) (General Food Hygiene Regulation)
- [Retained Regulation 853/2004](#) (Specific Food Hygiene Regulation for food of animal origin)

These retained regulations are applicable to the production and supply of all food in Scotland, although there are various exemptions from the regulations which may apply to small producers directly supplying final consumers. Whether the exemptions apply to you or your food business is dependent on several factors, including who you supply to, the quantities involved and the geographical boundaries of your supply.

To understand which exemptions apply to your business you need to determine whether you are a 'primary producer'. Primary production is defined as *"the production, rearing or growing of primary products including harvesting, milking and farmed animal production prior to slaughter. It also includes hunting and fishing and the harvesting of wild products"*. Primary products are therefore unprocessed products of primary production, such as fruit & vegetables, eggs, unskinned and unprocessed wild game and farmed animals pre-slaughter. Any further processing of these products is not considered primary production. For example, as soon as wild game has been skinned and butchered in any way, and as soon as farmed animals are slaughtered, they cease to be primary products and therefore do not fall within the primary producer regulatory exemptions.

A summary of each of the regulations and their exemptions is set out below, whilst a decision tree and glossary are also available at the end of the document.

Retained Regulation 178/2002

[Click here to access this regulation](#)

- This regulation lays down the general principles of food law and is the foundation of all other food hygiene regulations.
- It defines what a 'food' or 'foodstuff' is, and sets out other key definitions, including: 'primary production', 'food business', 'final consumer', 'retail', 'placing on the market' and others.
- It places responsibility on the food business operator (FBO) to **ensure all food they supply has been produced in line with food law and is safe for human consumption**. It also obligates them **to initiate procedures to withdraw any food which may be unsafe and to inform the competent authorities** in such circumstances.
- The regulation applies to *"all stages of production, processing and distribution of food"*. The regulation therefore applies to all producers and suppliers of food, even if, for example, you are only selling eggs from your farm gate or supplying veg to your local restaurant.
- Another key requirement is the obligation to **maintain the traceability of food at all stages** of production, processing and distribution.
 - This means a record needs to be kept of all the people and businesses who have supplied you and of all the people and businesses to whom

you supply food (i.e. a one step forward, one step back record). This information is to be stored and presented to the competent authority on demand.

- Any food or feed placed on the market must be adequately labelled and identifiable to remain traceable.
- [Retained Regulation 931/2011](#) sets out specific traceability requirements for food of animal origin (i.e. meat, eggs etc.)
- There are only two circumstances in which the requirements of Retained EU Regulation 178/2002 **shall not apply**:
 - primary production for private domestic use (i.e. keeping the eggs you produce, the game you hunt or the veg you grow for your family and friends domestic consumption, with no further onward supply)
 - the domestic preparation, handling or storage of food for private domestic consumption

Retained Regulation 852/2004

[Click here to access this regulation](#)

- This regulation lays down general requirements for FBOs on the hygiene of foodstuffs. It reinforces that the primary responsibility for food safety lies with FBOs.
- The regulation applies to all stages of production, processing and distribution of food.
- It requires that all individuals and businesses producing, processing or supplying food **register with their Local Authority as a food business**. You can find more information on registering as a food business here: [Starting a new food business - Your checklist | Food Standards Scotland](#).
- It also requires that all FBOs **have a food safety management system based on Hazard Analysis and Critical Control Points Principles (HACCP)**. Your local EHO will be able to assist you in developing a HACCP plan.
- **Annex I** of this regulation sets out the general hygiene requirements for FBOs carrying out primary production and associated operations. **Annex II** sets out the general hygiene requirements for all FBOs, except where Annex I applies.
 - These annexes outline many of the requirements **you must abide by** with regards to your food premises and equipment, as well as setting out rules for water supply, food waste and the transport of food.
- The requirements of this regulation **shall not apply** in the following circumstances:
 - primary production for private domestic use (i.e. keeping the eggs you produce, the game you hunt or the veg you grow for your family and friends domestic consumption, with no further onward supply);

- the domestic preparation, handling or storage of food for private domestic consumption;
- the direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer (e.g. selling a dozen eggs from your farm gate or selling fruit, veg and in-skin wild game to a local farm shop or restaurant).

Retained Regulation 853/2004

[Click here to access this regulation](#)

- This regulation lays down the specific hygiene rules for FBOs with regards to food of animal origin and supplements those outlined above.
- It includes rules which apply to those FBOs which require approval as slaughterhouses, cutting plants and game handling establishments, as well as for specific categories of food of animal origin (e.g. meat preparations, meat products, wild game, fishery products, raw milk etc.).
- However, in most cases, this regulation **shall not apply** to small producers directly supplying the final consumer. The requirements of this regulation **shall not apply** in the following circumstances:
 - Retail (as defined in Retained Regulation 178/2002);
 - primary production for private domestic use;
 - the domestic preparation, handling or storage of food for private domestic consumption;
 - the direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer;
 - the direct supply, by the producer, of small quantities of meat from poultry and lagomorphs slaughtered on the farm to the final consumer or to local retail establishments directly supplying such meat to the final consumer as fresh meat;
 - hunters who supply small quantities of wild game or wild game meat directly to the final consumer or to local retail establishments directly supplying the final consumer.
- It should be noted however, that some of the requirements in this regulation will apply if you supply food to an approved establishment, for example if you supply wild game to a game handling establishment, live animals to a slaughterhouse or raw milk to a processing establishment.
- Generally however, this regulation is unlikely to apply to you if you do not process food or supply it to an approved establishment. Consequently, it is unlikely to apply to farmers and crofters directly supplying food from their farm gate or at farmers markets etc.

- However, if you are not exempt from this regulation as set out above, you should contact your Local Authority and FSS to seek the appropriate approval. You can find more information on approving your business here: [Starting a new food business - Your checklist | Food Standards Scotland](#).
- Being exempt from the requirements of this regulation does not necessarily mean you are exempt from the requirements of Retained Regulations 178/2002 and 852/2004 and indeed, in most circumstances, these regulations will still apply.

If you are seeking advice about the supply of food or setting up a food business, you should first contact your Local Authority's EHO. You can find contact details for your local EHO here: [Contact - Local Authorities | Food Standards Scotland](#). If you have any specific questions related to food hygiene regulations, or you need further advice, please contact Food Standard Scotland's (FSS) Enquiries Mailbox at: foodenquiries@fss.scot.

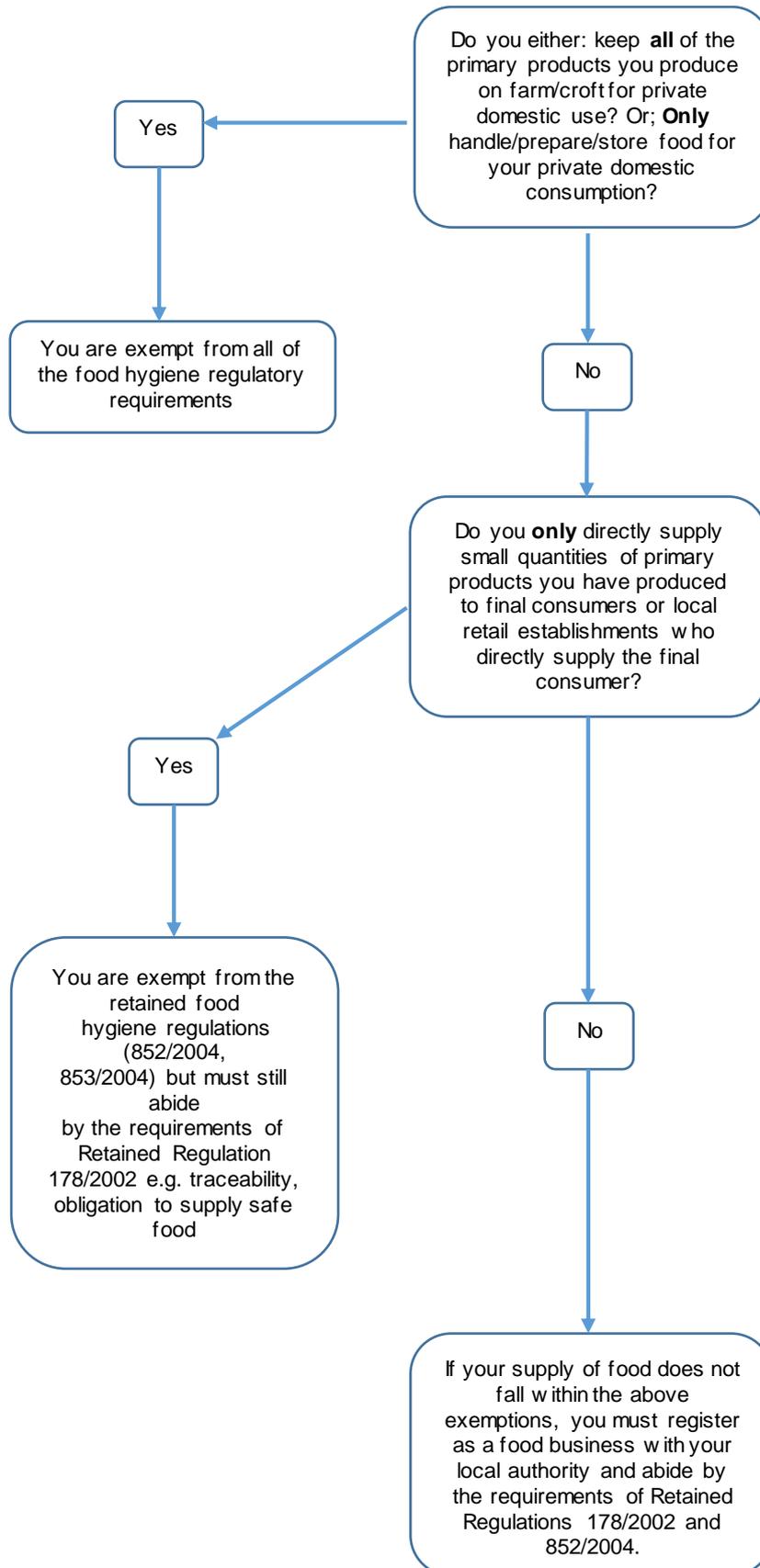
Sample Scenarios

This section will provide examples of a few scenarios in which food may be supplied from a farm/croft. It will seek to demonstrate how the regulatory framework might apply in practice and give some real world context to the regulations set out above. However, the scenarios set out below are not exhaustive and you should seek advice on how the law applies to your specific circumstances.

- You have some hens and use the eggs they lay for your own personal consumption or for sharing with family and neighbours.
 - You are exempt from all of the outlined regulations as you are keeping the food you produce for private domestic consumption
- You sell small amounts of fruit & veg or eggs you have produced on farm/croft to a local restaurant.
 - You are exempt from Retained Regulations 852/2004 and 853/2004 and therefore do not need to register as a food business or abide by any of the specific food hygiene controls. However, you must still abide by Retained Regulation 178/2002, including the obligation to supply safe food and maintain traceability.
 - This is because you are only supplying primary products direct to the final consumer or local retail establishments who supply the final consumer
- You have some of your livestock (cattle, sheep, pigs etc.) slaughtered and butchered at a slaughterhouse and sell the meat to a local restaurant or at a local farmer's market.

- You are exempt from Retained Regulation 853/2004 but must abide by Retained Regulations 178/2002 and 852/2004. This means you must be registered as a food business with your Local Authority. This is because once your livestock have been slaughtered and butchered they are no longer primary products and you are therefore not eligible for the exemption which applies to the direct supply of primary products.

Decision Tree/Flow Chart



*This decision tree primarily displays whether Retained Regulations 178/2002 and 852/2004 apply or not as these are the regulations which will most commonly apply to crofters/farmers directly supplying final consumers. However, if you process or supply products of animal origin, it is also possible Retained Regulation 853/2004 will apply. If your handling of products of animal origin is strictly confined to retail operations you will be exempt from this regulation. However, if you process and produce products of animal origin on farm/croft, you should contact your Local Authority in the first instance, as you may require approval (unless you are processing small quantities of wild game meat you have hunted or small quantities of poultry/lagomorphs you have slaughtered on farm).

Glossary

- **'Approval'** refers to the requirement set out in Article 4 of Retained Regulation 853/2004 for food business operators to only place products of animal origin on the market if they have been produced in premises approved by the competent authority. Requiring approval means the full range of regulatory requirements apply to you.
- **'Final consumer'** means “the ultimate consumer of a foodstuff who will not use the food as part of any food business operation or activity” (Retained Regulation 178/2002).
- **'Food business operator'** means “the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control” (Retained Regulation 178/2002).
- **'HACCP'** means Hazard Analysis and Critical Control points. The principles on which your food safety management system should be based. This refers to identifying hazards and establishing critical control points to mitigate these hazards.
- **'Local Supply'** means supply within the same Local Authority, in immediately neighbouring Local Authorities or those situated no more than 30 miles/50 kilometres from the boundary of the supplier's Local Authority, whichever is greater – but never beyond the UK, except supply from Northern Ireland to the Republic of Ireland. When the supplying establishment is located in the Scottish islands, local is interpreted as anywhere within Scotland.
- **'Primary Production'** means the production, rearing or growing of primary products including harvesting, milking and farmed animal production prior to slaughter. It also includes hunting and fishing and the harvesting of wild products (Retained Regulation 178/2002).
- **'Registration'** refers to the requirement set out in Article 6 of Retained Regulation 852/2004 for food business operators to register premises involved in food production with the relevant authority (this is your Local Authority in Scotland).
- **'Retail'** means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets (Retained Regulation 178/2002).
- **'Small Quantities'** refers to the quantity of a product you can supply whilst continuing to operate within the regulatory exemptions. You should speak to the environmental health officer from your Local Authority for guidance on what they would determine as 'small quantities' for the products you intend on selling. It should be noted however that small quantities for many products is often regarded as self-defining as there is a limit to local and final consumer demand for products directly sold from small and primary producers.