



**The application of food hygiene legislation
to domiciliary care, assisted living and care
homes**

February 2017

For all queries about this guidance including if you require the information in an alternative format such as audio, large print or Braille please use the number below.

CONTACT TELEPHONE

0207 276 8537/8180 (England)

029 20 678956 (Wales)

90 417700 (Northern Ireland)

Summary

Intended audience:	Authorised officers at local food authorities
Which UK nations does this cover?	England, Wales and Northern Ireland ¹
Purpose:	To provide authorised officers with guidance on the application of food hygiene regulations ² in domiciliary care, assisted living and care homes, including registration and inspection requirements.
Legal status:	This guidance is intended to accompany the European Union (EU) food hygiene legislation, the Food Safety and Hygiene (England) Regulations 2013 and the equivalent Food Hygiene Regulations 2006 in Wales and Northern Ireland that apply to domiciliary care, assisted living and care homes.
Key words	<ul style="list-style-type: none"> • Food law, monitoring and controls • Hygiene and food safety.
Next review date	February 2019

REVISION HISTORY

This guidance follows the Government [Code of Practice on Guidance](#). If you believe this guidance breaches the Code for any reason, please let us know by emailing betterregulation@foodstandards.gsi.gov.uk. If you have any comments on the guidance itself,

¹ Related arrangements for Scotland can be found in “Enforcement Guidance on the Application of Food Hygiene legislation to Carehouses” document at: <http://www.food.gov.uk/multimedia/pdfs/carehousescotguide.pdf>. For further details please contact Food Standards Scotland’s Enforcement Branch by telephone on 01224 285100.

² See paragraph 8 for the meaning of this term.

please call us using the contact number on page 2 or complete our ongoing [Guidance survey](#): <https://www.surveymonkey.com/s/55QQDCG>

Revision No.	Revision date	Purpose of revision and paragraph number	Revised by
1	December 2012	Issue of guidance	Issued by Ned Mazhar (FSA)
2	September 2014	Updated due to a planned implementation review <ul style="list-style-type: none"> Page 3: Legal Status (and as referenced throughout the document) 	Chris Harvey Chris Rowswell (Hygiene Delivery Branch)
3	February 2017	Programmed review	Carol Wittrick (Technical Delivery Division)

CONTENTS

REVISION HISTORY	3
CONTENTS	5
INTRODUCTION	6
INTENDED AUDIENCE.....	6
PURPOSE OF GUIDANCE	6
LEGAL STATUS OF GUIDANCE.....	7
TERMS USED IN THE GUIDANCE	7
KEY LEGAL OBLIGATIONS.....	7
AREAS OF RESPONSIBILITY	8
BASIC LEGAL PRINCIPLES CONCERNING REGISTRATION	10
APPLICATION OF KEY PRINCIPLES.....	10
INSPECTION OF ESTABLISHMENTS	16
REVIEW	17
CONTACTS.....	17
ADDITIONAL INFORMATION.....	17

INTRODUCTION

1. This document is intended³ to clarify registration and inspection requirements, and the application of food hygiene regulations in relation to domiciliary care, assisted living and care homes, following enquiries from local authority enforcement officers.

INTENDED AUDIENCE

2. This guidance is for authorised officers at local food authorities responsible for enforcing the food hygiene regulations. It may also provide helpful information for those working in the domiciliary care, assisted living and care homes sectors. If those working in domiciliary care setting have questions about how food law applies to them, they should contact the local authority food safety team, which is usually part of the environmental health department.

PURPOSE OF GUIDANCE

3. This guidance is intended to assist authorised officers in understanding the legal requirements of the food hygiene regulations in relation to domiciliary care, assisted living and care homes. However, the nature of the sector means that it is unlikely that every possible situation will be covered.
4. The guidance applies equally to operations in the public, private or voluntary sectors. It should help to provide clarity in situations where people live, as far as possible, independently but with individual levels of assistance provided to meet their personal needs. Accommodation may be provided to meet the needs of a wide variety of people e.g. young adults, people with learning difficulties or mental health issues and the elderly. A

³ This guidance document has been adapted from the Scottish document entitled “Enforcement Guidance on the Application of Food Hygiene legislation to Carehouses”.

characteristic of such accommodation is that people enjoy a degree of independent living and/or live as a family with care workers.

LEGAL STATUS OF GUIDANCE

5. These guidance notes provide advice to authorised officers on the application of food hygiene legislation to domiciliary care, assisted living and care homes.

TERMS USED IN THE GUIDANCE

6. The terms “domiciliary care”, “assisted living” and “care homes” are used to cover a variety of situations as there is considerable overlap in these operations which fall within the care sector.
7. The term “resident” refers broadly to any person occupying a place of residence as their normal dwelling.
8. The term “hygiene regulations” means the EU Food Hygiene Regulations, and in this guidance document, this mainly refers to Regulation (EC) No. 852/2004 on the hygiene of foodstuffs, the Food Safety and Hygiene (England) Regulations 2013 and the equivalent Food Hygiene Regulations 2006 in Wales and Northern Ireland, which enforce the EU Regulations.

KEY LEGAL OBLIGATIONS

Where a business supplies food or food services there are three distinct legal obligations:

Food businesses must comply with:

- 1) General food law requirements relating to food safety, presentation, traceability and withdrawal, recall and notification to competent authorities of unsafe food and other obligations, mainly contained in Regulation (EC) No. 178/2002; and

2) Requirements of the food hygiene regulations (including registration);

3) Requirements of the EU Food Information for Consumers Regulation (EU No.1169/ 2011 or (EU FIC) including the provision of allergen information.

The food authority must:

Verify that the controls in place are appropriate and carry out official controls in relation to the business.

AREAS OF RESPONSIBILITY

9. In cases where the operations relating to domiciliary care, assisted living and care homes fall within the legal definition of a food business, local authority authorised officers have responsibility for official controls under the hygiene regulations⁴. Further clarification on food businesses can be found in the European Commission's guidance on Regulation (EC) No. 852/2004:

http://ec.europa.eu/food/safety/biosafety/food_hygiene/guidance_en

10. In circumstances where the food provided to residents by care workers is not subject to the requirements in the hygiene regulations, other non-departmental independent regulatory bodies of health and adult social care services may have a role as detailed below.

In England, the Care Quality Commission (CQC) protects the rights of those subject to the provisions of the Mental Health Act. Its role is to check whether registered services are meeting the national standards under the Health and Social Care Act 2008. Services are inspected regularly and in response to concerns. More details about which services might register with the CQC and about the regulations they will need to comply with, can be found on the CQC website: <http://www.cqc.org.uk/>

⁴ See "Registration of food business establishments" section in the FSA's Food Law Code of Practice for further background (Separate but parallel versions exist in England, Wales and Northern Ireland).

In Wales, the Care and Social Services Inspectorate Wales (CSSIW) carries out its functions on behalf of Welsh Ministers. Care services in Wales are regulated by CSSIW, who inspect services and make reports publicly available. CSSIW can take civil or criminal enforcement action where services fail to comply with relevant regulatory requirements. For more information, see the CSSIW website:

<http://wales.gov.uk/cssiwsubsite/newcssiw/?lang=en>

In Northern Ireland, the Regulation and Quality Improvement Authority (RQIA) is the body responsible for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland, and encouraging improvements in the quality of those services. RQIA was established under The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. The Order also places a statutory duty of quality upon health and social care organisations, and requires the Department of Health Social Services and Public Safety (now known as or referred to as the Department of Health) to develop standards against which the quality of services can be measured. For more information, see the RQIA's website: <https://www.rqia.org.uk/>

11. In all circumstances, where food is placed on the market⁵ there is a legal obligation, on those placing food on the market to ensure that the food meets the general food safety requirements (regardless of whether the Food Hygiene Regulations apply). A duty of care may also exist under the Health and Safety at Work Act 1974 (and equivalent legislation in NI - Health and Safety at Work (NI) Order 1978). Enforcement of this is the responsibility of the Health and Safety Executive or the local authority in accordance with the Health and Safety (Enforcing Authority) Regulations 1998 (and equivalent legislation in NI – the Health and Safety (Enforcing Authority) Regulations (NI) 1999).

⁵ “Placing on the market” is defined in Regulation (EC) 178/2002 to mean the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves. Article 14 of that Regulation provides that unsafe food, must not be placed on the market, and this applies both to businesses and to individuals and organisations that are not businesses. However, the Regulation does not apply to the domestic preparation, handling or storage of food for private domestic consumption.

BASIC LEGAL PRINCIPLES CONCERNING FOOD BUSINESS REGISTRATION

12. Article 6(2) of Regulation (EC) No. 852/2004 requires each establishment of a food business operator to be registered with the competent authority (in the case of the care sector this is with the local authority in the UK).
13. The test to apply in each case to determine whether or not provision of food requires registration is:

1. What food provision exactly is taking place at the establishment within the context of the relevant EU Regulation?
2. Does the food provision constitute an 'undertaking' as described in the EU food hygiene regulations? That is, does it have a degree of organisation and continuity?
3. When does the establishment, in principle, appear to meet the need for registration for this activity under the hygiene regulations?
4. Are there any exemptions applicable?

APPLICATION OF KEY PRINCIPLES

Food business registration

14. The hygiene regulations (including food business registration) and allergen requirements under EU FIC will apply where it is considered that the care service operations fall within the legal definition of a food business. This is where operations involve a regular undertaking of handling, production, processing or supplying of food in an organised way. Recital 9 of Regulation (EC) No.852/2004 states:

“Community rules... should apply only to undertakings, the concept of which implies a certain continuity of activities and a certain degree of organisation.”

15. The hygiene regulations do not apply where there is a lack of continuity and organisation concerning such activities and/or where the activities take place in circumstances considered “domestic” and “private”. The provision of food or food services within domestic premises may however be subject to the hygiene regulations. In other words, it is not the nature of the premises as domestic or public, which is critical, but the nature of the circumstances in which food or food services are provided.
16. The nature and extent of food activities can vary within an establishment. If registration is required for any operations undertaken within an individual establishment, then the entire establishment would require registration even if some operations carried out in other areas of the establishment do not require registration.
17. All care settings, which need to be registered as a food business, should also have a system in place to ensure dietary needs relating to allergies or intolerances are taken into account and that allergen information is provided in accordance with EU FIC (see above).

Continuity and organisation

18. The decision as to whether the activities in question involve “a certain continuity of activities and a certain degree of organisation” should be determined at local level. If the provision of the food amounts to an undertaking as mentioned in the Table at paragraph 13, then the organisation would require food business registration. The law does not define what ‘continuity’ means in terms of dates, hours, regularity of occurrence, size of organisation etc.⁶, but the FSA’s view is, that food supply occurring on an average monthly basis could be considered a regular supply. The FSA assumes that in most cases care provision will occur more often than this.
19. In terms of whether the food provision is ‘organised’, in care contexts consumers will often be people who are more vulnerable to some types of

⁶ For instance, a group of carers from an organisation might provide significant input (in terms of food provision) to some individuals and just occasional assistance to others.

food related illness. The FSA's advice is that where food-handling procedures involve putting in place safe procedures and other considerations for people vulnerable to food poisoning, and the circumstances are not a 'domestic' situation, this effectively makes that food operation organised.

Private domestic consumption

20. The preparation of food by an individual within his or her own accommodation in a care home and without assistance from any care worker, should be considered a domestic situation and does not require registration. The preparation of food by a resident for one or more other residents as a social arrangement, should also be considered a private domestic arrangement and not part of any food business operation. These principles would still apply if the care home establishment/care services are registered as a food business and inspected in regard to compliance with the relevant requirements for other activities undertaken
21. It is also possible for the preparation of food by a care worker who lives with a person receiving care assistance to be considered a private and domestic situation.
22. Care workers are advised to take into account allergies and intolerances of the people they look after and ensure the food they prepare or serve is safe for people with allergies or intolerances to eat.

Supply of food

23. There may be instances where the residents effectively own the food being handled and served by the carer. For example, the resident could have bought the food or the food could have been bought with the residents own money (whether or not paid in advance or by the carers on the residents behalf). In such cases, the hygiene regulations may not apply as it can be considered that the operations are being carried out at a private and/or domestic level.
24. However, where purchase, storage and/or transport and or food handling or cooking is a collective service for individuals or multiple residents simultaneously as part of the care package, then the related operations is

likely to fall within the definition of a food business and thus within the hygiene regulations and so should be registered.

25. The EU FIC allergen rules will apply to food and drink where care workers provide this to people they look after. Care workers are advised to find out about allergies or intolerances affecting the people they are caring for in advance, especially in protecting those who are vulnerable and not able to make their own informed choices. The Local authority should ensure that the provider understands the requirement for allergen information and implements them as part of their provision of food. For more information on Allergens and the obligations for food businesses go to:
<https://www.food.gov.uk/business-industry/allergy-guide>

Direction and preparation

26. Depending on the needs of residents food may be cooked by residents, with the advice of staff. If the care worker has no actual involvement in the preparation of food then such activities would not require registration.
27. There may be circumstances where residents provide their own food ingredients (i.e. not supplied by the care workers) to the care worker for preparation. If the care worker prepares the food, as part of their care package, and without direction/input from the resident, then this element of preparation could be considered to be a food business activity and therefore registration would be required.
28. In instances where the resident is capable of deciding about the way in which the food is to be handled and provides the care worker with direction in this respect, then the activity would be treated as domestic preparation for private domestic consumption and would not require registration.

NON-EXHAUSTIVE LIST OF EXAMPLES

29. The examples below are the FSAs interpretations of how the hygiene regulations apply in the given scenarios. Examples 1–4 cover situations that fall within the scope of the hygiene regulations and thereby require food business registration. Examples 5–9 cover situations that are exempt from the regulations and do not require food business registration.

Food business registration required

30. **Example 1 - A local branch of a national domiciliary care agency:** In this scenario, the agency may provide a range of care services. This could include activities such as buying food and preparing it for the consumption of residents. This activity involves “a certain continuity of activities and a certain degree of organisation”. The local authority would need to register the local domiciliary care branch as a food business.
31. **Example 2 - An assisted living/domiciliary care agency providing varied degrees of assistance:** If meals are regularly prepared for some recipients of the care services, or a significant degree of assistance is regularly provided in helping some residents prepare meals⁷, the operations of the agency would require food business registration.
32. **Example 3 - Domiciliary care workers who provide meals:** If a care worker routinely provides meals for an individual as part of their overall care package on a regular basis, including where the resident supplies the unprepared food but does not have input into the preparation of the food, then the food provision would require food business registration.
33. **Example 4 - A care home where ready-made meals produced in another establishment are served by care home staff:** This example is similar to a retail operation and would require food business registration unless the residents are directly responsible for arranging delivery of their own food.

Food business registration not required:

34. **Example 5 - A domiciliary care worker preparing and serving food occasionally:** If the care worker provides food for individuals to meet an unexpected need, such as helping residents prepare meals on a short temporary basis when normally they would not, or providing meals to

⁷ Where the resident is not believed to be in control of the preparation process

residents on rare occasions, then the operations would not require food business registration.

35. **Example 6 - A care home where residents occasionally prepare meals for themselves or each other:** Such activities should be considered “domestic preparation for private domestic consumption” and would not require food business registration.
36. **Example 7 - A care worker undertaking adult fostering within a domestic premises:** In this scenario the care worker may provide lodging facilities to an individual (or a small number of individuals) as well as providing some level of support to the person. Services could include:
- accommodation with care, or intermediate care, in the family home (habitual residence) of an adult placement carer (APC);
 - accommodation with support, including support funded through the supporting people programme, the family home (habitual residence) of an adult placement carer;
 - respite care (a break for the main carer) with or without personal care, in the family home (habitual residence) of an APC; and
 - day services in the family home (habitual residence) of an APC.

As the APC shares his/her normal domestic family life with the person he/she is supporting, it can be considered that the above activities are both private and domestic. This means that these activities would not require food business registration.

37. **Example 8 - A live in carer worker preparing a dish on the residents’ advice:** In this scenario, the resident has a physical disability that prevents him/her from preparing food. However, he/she specifically instructs the care worker to prepare the dish in a specific way on his/her behalf. This situation could be considered “domestic preparation for private domestic consumption” and thereby not require food business registration. (However, if a domiciliary business provides a carer who regularly visits and has responsibility for preparing food – that business would require registration as in Example 3).

38. **Example 9 – A care worker, who lives in the private accommodation of the individual he/she provides care for, and prepares meals for the individual:** This is another example of a domestic situation where the person receiving care assistance shares his/her domestic life with the person providing support. Therefore, food business registration would not be required.

INSPECTION OF ESTABLISHMENTS

39. The food business inspection should cover aspects of food transport, storage or handling/preparation carried out by the business outside of the home/residence and the training of staff and food safety management systems including the provision of allergen information.⁸ However, any activities that are carried out within someone's home should be viewed as taking place within private domestic premises. In such cases, the inspections should only be undertaken with prior 24-hour notice (except in the exceptional circumstances set out in the Food Safety and Hygiene (England) Regulations 2013 and the equivalent Food Hygiene Regulations 2006) and should be limited to areas where food is prepared. In care homes, the inspections should not cover private areas that may also contain shared facilities.
40. Private domestic premises where clients live, where carers (registered food businesses) are providing food to those clients, or operate in as part of their duties, do not require registration. The premises are not units of a food business and so recommendations to change structural elements should not be made. This is because private domestic dwellings should be viewed as if they were any other private home that require an assistant to prepare meals for the occupant – whether for a week, a year, or indefinitely.

⁸ For further details on food business inspections please see the FSA's Food Law Code of Practice (separate but parallel versions of this exist in England, Wales, Scotland and Northern Ireland).

REVIEW

41. It is planned that this guidance will be reviewed again in 2019.

CONTACTS

42. For further information please contact:

England: Technical Development Delivery Team on Tel: 0207 276 8537/8180;

Email: Technical.development@foodstandards.gsi.gov.uk

Wales: Local Authority Delivery and Support Team on Tel: 02920 678956;

Email: LASupportWales@foodstandards.gsi.gov.uk

Northern Ireland: Executive Support Unit on Tel: 02890 417700;

Email: executive.support@foodstandards.gsi.gov.uk

ADDITIONAL INFORMATION

43. Additional FSA information on related areas that may be useful in addition to this guidance can be found at the following links:

<https://www.food.gov.uk/business-industry/guidancenotes/listeria-guidance>

<https://www.food.gov.uk/business-industry/guidancenotes/hygguid/ecoliguide>

<https://www.food.gov.uk/business-industry/caterers/sfbb/carehomes>