



Six Pump Court

Covid-19 and the law relating to food – protecting the health and safety of consumers

Health and Safety Lawyers' Association
16th September 2020
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Introduction

- The virus and its impact
- Challenges and opportunities
- A food safety risk?
- The implications for food law
- Some examples
- Enforcement
- Concluding comments

The virus

- “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)*
- “coronavirus disease” means COVID-19 (the official designation of the disease which can be caused by coronavirus)*
- Primarily a respiratory illness
- A pandemic

*Section 1 (1) Coronavirus Act 2020

Timeline

- 31 December 2019 - Wuhan Municipal Health Commission reported a cluster of cases of pneumonia
- 13 January 2020 – First recorded case of Covid-19 outside China (in Thailand)
- 24 January 2020 – first confirmed cases in WHO European region (three cases in France – all had travelled from Wuhan)
- 11 March 2020 – Covid-19 characterised as a pandemic by WHO
- 4 April 2020 – WHO reported more than 1 million Covid-19 cases worldwide

The numbers

- Worldwide – 28,339,366 cases; 914,091 deaths
- UK – 358,138 cases; 41,608 deaths
- Ireland – 30,360 cases; 1,781 deaths

At 11th September 2020

The spread of Covid-19

- Primary transmission from person-to-person over close distances via droplets from nose and/or mouth
- Humidity, cold temperatures that promote/permit virus survival, air flow, physical exertion, talking and shouting, close groupings of people at work and at home and working long hours
- Food processing/meat plants – particular implications for workers, production and the supply chain

The Impact

- “Unprecedented”
- Consequences - businesses and consumers
- The response - global, regional, domestic, local
- Law, science, policy
- Carrot and/or stick
- The message – cogent, clear and consistent?

Challenges/opportunities

- Working **with** Covid
- Closures/restrictions
- Review/revamp businesses
- Innovation
- Diversification of offer
- Managing compliance –
plan/prove/document
- “Consumer first” in line with basic
principles

EU food law principles

- The assurance of a high level of **protection of human health and consumers' interest** in relation to food, taking into account in particular the diversity in the supply of food
- Whilst ensuring the **effective functioning of the internal market**
- It establishes the means to provide a **strong science base** ... and procedures to underpin decision-making in matters of food and feed safety

Articles 1 (1), 5 and 8 of Regulation 178/2002

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Selected EU Food Laws

- General Food Law Regulation 178/2002
- Hygiene of Foodstuffs Regulation 852/2004 (and Regulation 853/2004 POAO)
- Provision of Food Information to Consumers Regulation 1169/2011
- Nutrition and Health Claims made on foods 1924/2006

Food spread

- “It is highly unlikely that people can contract COVID-19 from food or food packaging” (WHO/FAO Interim Guidance 7th April 2020)
- Potential alternative transmission is indirect via cross-contamination from surfaces
- Survivability of the virus on surfaces
- The chance of transmission through inanimate objects appears to be very small

Hazard and risk (1)

- Food shall not be placed on the market if it is unsafe (Article 14 Regulation 178/2002)
 - ‘hazard’ means a biological, chemical or physical agent in, or condition of, food or feed **with the potential to cause an adverse health effect***
 - ‘risk’ means a function of the probability of an adverse health effect and the severity of that effect, **consequential to a hazard***
 - Not a ‘risk of a risk’!
 - Hazard has been identified - assess the associated risk
- *(Article 3 Regulation 178/2002)

Hazard and risk (2)

- Food hazards have the potential to cause harm - glass, foreign objects, pathogenic bacteria, microbiological contamination
- Risk based approach
- SARS-CoV-2 – **may not** be a true food safety hazard
- Unlikely that SARS-CoV-2 constitutes a food safety risk as there are no proven cases or scientific associations between food consumption and Covid-19
- If it is not a true food safety risk there are other consequences of the virus that might result in unsafe food or other breaches of food law

Food supply systems

- Longer more complex – Horsegate
- Take for granted we have access to healthy nutritious food
- Pressures and pinch points on supply chain along with criminality might result in unsafe or non-compliant food –
 - Adulteration
 - Substitution
 - Mislabelling
 - Counterfeiting
 - Unlawful processing
 - Diversion
 - Theft

Food hygiene (1)

- Regulation 852/2004 - hygiene rules
- Pre-Covid expectation/assumption rules being followed
- Now prudent to emphasise the importance of using good hygiene practices to minimise the possibility of food or food contact surfaces as a vector for SARS-CoV-2
- Not only must hygiene be done; it must be seen to be done
- Re-opening premises/re-assessing activities

Food Hygiene (2)

- Cleanliness of premises
- Cleanliness of articles and equipment
- Clean v disinfect
- Personal hygiene - the 20s “Happy Birthday” routine
- Contamination - new/substitute ingredients
- Changing/welfare facilities
- Hand sanitiser/clean tables/face coverings/physical distancing
- Training and supervision

Food For Health

- No vaccine on the horizon
- People seek protection against/cure for Covid
- Foods and food supplements
- Immune system foods – citrus fruits, garlic, peppers, ginger
- No evidence they protect from Covid
- Article 7 EUFIC and Art 16 178/2002 – not mislead – true and honest (ASA)

Claims

- Authorised health claims – XXX contributes to the normal function of the immune system (e.g. vitamins A, B, C and D)
- Avoid “boosting” or “strengthening” immune function
- No medicinal claims - Any substance or combination of substances presented as having properties for treating or preventing disease in human beings
- "VITAMIN-C HAS BEEN PROVEN TO **BOOST** IMMUNITY BY MANY GLOBAL STUDIES ... IT IS NOW BEING TESTED IN THE USA & CHINA AS **A POSSIBLE CURE FOR COVID-19**"

Revival Drinks - ASA complaint upheld

<https://www.asa.org.uk/rulings/revival-drinks-ltd-a20-1061509-revival-shots.html>

Non-compliance

- Official and unofficial “inspectors”
- Food law breaches/Covid breaches
- Sentencing Guideline
- Culpability and harm
- Financial implications of Covid on turnover/profit/viability/decision to prosecute
- Accountant evidence
- Delays and the hearing

Business strategies

- Don't lose sight of the basics
- “Covid secure” - integration with existing HACCP/TACCP/VACCP and other procedures
- “Consumer first” policies
- Diversification – the consequences of making changes
- The “why” of training
- Guidance v business/premises specific

Conclusion

- We are all the answer
- Food may not be a problem *per se*
- The impact of the virus and the disease on society and on the food sector
- Resist temptations to “bend” the rules
- Futureproofing - risk assess - activities/crises
- A recovery plan – living/working with Covid-19

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Thank you

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