



Legal NewsBITE:

Food and Drink Quarterly

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Apprenticeship Levy

The Apprenticeship Levy, which the government hopes will help create 3 million new apprentices, is due to come into force in April next year. All employers with a payroll of £3 million will need to pay the levy. Draft regulations have now been produced, setting out how employers should calculate, report and pay their levy liability.

A recent study by the British Chamber of Commerce showed that two out of five businesses did not understand or know about the levy. Of those that do, many are placing the focus of “apprenticeships” on young people entering employment, whereas this opportunity could and should benefit a wide range of learning and development opportunities.

Food and drink businesses should consider what training they currently provide and ascertain what will fit into an approved “apprenticeship” framework, so that they can reap the best possible value from the levy. The apprenticeship standard for food and drink process operators is available on the gov.uk website.

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Sentencing Guidelines: Health and Safety and Food Safety and Hygiene Offences

In February 2016, definitive guidelines from the Sentencing Council came into force. For the first time, [the guidelines](#) include food safety and hygiene offences and health and safety offences which do not result in death. Turnover is taken into account, as well as culpability and risk. Large organisations can face fines of up to £10 million for health and safety and £3 million for food safety and hygiene offences.

Recent decisions suggest significantly higher penalties will result. In May 2016, the [Health and Safety Executive reported](#) on a food manufacturer fined £800,000 after an employee’s arm was entangled in a conveyor belt; and in September, they reported on a [supermarket](#) fined a total of £500,000 for breach of health and safety law and construction regulations. Reports of a pub being fined £100,000 for a mouse infestation have also appeared in [trade](#) and local press.

In light of such penalties, the overall approach to risk management by operators and senior management is increasingly important. If something does go wrong, being able to establish a “due diligence” defence is a significant advantage (if successfully defended, the company will not be sentenced, but sentencing is inevitable with a guilty plea).

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Nutrition Labelling: Deadline 13 December 2016

EU Regulation (EU) No. 1169/2011 on the provision of food information to consumers (EU FIC) came largely into force on 13 December 2014. However, the mandatory nutrition declaration, required for most pre-packed products, will apply from 13 December 2016 (the requirements have applied since December 2014 to any products where nutritional information was given voluntarily). Alcohol over 1.2% is currently exempt (although there have been calls from MEPs to require calorie information), along with some other products, including tea, coffee and chewing gum.

There is no requirement for nutrition information to be provided at all for non-prepacked food (for example, food sold in a restaurant or on a delicatessen counter). However, if nutrition information is provided voluntarily, the format provided must be either: the full “mandatory” nutrition declaration; energy value only; or energy, plus fat, saturates, sugars and salt.

In England and Wales, the primary enforcement mechanism will be improvement notices, but failure to comply in Scotland may be dealt with from the outset as a criminal offence. In Scotland, enforcement authorities also have the power to seize or detain food where it appears that food information law is being contravened.

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Advertising Watchdog Bans Heinz Beans Ad

On 23 November 2016, the Advertising Standards Authority (ASA) published a [decision](#) banning a TV advertisement for Heinz Baked Beans. The ad showed consumers of all ages, often in a family setting, tapping cans of beans to a rhythm, with the call to action “learn the #cansong”. The ASA held Heinz to be in breach of UK advertising rules, finding that the ad “is likely to condone or encourage behaviour that prejudices health or safety”. I.e. because children may injure themselves on an open can of beans.

Many have questioned whether the ASA has gone too far in censoring Heinz for running this ad, albeit that the watchdog received nine complaints about it. A key reason behind the ASA’s decision is the fact that the ad did not signpost sufficient information on how to safely use cans as instruments. It found that a link to a Facebook page with such information was insufficient.

Advertisers should always check campaigns with their legal teams as the ASA is increasingly insisting on policing a “nanny state”, in particular where the health and safety of young or vulnerable consumers is an issue.

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