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# **Food Sold Online**

Guidance for local authorities

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## **December 2016**

## Summary

Intended audience:	Local authorities
Which UK nations does this cover?	<ul style="list-style-type: none"> <li>• England</li> <li>• Wales</li> <li>• Northern Ireland</li> </ul>
Purpose:	The guidance is intended to help local authority officers when dealing with businesses selling food over the internet.
Legal status:	This guidance has been produced to explain the main legal requirements relating to food and food ingredients sold over the internet.
Key words	<ul style="list-style-type: none"> <li>• Online food sales</li> <li>• Internet sales</li> <li>• Food law, monitoring and controls</li> <li>• Hygiene and food safety</li> <li>• Food standards</li> </ul>
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# Food Sold Online

## Guidance for Local Authorities

### Introduction

1. The purpose of this guidance is to assist local authorities (LA's) with assessing and monitoring compliance with food law of businesses operating online. It provides specific inspection and identification techniques, sampling guidance and a basic understanding of the capture of digital evidence.
2. The scope of this guidance does not cover other forms of distance selling such as mail order, telephone transactions and animal feed. However many of the techniques contained here can be applied to these areas.

### Background

3. As more and more consumers source and buy their food online, it is important that food authorities adapt their traditional inspection and sampling activities to ensure that food supplied online meets legal requirements. The dangers of not doing so are clear from the following examples:

**Dinitrophenol (DNP)** is an industrial chemical, sold as a weight loss supplement. Its consumption has proven fatal in at least six cases in the UK in 2015 alone. Further fatalities have been noted in France and Norway. The dangerous 'internal cooking' effects it has on the human body have been established since 1933, but it continues to emerge on the online market place as a food supplement. The National Food Crime Unit (NFCU) of the FSA has been working with partners closing down websites selling DNP both in the United Kingdom and around the world.

**Methylhexanamine** also known as 1,3-dimethylamylamine , geranamine or DMAA, is an organic chemical compound manufactured as a synthetic powder. It has been sold online as a stimulant and fitness supplement,

often mis-described as being a 'natural product', obtained from geranium oil. It carries a risk of stroke, hepatitis and has been linked to several deaths.

A big online product in 2015 was **raspberry ketones** sold in supplement form, it is now regarded as a novel food and as such, its safety needs to be assessed by the European Food Safety Authority (EFSA). Danish researchers have warned that dosage levels in these products could be toxic.

The sale of **human breast milk** online is growing. This brings risks of hepatitis B and C, HIV and syphilis as well as harmful bacteria such as E.coli, candida, and pseudomonas aeruginosa. It is being sold not only to mothers who cannot breast feed but also bodybuilders, cancer patients and fetishists.

## Levels of non-compliance

4. 'But everyone else is doing it' is a phrase well known to officers who have tried to tackle online non-compliance. It is a difficult task for an individual officer or LA to tackle widespread non-compliance.
5. The more LA's that carry out both reactive and proactive activities in relation to internet food sales, the easier it will be to protect consumers. This will also help businesses who want to comply, but which find themselves up against unfair competition from those businesses that do not comply.
6. In a regional survey carried out in the Trading Standards North West area in 2015, of 213 online health claims reviewed, 162 did not comply – a failure rate of 76%. Once significant and sustained follow-up work had taken place, a further review found compliance rate to be 72%, a massive swing of 48% which demonstrates that intervention (mostly through advice) can be effective even if resource intensive.

7. Warwickshire Trading Standards carried out a series of small online surveys in 2015:
  - **Purchasing feed samples over the internet** – all seven samples purchased failed due to non-compliant labelling and one was found to be adulterated.
  - **Purchasing sweets online from UK specialists in American sweets** – all seven purchased samples failed due to inadequate labelling.
  - **Purchasing meat and meat products online such as sausages and pies and then collecting from shops** – of the seven samples purchased all but one was unsatisfactory due to meat content deficiency, presence of other species, labelling inadequate. The survey also identified two new producers of meat products that were unknown.
8. A review of 20 websites for compliance with other consumer law provisions such as cancellation rights and e-commerce found that 75% did not comply, 65% failed to give consumers adequate information about cancellation rights. Of relevance to food traceability in particular, 20% failed to disclose their legal identity.
9. Across all the surveys, a failure rate 90% was reported. Results such as this demonstrate why the FSA and the European Union (EU) has identified e-commerce as a high risk to food safety.
10. This guidance is part of a wider strategy to tackle the issues, along with consumer facing communications, advice to online businesses and development of greater intelligence sharing.

## **Identifying online businesses in the local authority area**

11. LAs should target inspection and sampling activities at online businesses operating within their local authority area.
12. The [Food Law Practice Guidance](#) provides guidance on the enforcement of food law in relation to the distance selling of food, and information on other generic legal requirements that relate to distance selling.

### **Food Law Practice Guidance (Chapter 7, 7.11.4)**

The distance selling of food from the UK is covered by relevant food law. Food that is sold by a distance selling method from the UK, and advertisements for such food, must therefore comply with exactly the same legal requirements as food sold from a high street supermarket or advertised in a UK national newspaper.

Competent Authorities are therefore responsible for enforcing food law in relation to the distance selling of food from the UK, including food that is advertised or sold through UK-based internet sites.

Competent Authorities must therefore have appropriate means of monitoring the distance selling of food by businesses for which they act as home authority.

13. LA's should ensure information is captured about businesses in the area that have an online sales platform and include this as a key part of their inspection protocol. This could be achieved with a premises / property use code for internet businesses on each LA's premises management information system. This may be used as a primary usage if business sales are only online or as a subsidiary usage, for example if the business also has a physical retail premises.
14. Businesses can sell their food using a range of online selling platforms:
  - selling through their own website
  - selling through third party sites such as eBay, Amazon, Just Eat, Alibaba and Takestock (the last two being business to business selling platforms)
  - selling using social media such as Facebook
  - Annex A provides tips on how to search for food businesses operating on eBay and Amazon.

15. When selling through their own website the business's legal identity and address is often found in their 'Contact Us' page, or terms and conditions pages. Where a legal identity such as limited company name is provided but not an address, a Companies House search should be carried out.
16. Some websites do not disclose their legal identity and address and a 'Domain Name search' may be required to establish the owner of a website, see **Annex B** for information on how to do this.
17. The more these techniques are used, the easier they become especially if embedded as part of annual inspection activity. This could include joint project working with partners such as local food liaison groups to pool resources, experiences and information.

## Inspecting online food businesses

18. Once online food businesses have been identified, they need to be registered, inspected and risk rated for future interventions. Inspections may need to be carried out in two phases:
  - a review of the website to gain an understanding of the nature of the business and any compliance issues, particularly for standards officers. Consider taking samples at this point.
  - a physical visit to the address of the online food business. This may be a private dwelling, storage unit, warehouse or retail outlet.

## Basic legal requirements

### Food hygiene

Registered as a food business

Safe food supplied, including adequate temperature controls and packaging during transportation



Food Safety Management System based on HACCP principles in place

Traceability maintained

### Food standards

Mandatory information provided online and on delivery

Business identity and geographical address provided

Claims are not misleading and meet any applicable requirements such as nutrition/health claims.

Any foods which are novel are authorised and meet conditions of use

### Good Practice

All mandatory food information, except duration date, should be available before the purchase is concluded and should appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator.

When other appropriate means are used, the mandatory food information should be provided without the food business operator charging consumers supplementary costs. It is not appropriate for a retailer's website to refer the consumer elsewhere for important mandatory food information (e.g. by referring the consumer to the manufacturer's website for allergen information, and away from the product page on the retailer's own website)

19. **Annex C** contains some illustrative case scenarios.

# Sampling

- 20. As well as monitoring compliance of food businesses based in their area, sampling surveys could be targeted at high-risk products that consumers in their area can purchase over the internet. An intelligence led and risk based approach to target online sampling activity should be followed to meet local and national priorities.
- 21. Before purchasing samples online, the following are needed:

<p><b>An email address</b></p>	<p>Recommend the use of an anonymous email address. Using a council email address could alert the business that a sample is being taken, and using a personal email address might not be appropriate. It is a simple process to open an email account such as Google, for the purpose of purchasing samples. Some LAs create a test purchase persona that a number of officers can use to make test purchases. For evidential and accounting purposes, keep accurate records of when the test purchasing persona has been used and by whom, to supplement officer notebook entries.</p>
<p><b>Anonymous credit cards or payment facility</b></p>	<p>This is often one of the problem areas for LAs who tend to have rigorous financial control procedures. If you do not already have a credit card, speak to your finance team and present a business case for needing one to carryout statutory responsibilities. Be aware this may take some time to arrange.</p>
<p><b>A delivery address</b></p>	<p>Using a council address for delivery, for example, County Hall, may alert the business that it is a test purchase by an enforcement officer. Consider if there are LA premises in your location where the address does not stand out as council property or ask the local housing department if you can use the address of a vacant house.</p> <p>Most delivery services offer tracking services so you know</p>

	<p>when it is going to be delivered. Consider using the Royal Mail redirection service; though this will be at a cost and businesses now use a range of other courier services to deliver their goods. To preserve evidence you need to be assured that no one will open packages or that if they do they are able to provide a witness statement that they have not tampered with the sample. Once an address has been used for some time then it may need to be changed to avoid alerting sellers that a purchase is being made by an officer.</p>
<p><b>A standalone computer with an independent internet connection</b></p>	<p>This is particularly important where the covert nature of the purchase is necessary, such as where food fraud is suspected.</p> <p>Council computers and Wi-Fi networks could reveal their identity to those with sufficient IT knowledge. Many Trading Standards services will already have standalone computers and the National E-crime unit is able to provide funding to buy them for other aspects of trading standards work. Even if you do not have access to a standalone computer, you can still carryout sampling, just be aware you may be sampling overtly and could be traced through your own digital footprint.</p>

## Sampling requirements

22. There are currently no specific provisions for sampling from online food businesses. The requirements of [Regulation \(EC\) 882/2004](#), the [Food Safety Act \(1990\)](#), the [Food Safety \(Sampling and Qualification\) \(England\) Regulations \(2013\)](#)<sup>1</sup>, any specific

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<sup>1</sup> Equivalent legislation in Northern Ireland and Wales; namely The Food Safety (Northern Ireland) Order 1991, The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013

sampling requirements such as for imported foods and the [Food Law Code of Practice](#) will therefore apply as for any other formal sample.

23. This means that when a formal sample is taken the usual principles apply, namely:
  - where it is being sent for analysis, sufficient product is obtained and where reasonably practicable, the sample is divided into three parts, in order that a supplementary second expert opinion can be sought by the owner and another retained as a referee sample.
  - the Food Business Operator (FBO) is notified that a sample has been taken after it is received
  - evidential rules are followed.
24. When formally sampling food that you should digitally record the online purchasing process should it be required as evidence. See **Annex D**.
25. When you receive the sample, maintain continuity of evidence at all times. Keep the packaging, as postmarks may help identify sellers if identity is disputed later.
26. Record the division process in officer's notebooks.
27. Send the owner their part of the sample as soon as reasonably practicable. This is a requirement of the Food Safety (Sampling and Qualifications) Regulations (2013).
28. If the sample has come from outside the EU, it should have an import declaration or customs form. Check if it has been declared correctly - DNP for example was being declared as Turmeric, kava kava as pepper tea or sometimes declared as gifts or trade samples. It is important to share this information with other enforcement agencies such as Port Health (see 'Making referrals and sharing intelligence').

## **Addressing non-compliance**

29. This section provides information on both formal enforcement action that can be taken to bring a business to compliance, as well as some alternative intervention

measures that can be taken. The authorised officer should consider which action is reasonable, proportionate, risk-based and consistent with good practice, in accordance with Chapter 6 of the Food Law Code of Practice and the LA's own enforcement policy.

30. Authorised officers must take account of the full range of enforcement options. This includes educating food business operators, giving advice, informal action, sampling, detaining and seizing food, serving applicable Improvement or other Notices and prosecution procedures.
31. Where a Primary Authority partnership exists, the enforcing authority should attempt to resolve non-compliance by liaising with the Primary Authority.
32. Where evidence needs to be captured to pursue formal enforcement action, **Annex D** provides some evidence gathering techniques that you may wish to consider in addition to the officer's contemporaneous notes. Where digital evidence is captured the requirements of the [Code of Practice and Conduct issued by the Forensic Science Regulator](#) will need to be considered.
33. You may also wish to consider other possible intervention methods:
  - Refer to the [Advertising Standards Authority](#) (ASA). The ASA's remit includes online advertising, companies own website content, advertising on social networking sites such as Facebook and Twitter and Online Behavioural Advertising (OBA). They also cover nutrition and health claims. Please note that they do not cover claims on packaging (unless it can be seen in an advert), or instore advertising, products on sale which contain banned substances, nor claims to treat or cure cancer.

## **Closing down a business's online sales presence**

34. There are currently no powers in food law to close down offending websites, however there are some techniques that LAs may employ to tackle non-complying websites:

- Contact the webhost – many webhosting agreements contain clauses that require the site to confirm it complies with the law. You may be able to demonstrate that the site is in breach of the law and therefore in breach of contractual terms with the webhost who may agree to remove the site from the internet.
- Contact the domain registrar. The 2013 [Registrar Accreditation Agreement](#) (RAA) requires at 3.18.1/3.18.2, that Internet Corporation for Assigned Names and Numbers (ICANN) – accredited registrars provide abuse contact information and take steps to investigate reports of abuse. This includes illegal activity. Look for the ‘Abuse Complaint’ tab on the domain registry to report this. You need to demonstrate that the website has a selling presence in the UK. This might include prices in Pounds sterling (£) and / or delivery options (shipping) to the UK.
- Contacting eBay - eBay has a [food policy](#), the central contact point for eBay is [ukcwreports@ebay.com](mailto:ukcwreports@ebay.com). Breaches of this policy may result in a range of actions, including:
  - listing cancellation
  - limits on account privileges
  - account suspension
  - forfeit of eBay fees on cancelled listings
  - loss of PowerSeller status
  - Contacting Facebook – [Facebook Statement of Rights and Responsibilities](#) includes Section 3 Safety, Point 9 ‘You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory. In serious cases, you may wish to contact the National e-crime unit who have established a good working relationship with Facebook.

35. You can contact the webhost or sales platform and outline the criminal offences and that they may be liable for if they continue to host the site / seller via applicable act or default provisions of the legislation, which is being breached.

36. The protection provided to webhosts by of European [e-Commerce Directive 2000/31/EC](#) Article 14 would not be effective once they have actual knowledge of the illegal activity and fail to act expeditiously to remove or to disable access to the information.
37. Contacting Amazon – Contacting Amazon – Amazon expects all sellers to comply with all applicable laws. Amazon has created the following aliases:
- [eu-authority-takedown@amazon.com](mailto:eu-authority-takedown@amazon.com) – to action requests from regulatory authorities to remove potentially unsafe or non-compliant food products from sale on Amazon’s European websites.
  - [eu-compliance-questions@amazon.com](mailto:eu-compliance-questions@amazon.com) – for more general questions on potentially non-compliant products offered for sale on Amazon’s European websites. Breaches of Amazon’s policies can result in:
    - Listing cancellation
    - Limits on account privileges
    - Account suspension
    - Loss of seller status

## **Referral to port authorities**

Where evidence of potential activity involving a UK point of entry (sea or airport) is identified, LA's should liaise with the relevant port to alert them to the issue.

## **Consumer education**

Consider raising awareness about particular issues or scams via the media, on council websites and social networking or carrying out more general consumer education work to assist consumers to protect themselves. For example, distributing the FSA advice to consumers when buying food online.

## Making referrals and sharing intelligence

38. The following table gives examples of referrals that should be considered. This list is not exhaustive and you should consider which agencies would need to know the information to enable effective enforcement.

Incident	Action
Where there is a danger to human health	Refer to the <a href="#">FSA Incidents Team</a>
Where the product or website does not comply with EU law (but there is no immediate danger to human health) and the business is based in another EU Member State	<p>The European Commission has launched a dedicated IT tool, known as the Administrative Assistance and Cooperation (AAC) system to facilitate the exchange of administrative information between national authorities working to combat cross-border violations in Europe.</p> <p>You can make contact with the authorities in another EU member state, via the FSA (who act as the Single Liaison Body for the UK) using the <a href="#">Notification of Incident to the FSA Exchange of Information: Routine Food Matters form</a>.</p>
Where medicinal ingredients are found	<p>Refer to the Medicines and <a href="#">Healthcare products Regulatory Agency</a> (MHRA) at: <a href="mailto:borderline_medicine@mhra.gsi.gov.uk">borderline_medicine@mhra.gsi.gov.uk</a></p> <p>For urgent referrals call MHRA Information Services (Medicines Borderline Section) on 0203 080 6000.</p>
Where organised crime is suspected	Refer to the <a href="#">National Food Crime Unit</a> . If you have any suspicions or information about food fraud, it is important to forward this to the National Food Crime Unit.
Where you have received a sample or complaint information that a food has been incorrectly declared on an import certificate	Notify the Border Force Intelligence Hub by emailing <a href="mailto:bfih@homeoffice.gsi.gov.uk">bfih@homeoffice.gsi.gov.uk</a>



39. The [International Consumer Protection and Enforcement Network](#) allow you to find consumer protection bodies from many countries around the globe.
40. Where the matter is, particularly complex and you need advice the national e-crime unit, the NFCU or the Welsh Food Fraud Coordination Unit may be able to take on cases or provide you with advice on how to proceed.

## Future proposals

Note that the European Commission is currently debating specific sampling provisions for e-commerce, along with other initiatives, as it has recognised that further work and co-operation is required to ensure food safety.

The commission is also considering a proposal to enable the competent authorities to order the cessation of activities of an FBO either completely or in part for an appropriate period.

## Further sources of training / assistance

Please note this section is not exhaustive and subject to change, other training providers are available.

- The National Trading Standards e-crime unit has developed a basic introduction to internet crime that can be made available to TSO's by request. This four hour course includes tests at the end of each section and is an introduction to how the internet works, the make-up of web pages, what domain names are, how to capture web pages, websites and other digital assets for evidential purposes:

<http://www.tradingstandardsecrime.org.uk/training/>

- Better Training for Safer Food (BTSF) is a Commission initiative aimed at organising an EU training strategy in the areas of food law, feed law, animal health and animal welfare rules, as well as plant health rules. They provide in depth courses of 3 to 5 days on a wide range of subjects including new Investigatory Techniques to tackle

food fraud and e-commerce. The courses are in English, with accommodation and travel, funded by the Commission: <http://ec.europa.eu/chafea/food/calendar.htm>

## Useful links

- [Food Law Code of Practice – Practice Guidance](#) Chapter 7 Distance selling / mail order
- [The Food Industry Guide to Good Hygiene Practice – Mail Order Food](#) (2008)
- Association of Chief Police Officers of England, Wales & Northern Ireland (ACPO) [Good Practice Guide for Digital Evidence](#)- (2012)
- The [Food Authenticity Network](#)
- [Food Integrity \(FI\) Network](#)
- [Operation Opson](#)

## Annex A – Internet searches top tips

1. Use 'advanced search' on any search engine – this allows you to refine your searching methods and to perform a more comprehensive search. The advanced search option is often displayed as an option on a search engine page. The following links gives advice from Google on searches:
  - [blog.hubspot.com/blog/tabid/6307/bid/1264/12-Quick-Tips-To-Search-Google-Like-An-Expert.aspx#sm.00000all2k595hfomvncbxa6i7c03](http://blog.hubspot.com/blog/tabid/6307/bid/1264/12-Quick-Tips-To-Search-Google-Like-An-Expert.aspx#sm.00000all2k595hfomvncbxa6i7c03)
  - [support.google.com/websearch/answer/2466433?p=adv\\_operators&hl=en-GB&rd=1](http://support.google.com/websearch/answer/2466433?p=adv_operators&hl=en-GB&rd=1)
2. Use a 'metasearch' engine - such as [Dogpile.com](http://Dogpile.com) and [metasearch.com](http://metasearch.com). These search tools use several search engines to aggregate results, therefore increasing the chance of a hit.
3. Don't just search on a name; use any details you have to search. A telephone number or email address may provide more information.
4. Use <http://archive.org/web/> an archive of over 400 billion web pages. Find old websites that have now been removed, or see what content was on a page at a given point in time.

### Specific tips when carrying out searches on eBay and Amazon

5. eBay: To find food businesses operating in or near your area:
  - click the 'shop by category' button and select
  - click 'See all categories'
  - then find the Home, furniture & DIY category and then select 'Food and Drink' (NB If you just search for the word 'food' on the first screen your search would include cook books, dolls house food and other food related items).

6. Use the Advanced search function to find sellers within x miles of a postcode location (ideally try to find a postcode for the central point of your geographical area and try to establish the mileage radius out to the boundary of your neighbouring authorities and filter to business or private sellers).
7. Go to the seller's information. Look at the other items the seller has on sale, does it look like a food business? If it does not, move on.
  - Sellers might have their own Shop on eBay. You may need to put the name into a general search engine to find more information, such as an address or there may be a website that provides more information about the business. If you have found a limited company name, try a search on Companies House.

## **Amazon**

You can find a seller's details on the Amazon Marketplace by going onto the product detail page for the product in question. Click on the seller's name where it says 'Dispatched from and sold by' which will take you through to detailed seller information.

## Annex B – Find the geographical addresses of businesses

All websites have an IP address. Since these are numbers and not easy for a human to remember, we use recognisable names, known as domain names, for example [www.food.gov.uk](http://www.food.gov.uk). To ensure that the same name is not used more than once, domain names must be registered with a 'Domain Name Registrar'. In the UK, this administration body is called [Nominet](http://www.nominet.uk) and they will register all domain names ending .co.uk, org.uk, .me.uk, .cymru and .wales top level domains.

It is important to note that just because a website ends in .co.uk it does not mean the business registering the website is based in the UK, as anyone can register any website anywhere in the world.

All domain name administrators offer facilities that enable anyone to find out who has registered a business domain name. Nominet in the UK provide the 'Who is site' [www.nominet.uk/whois](http://www.nominet.uk/whois). This tool also provides an indication of how long the site has been registered for which might be useful for your enquiries.

There are some limitations to be aware of:

- Private individuals can opt out of having their address made available on the 'Who is' service. See the ['Opt out' section](#) on the Whois site for more details. However they may release the information to you if you can demonstrate to Nominet that the website is inconsistent with the opt out conditions, namely:
  - they are not an individual (i.e. a company, organisation, association etc)
  - the domain name is being used to transact with customers (merchant websites); or primarily to advertise or promote goods, services, or facilities
  - the site acts as third parties employed to act as registrants of websites. When this is the case, you may need to serve a S29 Data Protection Act Notice on the host to reveal the true identity behind a website. However where the third party is outside the UK this may have limited success.

- false information is provided. The verification process to register domain names is limited so false names and addresses can be used. Do not assume an address is real, check out addresses including house number, using google maps, [Royal Mail Postcode Finder](#) and other online services, to make sure it seem consistent with the information you have.

There are also paid for services that will give you more sophisticated data searches, such as other websites registered by the same person or at the same address. It also enables you to identify new websites registered with certain words, such as 'Norfolk' which is useful if you want to be alerted to new businesses in your area or for example 'ketones' if you are carrying out targeted work.

Once you have verified the name and address details and they are in your LA area, you can check if they have registered as a food business. If they have not or they appear not to comply with legal requirements, you need to consider the best way for you to make contact with them, such as face-to-face or by letter.

Where you have tracked down online businesses to another LA's area, you should forward this valuable information on to the responsible LA.

## Annex C – Illustrative scenarios

### Scenario 1

A high street butcher, Theodore Meats Ltd famous for his sausages and bacon, decides to expand his business by selling these products online. Delivery is via the Royal Mail first class.

The same legal requirements apply as for any conventional butcher's premises, but as the business has decided to sell online, the inspection needs to consider the following further requirements:

The [Guide to Good Hygiene Practice – Mail Order Food](#) (2008) gives detailed advice on the application of [Regulation \(EC\) 852/2004](#) including model food safety management charts based on the principles of HACCP and discusses the hygiene issues that arise when delivering food.

#### Hygiene (is the food safe when it is delivered to the consumer?)

##### Key areas to consider

- Suitable temperature requirements for the bacon and sausages – although food does not need to be chilled during transit to the ultimate consumer, it must not be transported at temperatures that could cause a risk to health. Has the business taken additional steps in the warmer months?
- Is the packaging adequate to prevent cross contamination or to maintain safe temperature?
- Is the delivery service fast and reliable?
- Is the package marked with a dispatch date and an instruction to the consumer that the package contains perishable items?

#### Standards

##### Key areas to consider

- Does the website provide the information required under the Food Information to Consumers Regulations?
- Does the labelling of the products comply?
- Do the products meet applicable compositional standards?

- E-commerce Regulations
- Consumer Rights Act, (cancellation/unfair terms)
- Pricing
- Weights and measures
- Online Dispute Resolution and Alternative Dispute Resolution requirements

## Scenario 2

Ayden Sprouts Ltd import mung beans and seeds for sprouting from third countries, and sell them on a website to consumers and retailers, such as garden centres. The beans and seeds are packaged at ambient temperature and sent to purchasers through Royal Mail. Ayden Sprouts is not approved or registered as a food business.

### Approval or registration

Ayden Sprouts is not sprouting the seeds so does not need approval. If they did, they would need to be approved under [Regulation \(EC\) No 852/2004](#), the requirements are contained in [Commission Regulation \(EU\) No 210/2013](#). The business needs to be registered with the Competent Authority as an importer, distributor and retailer.

### Import controls

LA's need to consider if the business is complying with imports controls that apply to seeds for sprouting, such as the certification requirements provided for in [Commission Regulation \(EU\) No.211/2013](#). The original certificate needs to accompany the consignment until it reaches its destination as indicated in the certificate.

Ayden Sprouts needs to ensure a copy of the certificate accompanies seeds sent to its business customers.

A [Q&A document](#) on sprouts and seeds has been produced by the FSA for FBOs and LA officers.



## **Traceability**

Enhanced traceability requirements apply to sprouting seeds under [Commission Implementing Regulation \(EU\) No 208/2013](#).

## **Microbiological controls**

Sampling and testing requirements have been introduced for sprouts and seeds used for the production of sprouts. However, this only applies to establishments producing sprouts that Ayden Sprouts does not do so it is not applicable here, but officers may wish to ascertain if Ayden Sprouts Ltd.'s business customers are producing sprouts from the seeds and comply with [Regulation \(EC\) No 2073/2005](#).

LA's need to consider if online businesses are complying with important imports controls such as those that apply to seeds for sprouting, the importance of which were demonstrated by the deaths of over 50 people in 2011 when organic fenugreek sprouts imported into Germany had acquired the genes to produce Shiga toxin-producing E. coli.

## **Temperature controls**

The seeds and beans can be sent through the post in ambient temperatures but should be packaged to avoid contamination as for any other food.

## Annex D – Gathering digital evidence

Where digital evidence is captured the requirements of the [Code of Practice and Conduct](#) issued by the [Forensic Science Regulator](#) will need to be considered.

There are computer programmes, such as Hypercam, BB flashback and snag it, that enable you to record what you see on a computer screen, for example as you place an order for a food sample from an online retailer or look at the claims made on the website. Basic versions of these programmes can be obtained free.

### Good practice

- it is important that whichever programme you use that it does not enable the data to be edited
- as well as recording ordering the sample itself you should ensure that pages that relate to the product and any related pages such as links to claims are also captured
- make sure you record the page that declares the legal identity and address of the business, often found on the Contact Us page or the terms and conditions. If not present then try to capture its absence too by exploring reasonable amount of the site where you would expect this information to be found.
- it can be a good idea to plan beforehand which pages you are going to visit on the recording so that the recording does not contain too much repetition as you explore the site
- linger on each page long enough that an average reader can absorb the relevant information on the page. Bear in mind the recording can be paused if there is a lot of information on the page
- scroll down the page to capture all text
- keep an audit trail and notebook entries
- taking a sample online is unlikely to require [Regulation of Investigatory Powers Act](#) (RIPA) (2000) authorisation
- it is best to turn the sound off unless there are relevant adverts with sound that you wish to record

- backing up the evidence – you need to save the digital evidence recording into a non-volatile form i.e. onto a CD/DVD

[Regulation of Investigatory Powers Act \(2000\)](#) (RIPA): Make sure you follow your organisation's procedures and are aware of RIPA guidance on directed surveillance and CHIS. Certain online platforms such as Facebook, may lend itself to the forming of a relationship, in which case the need to authorise the officer as a CHIS should be considered in consultation with your RIPA policies.

Emailing a business to incite the sale of a product may also be called into question. Generally, if you look at a personal Facebook account more than three times it may require directed surveillance authority.

### **Going online top tips**

#### **1. Clear cookies and temporary internet caches before you go online**

Cookies are plain text files that web servers send to your computer to enable them to target what you see when you visit the site again, based on your activities from previous visits. For example, this means that if an officer has been investigating the sale of honey on Amazon and has accepted cookies, the next time they visit Amazon it is likely that honey will feature strongly in the advertising, along with related products. It is likely that without deleting cookies at the beginning of each search, different officers will all be shown different content when they visit the same site. This would breach the repeatability principle of computer-based electronic evidence. (ACPO Good Practice Guide for computer-based electronic evidence)

#### **2. Avoid 'just looking' and repeated visits to the same site**

Unless there is good reason for doing so, such as you are monitoring the changes made to descriptions etc. Review a site in a comprehensive manner first time around, perhaps using a compliance checklist decide what action you are going to take and whether you need to preserve a copy of the site for future reference.

#### **3. Establish the IP address**

Every computer has a unique internet address called the IP address. The IP address is made up of four groups of numbers separated by points. For example, '194.176.69.41 is the IP address for [www.tradingstandards.uk](http://www.tradingstandards.uk).

IP addresses can be static or more probably dynamic. Dynamic means they change frequently so it is important to record the IP address of a subject website every time so that you can trace it later if necessary. The domain host should keep a record of what site used which IP address at what time. There are online tools that let you look up site's IP address. such as: <http://ping.eu/nslookup/> and <http://mxtoolbox.com/DNSLookup.aspx>

#### **4. Website archives**

Webreaper programmes, such as the '[waybackmachine](http://www.archive.org/)' capture the content of websites so you may be able to see what it looked like in the past. The popularity of the site determines the frequency with which this has been done but it could be helpful in establishing the history of the business.

#### **5. Use Google cache to look at website pages**

Google Cache stores copies of web pages listed by Google. Google crawls the web and takes snapshots of each page as a backup. These pages then become part of Google's cache. This has the advantage that you do not leave a footprint on the site if you are using a Council computer or if the owner has recently removed the site from use.