

Food Sampling by Authorised Officers

Food Safety Act 1990

Local authorities are required to enforce the provisions of the Food Safety Act 1990 and Regulations made under the Act. Food composition is controlled by the legislation, the most serious offence being to sell to the purchasers prejudice food which is not of the nature, substance or quality demanded.

Enforcement action

Enforcement action for incorrect descriptions can only result from formal samples of foodstuffs (which includes drink). Formal samples may be taken for various reasons, as outlined below:

- Investigation of consumer complaints.
- Conducting a trade audit.
- During a routine inspection.

Sampling procedures

Procedures for sampling are strictly controlled by specific Regulations and Codes of Practice. This legislation gives authorised officers the power to purchase or take food samples at all reasonable hours, e.g., when the business is operating and staff are on the premises. Failure to allow an authorised officer to take a sample could lead to commission of an obstruction offence.

Formal food samples will generally consist of either one sample split into three identical parts, or three samples taken from an available batch, depending on what is being sampled, and what is being tested for. One of these thirds of each sample will go to the following persons:

1. Selected and retained by the person in charge where the sample is taken.
2. Submitted by the Officer to a public analyst for analysis.
3. Stored safely as a reference sample in case of a dispute.

The reason for the division of samples, as indicated, is to allow potential defendants the opportunity to have their own sample portion analysed if the results from the Public Analyst reveal a misdescription/compositional problem. If you have manufactured or altered the food, or applied the description tested to the food, you may be responsible for any offence. If you are only retailing food supplied to you in the same state, your supplier/the manufacturer may be the responsible person.

The sample portion kept by you is very important and should be stored safely until you receive notification of the analytical results.

The following are important actions relating to the sample you have retained:

1. You keep a clear record of where the sample is stored, so that it can be found easily in the future.
2. You ensure that the best recommended storage conditions are used (see recommended storage below).
3. You contact your head office (if applicable) and inform them that an official sample has been taken.
4. If the enforcement authority informs you of a problem with the part of the sample it took, you may wish to test the sample, if you have suitable facilities, or have the sample tested by an independent party.
5. If the sample is sent for independent analysis, you ensure that there are clear details given of the test required and storage conditions if required, and that the storage during transport to the laboratory is appropriate.

If there is a dispute over the analysis, the final portion is sent to the Laboratory of the Government Chemist who have the final say on the result.

If a sample is proved to be incorrect, five possible courses of action may be taken against the person responsible for the offence:

1. Verbal warning.
2. Departmental letter of caution.
3. Formal caution notified to the Office of Fair Trading.

4. Prosecution
5. Civil Enforcement, which varies from an undertaking to comply with the law, to an injunction followed up by contempt of court proceedings if the injunction is broken.

Recommended storage of the sample(s)

No. of samples of same type taken, and requiring to be stored by the owner/seller _____

Storage Type	Recommended temperatures	Specific conditions (temperatures, etc.)
FROZEN	Between minus 1 degree C and minus 22 degrees C.	Check and record temperature daily; adjust freezer if outside recommended range.
CHILLED	Between plus 1 degree C and plus 5 degrees C.	Check and record temperature daily; adjust fridge if outside recommended range.
AMBIENT	Between plus 15 degrees C and plus 22 degrees C.	Atmosphere and storage surface should be dry. Check and record temperature daily.

Where can I get further help?

This leaflet is not an authoritative document on the law and is only intended for guidance. For further details or clarification contact Derbyshire Trading Standards at:

Chatsworth Hall
 Chesterfield Road
 Matlock
 Derbyshire
 DE4 3FW

Telephone:

Businesses: Call Derbyshire 08 456 058 058
Consumers: Citizens Advice consumer helpline 08454 040506
 (continued overleaf)

Fax: 01629 536197

Website: www.derbyshire.gov.uk/tradingstandards

We want everyone to be able to understand us. On request, we will arrange:

- Language interpreters, including for sign language
- Translation of written materials into other languages
- Materials in large print, on tape or in Braille.

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