

PRIMARY AUTHORITY ASSURED ADVICE

CCC/860039/K

Guidelines on Giving Food to Good Causes

If you require further information and the full version of this advice and guidance, please contact the Primary Authority via the Primary Authority Register. Alternatively email deniserion@bfff.co.uk

Notes:

1. This document includes best practice advice and a brief summary of the requirements of the [Primary Authority Statutory Guidance](#). It should be read alongside the Primary Authority Statutory Guidance.
2. Primary Authority Advice is assured. This means that when a business is following the advice the primary authority can direct against any proposed enforcement action which is inconsistent with the advice

Introduction

This Primary Authority Advice has been produced by Cambridgeshire County Council and South Cambridgeshire District Council in partnership with British Frozen Food Federation for use by members of British Frozen Food Federation to help your business comply with the law. If you follow this advice correctly your local trading standards officer should respect this and not ask you to comply with the law in a different way.

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Primary Authority partnership Administration

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The South Cambridgeshire District Council contact;

Health and Environmental Services

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Primary Authority Advice

Relevant Legislation:	<u>Assimilated REGULATION (EU) No 1169/2011 on the provision of food information to consumers (FIC)</u> Note: European Regulation on the provision of food information to consumers (EU) No. 1169/2011 (FIC) applies in the GB as “assimilated EU law”. The Food Information Regulations 2014 (FIR) and equivalent regulations in Wales, Northern Ireland and Scotland provide for the execution and enforcement of the EU FIC in the UK. <u>Assimilated REGULATION (EC) No 853/2004</u> laying down specific hygiene rules for on the hygiene of Foodstuffs.
Geographic Applicability:	This has the status of Primary Authority Advice in England.
Scope:	This advice is addressed to businesses in the regulated group which are food business operators.
Details of request:	Guidelines on Giving Food to Good Causes to provide both contextual information on the regulatory framework and best practice advice specifically designed to ensure regulatory compliance.
Advice provided:	Food waste According to WRAP (Waste and Resources Action Programme) one third of all food produced globally ends up as waste. Every year this equates to some 4.2 million tonnes of food waste generated by factories, shops, and hospitality businesses across the UK. IGD and WRAP have led an industry-wide programme of work developing a roadmap for how the UK food industry will help achieve the Sustainable Development Goal (SDG) 12.3. The Food Waste Reduction Roadmap



encompasses the entire supply chain from field to fork. It shows actions that large businesses will take to address food waste in their own operations, support their suppliers in taking action, and engage with consumers and innovate to reduce their food waste.

Food waste occurs for many reasons along the supply chain and is a key aspect of the current debate on food security. With estimates that food production will need to increase to meet the future population growth in the UK it is incumbent on businesses to reduce food waste wherever it occurs. To do so supports a company's CSR and sustainability objectives, drives efficiencies, reduces costs and helps socially.

There are three approaches to reducing waste:

- Preventing food waste in the first place is both the most ethical and economic approach. WRAP have a range of resources available on their website to advise food businesses and consumers:
[http://www.wrap.org.uk/Food and drink | WRAP](http://www.wrap.org.uk/Food_and_drink)
- Reuse - where food produced will not end up being sold to the original intended customer and is given away to charities and good causes. This is not only socially good practice but can also reduce the costs for a business by cutting the volume of waste having to be picked up by a commercial waste collection service.
- Recycling the food to be put to some other use (with the exception of situations where wholesome food can be recovered and reworked into another food product). This usually represents food that is used to produce energy from anaerobic digestion. This recycling process involves the use of microorganisms to break down biodegradable material in the absence of oxygen to produce fuel.

This guidance concerns the second of these options and covers aspects of controls that businesses should take into consideration if they are giving food to good causes. This can be providing food to a locally run soup kitchen or food bank, a one-off fund-raising event or the donation of food on a regular basis to one or more of the larger and more organised distributors of donated food such as the Trussell Trust, Besoms, Basics, FareShare or Food Cycle.

The food given can range from primary agricultural products such as fruit and vegetables; unused ingredients; production line or product which has been rejected by customers for reasons other than food safety; production overruns or good stock within its overall life but exceeding minimum depot life. In the hospitality, retail and wholesale sectors this can be ingredients and food left on the shelf at the end of the trading day or food that is not expected to be consumed within its given durability.

Often chilled food has only very limited life remaining; this guidance also provides advice on the freezing of food to enable its life to be extended, thereby making it more practical for donating.



Business considerations when donating surplus food.

Socially, ethically, and economically, it makes sense, regardless of where in the supply chain it arises, to consider donating safe and wholesome food in order to prevent it becoming waste. It may also be the case that charitable redistribution can negate the costs of disposal whilst benefitting the local community.

In doing so however, the food business should recognise that donated food is destined for consumers and that the regulatory obligations for food safety, quality and hygiene, traceability and due diligence must still be met.

Agreements with charitable organisations should seek to ensure that standards and controls are in place to ensure that consumer protection is not compromised, and that brand integrity is maintained.

If a food poisoning outbreak were to occur the implications both immediately for a business and more widely with regard to charitable giving to a food bank, would be serious and subject to a considerable risk of negative publicity. This would be compounded if such a food was unable to be adequately traced or had inadequate records associated with its transfer.

It is important that the commitments and obligations by both the charity and the business are fully understood if problems are to be avoided. These should include:

- The food safety issues involved in handling products – whether ingredients or finished products; does the charity for example follow the FSA Safer Food/Better Business practices or have food safety training for staff? Does the charity have suitably hygienic premises and sufficient storage facilities for food requiring temperature control? In the case of frozen products does the charity have frozen storage facilities and transport? If not, then the products will need to be used immediately product defrosting has taken place.
- The legal implications for both organisations- Some charitable concerns should be registered as food businesses with the local authority. The FSA advice that if food is provided on a regular basis – i.e., more than once a month, the charitable organisation should be registered, and the Food Hygiene Regulations apply. If the charity is serving or handling food, they may need to have a food hygiene rating. It would be prudent for the food business to check that a regularly used charitable organisation understands its own due diligence obligations. In the event of a regulatory breach, if a large business is supplying a charity that it knows is not capable of controlling food safety, then the supplying company can be deemed negligent. However, this risk can be suitably controlled with an appropriate questionnaire and recording of answers to the above questions.
- Understanding the particular risks associated with the food – more risky products will carry a greater burden of responsibility to both parties to ensure the correct controls are in place. Some products may just be unsuitable.



- As part of the food safety management system, businesses must be clear and confident about what foods they will and will not donate.
- Compliance with labelling regulations, particularly with regard to providing accurate allergen information; each party must understand their responsibilities and if the supplier is not the brand owner (the supplier name and address/postcode that appears on the packaging) this will need to be agreed beforehand and the brand owners' policies considered.
- Traceability must be maintained, and records kept including details of quantity of product, product name and relevant batch codes. For temperature sensitive products temperatures of product at the delivery point and delivery vehicle operating temperatures should be recorded and retained.
- The life of the product and how it should be handled, stored and instructions for use must be fully documented, validated, and communicated. Brand owners should take into account as part of their shelf life tests any extension of shelf life or change in temperature regime applied – including defrosting and/or further heat treatment by the charity.
- The potential risks to the business' name/brand (or indeed that of the charity) if something were to go wrong; and how issues would be managed. In the event of an incident, the right information needs to be available and mechanisms in place to manage hold, release, and recall.
- The commitments to managing the process, including the agreement of the transport arrangements between the business and charity, whether it be a delivery or collection and any limitations on how the donated food may be used. Suppliers will need to be aware that some charities may gain more by selling the product and using the money for other purposes within the charity – this is completely legal and acceptable unless there are contractual arrangements to prevent it. There is greater risk to the brand owner if charities opt for this route and suppliers are advised to explore the implications carefully before allowing its use.
- Understanding what is expected to happen to packaging – be it branded pre-packaging or returnable trolleys or plastic trays. Returns should be carefully inspected and controlled with regard to potential foreign body / pest infestation risks.

To manage these aspects, a formal agreement should be put in place between the business and the charity that sets out exactly the responsibilities of both parties. An example of the Commitments that you may expect can be found in the annex to this document.

Freezing food for donation

For chilled products where the remaining shelf life on the food is short or it cannot be extended in its current form and if the food is suitable, the business operator may consider freezing it within its 'Use by' to extend life so that it can practically and usefully be used by the charity. However, there are a number of Regulatory and good practice considerations the business needs to manage and precautions that need to be taken to ensure that:



- the food is wholesome, safe and within its given 'use by' life at the time when it is frozen.
- the food is suitable for freezing; although most foods are suitable and can safely be frozen to extend life, quality attributes may be affected.
- the product is wrapped (to exclude air) and frozen (as quickly as possible) in a way that preserves the safety and the quality of the food. If a FBO is intending to freeze a large volume of food and they do not have blast or commercial freezing equipment, they should consider outsourcing the activity to a commercial third party equipped for the job as well as breaking down the consignment to make it easier to freeze quickly and completely to the core.
- records are kept so that complete traceability is maintained and the original 'use by' date and date of freezing can be demonstrated.
- the FBO will need to determine how many "chilled days life" were left on the product prior to freezing as these should not be exceeded if the product is to be thawed for use. For some products, a date of freezing must be applied. Where this is not the case, it is best practice to label or mark the packaging of the frozen product with the date of freezing so there is no ambiguity as to the remaining shelf life once subsequently defrosted for use. This step would be in addition to the records described above.
- that whoever receives the food has written instructions that allow them to store and use the food safely and appropriately. Consideration should be given to cooking and usage instructions directly from frozen and life once defrosted.
- once frozen, products need to be stored at a temperature that is consistently -12 °C or colder and that an appropriate shortened frozen shelf life is applied.
- Permitted exceptions relating to the temperature of frozen food apply when—
 - (i) that food is kept within brief periods during transport (including local distribution) at a temperature warmer than -18°C but not warmer than -15°C, or
 - (ii) that food is kept in a retail display cabinet at a temperature warmer than -18°C to an extent consistent with good storage practice but not warmer than -12°C
- Some products may not be suitable for freezing for regulatory reasons (for example savoury pastry products may be supplied already baked and RTE – but if the hygiene regulation exemption is applied and the product is normally at ambient, the shelf-life limit of day of bake plus one applies – such product must not be frozen down and or reheated later by charity. The day of bake plus one is a strict exemption rule – for baked savoury products to be frozen down they would need to have complied with the hygiene regulations and initially kept hot over +63°C or chilled to below +8°C within 2 hours). A similar consideration should be given to other prebaked / cooked products which may be frozen down at end of shelf life with the intention of donating.
- the labelling of the food is updated in order to comply with the requirements of Regulation (EU) No 1169/2011 and Regulation (EC) No 853/2004 as appropriate. This includes a reference to the fact that the product must not be refrozen once defrosted.



Labelling implications of freezing food for donation

Regulation (EU) No 1169/2011 places an obligation on the FBO responsible for prepacked food to provide certain mandatory information. If a food business operator freezes a fresh food the information on the label that he may need to provide, or change includes:

- Changing a 'use by' date to a 'best before' or 'best before end' date. Where the 'use by' date was also the 'lot marking indication', the new marking must include an appropriate lot marking indication. If the new 'best before' date indicates day and month, this will be sufficient.
- For meat, meat preparations and unprocessed fishery products only, the provision of a date of freezing (or date of first freezing if the food has been frozen more than once).
- The name or business name and address appearing on the label must be that of the FBO responsible for the freezing the food to indicate that he is responsible for the food information provided. These details will need to be changed unless it is the same FBO who is responsible. The FBO who is responsible is not necessarily the same one who carries out the freezing operation itself, as such processes can be subcontracted within a due diligence operation.
- Storage instructions and instructions for use; the latter must be either instruction for use from frozen and/or instructions for defrosting, and the life and storage requirements once defrosted.
- If the FBO is freezing a prepacked product of animal origin (PoAO) and repacking or wrapping is involved (unless the FBO is a retailer) he must apply his own identification mark to product. Application of an identification mark can only take place in an establishment that has been approved by the Local Authority.
- Amending the name of the food to indicate it is frozen, if omission of this could be misleading.

Annex

Agreements between business operators and charitable organisations

(This checklist was developed by the British Sandwich Association)

Charity Commitments:

- To take responsibility for all the products provided on the basis that once they are collected, they become the sole property of the charity;
- To indemnify the business supplying the food against all claims, liabilities, costs, actions, proceedings, and expenses arising out of, or in consequence of, any act, neglect or default of the charity, its agents, employees, volunteers, or clients;
- Ideally undertake a HACCP (Hazard Analysis Critical Control Point) survey of all procedures (from the point of receipt of products to the delivery to the client) to ensure that all risks are fully documented and understood by all those involved. Alternatively, an assessment based on HACCP principles e.g., the FSA publication Safer Food Better Business could be used provided advice from a local EHO is sought.
- To collect donations from the business' premises at agreed times and to communicate in advance with the business if there are problems in doing so;



- To ensure that all those involved in handling food (including collection staff) are suitably trained in good food hygiene practices and are appropriately supervised by people with food hygiene management training;
- To ensure that products are appropriately and accurately labelled in accordance with EC Food Information Legislation, including accurate allergen information;
- To transport the food in suitable vehicles/containers to maintain the chill chain and food safety;
- To transport the food in the right conditions and at the right temperatures: below 8 °C (but ideally around 5 °C) for chilled products/below -15 °C for frozen products;
- To ensure that suitable storage facilities are provided by the charity for the products to be maintained at the right temperatures and in the right conditions up to the point of their consumption;
- To use the products collected within the specified times agreed with the business or required by law (e.g., Use by dates);
- To ensure that the donated food is used specifically for the purposes it is intended and not sold, exchanged, or used in any other way;
- To undertake to destroy any unused food and to ensure that it cannot be otherwise obtained for human consumption;
- To ensure that when unused food is disposed of any packaging or other material that could identify the food as coming from a specific donor is removed.
- To agree to being audited by the donor's technical team – including unannounced spot checks – and to work with them to comply with appropriate food safety standards.

Business Commitments:

- To establish a communication system with the charity that will notify them of foods available and when collections are to be made;
- To audit the charity food management or recognise a third-party audit provider;
- To ensure that all the food supplied to the charity is in suitable condition to be used by the charity safely within the timescales specified;
- To ensure that all food supplied is suitably labelled with clear instructions for use, including dates or times when it must be used by as well as requirements for preparation, such as cooking;
- To set up and maintain a system for recording details of all the food donated, ideally including a traceability system, such as a batch or day code, that will allow products to be clearly traced if required;
- To ensure that collections are managed efficiently;
- To ensure that all collections are fully checked, documented, and signed for by those collecting on behalf of the charity.

Note: The agreement between both parties should allow the business to withdraw immediately from supply in the event of any concerns about food safety without penalty.



	We gratefully acknowledge the support of the British Sandwich Association; their site can be accessed here: www.sandwich.org.uk
Document references:	This guidance was previously issued under code CCC/32105/4 Further Reading https://www.wrap.org.uk/ WRAP Redistribution labelling guide, and Checklist Updated April 2020 (endorsed by FSA & DEFRA) Key resources WRAP FSA guidance Bulk Freezing of Ambient & Chilled Foods European Commission Notice EU guidelines on food donation (2017/C 361/01) The entirety of the above guidelines should be considered. One point from the Commission Notice: Freezing of surplus food to facilitate redistribution. In recent discussions with Member States regarding guidance needed at EU level to facilitate food donation, experts have indicated that the practice of freezing foods before their expiration date in order to extend shelf-life and facilitate safe redistribution would merit further consideration at EU level as food received by redistribution organisations and charities cannot always be donated to the customer by the 'use by' date. However, for hygienic reasons, Regulation (EC) No 853/2004 prescribes that food of animal origin intended for freezing must be frozen without undue delay after production (2). This requirement does not apply to retailers supplying other food business operators such as food banks provided that such retailers' activity stays marginal, localised, and restricted in accordance with its Article 1(5)(b)(ii). Member States granting the possibility of freezing food of animal origin for redistribution purposes should adopt national measures accordingly and notify them to the Commission and the other Member States. COMMISSION NOTICE providing guidance on food safety management systems [FSMS] for food retail activities, including food donations (2020/C 199/01) Published 12 June 2020 NOTE following EU Exit the EU guidelines formally apply to NI and EU only, but may be of informative value in GB unless superseded by UK government endorsed guidelines. Members may also wish to learn more about this subject from The Institute of Grocery Distribution via the following link: Sustainability (igd.com)
Communication with businesses	This advice will be published in electronic format and located in the Technical Guidance area of the BFFF website: http://bfff.co.uk/technical/guidance/.



Communication with enforcing authorities:	An enforcing authority, proposing to take enforcement action against a business, is only required to notify the primary authority, where they are aware that the business is a member of a regulated group. While guidance states that the enforcing authority should ask you whether you are relying on Primary Authority advice, we recommend that you ensure you communicate this as soon as possible, and do not wait to be asked. (para 21.5 of the Statutory Guidance refers). The scheme does not allow for a business to make a notification to the primary authority where an enforcing authority has already taken action in respect of which it [the enforcing authority] failed to make the required notification to the primary authority (para 21.20 of the Statutory Guidance refers). Additionally, the rules allow for you (or the Co-ordinator) to notify the primary authority (para 21.19 of the Statutory Guidance refers). Once a primary authority receives notification, statutory time limits apply (usually 5 days) in which time they must respond to the notification. (Paras 21.9 & 21.10 of the Statutory Guidance refer).
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