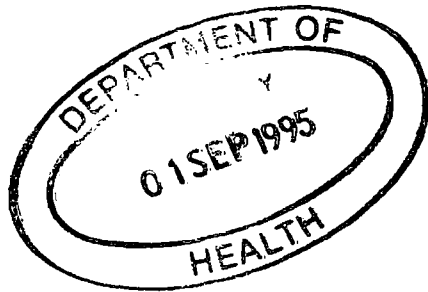




FOOD SAFETY ADVISORY COMMITTEE

**Application of the Food
Hygiene Regulations to
Small Scale Food
Enterprises Operating from
Domestic Kitchens**



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Application of the Food Hygiene Regulations to Small Scale Food Enterprises Operating from Domestic Kitchens

Report to the Minister for Health
and the
Minister for Agriculture, Food and Forestry

REPORT NO. 15

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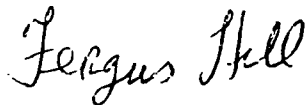
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Foreword

The Food Safety Advisory Committee was directed by Mr. Willie O'Dea, T. D., Minister of State at the Department of Health, to report to him on the application of the food hygiene laws to small scale food industries operating from domestic kitchens.

This report was prepared and submitted to the Minister. In accordance with the Minister's policy the report is now published for public information.



Dr. Fergus Hill,
Chairman,
Food Safety Advisory Committee.

June 1994.

Food Safety Advisory Committee

The Food Safety Advisory Committee was established by the Minister for Health and the Minister of Agriculture, Food and Forestry in July, 1989.

Terms of Reference

To advise the Minister for Health and the Minister for Agriculture, Food and Forestry on matters relating to food and zoonotic diseases referred to it and to make recommendations to the Ministers.

Members

Dr. Fergus Hill (Chairman)	Dublin Region Public Analyst, Eastern Health Board.
Professor Charles Daly	Faculty of Food Science & Technology, University College Cork.
Mr. Martin Devine	Principal Environmental Health Officer, Eastern Health Board.
Dr. Hugh Dolan	Public Health Specialist.
Mr. Raymond Ellard	Chief Environmental Health Officer, Department of Health.
Mr. James Flanagan	Deputy Chief Inspector, Department of Agriculture, Food & Forestry.
Professor John Flynn	Consultant Bacteriologist, University College Galway.
Mr. Colm Gaynor	Director of Veterinary Services, Department of Agriculture, Food & Forestry.
Professor Michael Gibney	Department of Clinical Medicine, Trinity College Dublin.
Professor John Hannan	Faculty of Veterinary Medicine, University College Dublin.
Miss Maura Nolan	Food Division, Department of Agriculture, Food & Forestry.
Dr. Timothy O'Dwyer	Deputy Chief Medical Officer, Department of Health.
Mr. Tom Power	Public Health Division, Department of Health.
Mr. Michael Mulkerrin	Food Safety Advisory Committee,
Mr. Billy McCarthy (Secretariat)	Department of Health, Hawkins House, Dublin 2.

Summary of Recommendations

General

1. Controls should relate to the health risk involved in the manufacture of food i.e., the greater the potential risk to public health the more rigorous the controls.
2. All such food businesses should be known to the health board.

Specific

- A “Permit System” should be introduced for food businesses operating from premises used primarily as a domestic dwelling.
- Each permit holder should have an identification number.
- Persons intending to operate such a business should have to apply to the health board for a permit. The cost of the permit should not exceed £30 and be valid for a period not exceeding three years.
- Structural requirements for compliance with the Food Hygiene Regulations should be commensurate with the type of business to be conducted.
- Other activities which could pose a danger to public health should not be permitted while food manufacturing is taking place.
- Such a “Permit System” would only apply to the production of low risk foods such as: Bread, Scones, Apple Tarts, Flour confectionery (with low risk fillings — excluding cream), Jams, Preserves, Honey, Fermented meat products of low moisture content.
- The use of a domestic kitchen should not be permitted where medium or high risk foods are to be produced.
- The “Permit System” would only apply to kitchens where domestic appliances are used. The number and capacity of appliances should not exceed that for which the kitchen was primarily designed.
- The current application for registration fee of £200 should be reduced in respect of small scale manufacturers.
- Guidelines should be drawn up and agreed by the health boards and the Department of Health for the operation of the “Permit System”.
- The production of foods such as cakes and jams for sales of work or charity cake sales should be exempt from these proposed controls.

Introduction

The Minister for Health has received representations that the requirements for registration, under the above regulations, for food premises engaged in bona fide home baking for local markets are unduly onerous.

Accordingly, the Food Safety Advisory Committee (FSAC) was asked to consider the matter. In turn this was referred to the sub-Committee on Legislation. A small working group was established to produce a draft report for consideration by the Committee.

Background

Under the Food Hygiene Regulations 1950-1989, which are enforced by the health boards, systems of registration, licensing and permits for food businesses are in operation. In effect these are prior approvals systems. In other words certain types of food business must obtain the approval of the health board before they can commence operations.

Certain classes of food premises must be registered with the health board. These classes are defined in Food Hygiene Regulations, 1950 (Commencement of Part IV) Order 1951 (S.I. No. 270 of 1951) and Food Hygiene Regulations Order, 1986 (S.I. No. 21 of 1986). The registrable categories are:—

“hotels,* holiday camps and restaurants”

“fishmonger”

“poulterer”

“ice cream manufacture”

“butcher or pork butcher”

“take away”

“premises in which is carried on a food business consisting of the manufacture of food intended for sale for human consumption”,*

“premises in which is carried on a food business consisting of the preparation, exposure for sale or storage for sale by wholesale of food intended for sale for human consumption.”

*A fee of £200 is payable upon application in respect of these categories. £100 is payable in respect of all other categories.

In recent years the practice has increased whereby private individuals use their domestic kitchen to produce food for sale to the public. The question then arose as to whether a domestic kitchen could be deemed suitable for registration, given that it is also used for other purposes. The Department of Health in a circular letter in 1988 advised against the registration of dual purpose kitchens. While the regulations do not preclude the registration of a kitchen used for both domestic and food production purposes, many health boards seem to have automatically refused to register such premises or discouraged their use by advising persons against applying for registration because they would be refused.

The advent of the labelling regulations, coupled with the extra attention paid to food hygiene inspections has led, in recent years, to the discovery of previously unknown food businesses based in private dwellings. The labelling regulations require that packaged foods state on the label the name and address of the producer. Many food business operators overcame the difficulty of acquiring registration by providing a separate room in their dwelling for food production and such a facility was registered.

Type of Businesses

However the question now arises as to whether given the nature and scale of some of the businesses purported to be in operation that the application of the food hygiene regulations is too restrictive and the refusal to register dual purpose kitchens unduly harsh.

There would seem to be three different broad categories of home producers:—

1. Production of foodstuffs on an occasional basis for sale at country markets.
2. Production of foodstuffs on a small scale for sale to markets and retailers.
3. Small businesses operating from private dwellings

The Committee recommend that all the above categories should continue to be subject to some means of prior approval by the health board.

The Committee believe that businesses in Category 3 above should continue to be subject to the registration requirements that currently obtain. However, in the case of businesses in Categories 1 & 2 above a "Permit System" along the lines discussed hereunder should be used.

It is felt that any consideration for future controls should be based on the food hygiene/food safety risks involved in the production.

In the course of the public debate some fears were also expressed that persons producing foods such as cakes or jams for sales of work or charity cake sales could not legally do so. The Committee felt that such fears were misplaced and that health boards do not and need not exercise any controls over such minor operations.

However in the interest of public health generally, any other business providing food for sale should be subject to control and that at the very minimum, the health boards should know the origin of any food produced for sale.

Health Board Views

In advance of the Committee's examination of the issue, the Department of Health had circularised the eight health boards for their views. A wide variety of opinions and suggestions were received. These ranged from the attitude that there should be no change in current practice to suggestions to permit the use of domestic kitchens for food production in certain circumstances and under certain conditions. A widely held view was that the fee of £200 for registration as a food manufacturer was excessive for domestic scale operations.

Recommendations

Having considered the matter and reviewed the opinions and suggestions offered by the health boards, the Committee is of the opinion that there is a need to introduce some flexibility into the enforcement of Food Hygiene Regulations where domestic based operations are concerned. It is recognised that opportunities must be allowed for small business to begin at low cost provided that essential controls are in place and public health can at the same time be adequately protected. The dual use of domestic kitchens could be permitted in certain defined cases.

The Committee felt that any changes to present practice should be based on two propositions:—

- 1. Controls should relate to the health risk involved in the manufacture of food i.e., the greater the potential risk to public health the more rigorous the controls.**
- 2. All such food businesses should be known to the health board.**

Bearing these in mind the Committee considered whether registration in its present form was a suitable control for the many small and often part time food business operating from domestic kitchens. Pertinent to this is the nature, volume and extent of the business. It was accepted that some businesses given their low risk nature would present only a minimal risk even if carried on in a dual purpose domestic kitchen. The volume of business and nature of the business would need to be defined. A prior approvals scheme would be required for those types of operations being conducted from domestic kitchens.

Accordingly the Committee makes the following recommendations:—

Notifications System to Health Boards

- * A "Permit System" should be introduced for food businesses operating from premises used primarily as a domestic dwelling.**
- * Each permit holder should have an identification number.**

The "Permit System" would apply to the Categories 1 & 2 above and would replace the registration system in those cases. The volume and nature of the business would be as defined further below.

- * Persons intending to operate such a business should have to apply to the health board for a permit. The cost of the permit should not exceed £30 and be valid for a period not exceeding three years.**

The health boards would then be aware of all such businesses and the premises concerned would be subject to routine inspection under the Food Hygiene Regulations. The health boards would use their judgement, having regard to the Food Hygiene Regulations, whether or not to grant a permit or whether to limit the type of business to be conducted.

Permits could be revoked for non-compliance with the Food Hygiene Regulations. Closure Orders could be sought from the District Court as already provided for in the case of other types of food premises where there is a grave and immediate threat to the public health. Provision could be made for an appeal to the Minister for Health against a refusal by a health board to grant a permit.

- * **Structural requirements for compliance with the Food Hygiene Regulations should be commensurate with the type of business to be conducted.**
- * **Other activities which could pose a danger to public health should not be permitted while food manufacturing is taking place.**

Nature of the Food Business

- * **Such a "Permit System" would only apply to the production of low risk foods such as: Bread, Scones, Apple Tarts, Flour confectionery (with low risk fillings — excluding cream), Jams, Preserves, Honey, Fermented meat products of low moisture content.**

In general, these businesses would be limited to the production of food where the food materials used or the finished food product would not pose a high microbiological threat.

- * **The use of a domestic kitchen should not be permitted where medium or high risk foods are to be produced.**

Therefore, for example, the preparation of coleslaw or foods containing meat or soft cheeses would not be permitted. Separate facilities would have to be provided and registration sought.

Level of Business

- * **The "Permit System" would only apply to kitchens where domestic appliances are used. The number and capacity of appliances should not exceed that for which the kitchen was primarily designed.**

Experience has shown that where food production reaches a certain level, the provision of a production area separate from the domestic kitchen is essential. The difficulty is in defining this level either in monetary turnover or in units of output or in hours of operation. While such judgement should be left to the discretion of the health boards, to be exercised in accordance with nationally agreed guidelines, a criterion would be the number and capacity of appliances used. Businesses using domestic appliances only will have their output limited by the size and power of such equipment.

Businesses, therefore, which exceed the above limitations would require the provision of a separate facility and be subject to the registration system currently in force.

- * **The current application for registration fee of £200 should be reduced in respect of small scale manufacturers.**

At present, under the Food Hygiene Regulations, 1950-1989 the registration fee for food manufacturers is £200 regardless of size of the establishment. It is felt that such a fee should not be imposed in the case of small businesses and therefore the following is suggested:—

- (a) where the floor area of the food premises is less than 50m² — £100, and
- (b) where the floor area of the food premises is greater than 50m² — £200
(m² = square metres)

*** Guidelines should be drawn up and agreed by the health boards and the Department of Health for the operation of the "Permit System".**

Similar type guidelines were agreed with the health boards when Annual Licensing for Food Stalls was introduced under the Food Hygiene (Amendment) Regulations, 1989 and proved successful in obtaining uniform operation of the regulations across the country.

Bed and Breakfast Establishments

If the above proposed permit system is to be operated, the argument could be put forward that most Bed and Breakfast establishments operate from a domestic kitchen and therefore they should also be required to have a permit.

It is understood that under the "Programme for Government", some approval system for all guest accommodation is being considered. If such a system is operated by Bord Fáilte, there will be a need to develop liaison between it and the health boards to ensure that establishments are not approved unless they satisfy the requirements of the Food Hygiene Regulations. It is not considered necessary therefore to extend the proposed permit system to Bed and Breakfast establishments.

Conclusion

The Food Safety Advisory Committee, in order to protect public health, offers the above recommendations as a practical solution to the current debate on the use of domestic kitchens for small businesses. The Food Hygiene Regulations would still apply, but their application would be tailored to the risks posed by the business and the financial costs to business would be modest. A suitable amendment to the Food Hygiene Regulations would have to be introduced in order to implement these recommendations.