



# Legal NewsBITE: Food and Drink Quarterly

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## Cybercrime: Revised Guide to Protecting and Defending Food From Deliberate Attack (PAS 96:2017) and Draft Issue 8 of BRC Standard for Food Safety

The Food Standards Agency (FSA) has issued a revised version of *PAS 96*, which guides food business managers through approaches and procedures to improve resilience of supply chains to fraud or other forms of attack. The [guide](#) sets out Threat Assessment and Critical Control Points (TACCP), outlining steps that can deter an attacker or allow early detection. The updated guide includes the threat of cybercrime and an annex on “Ten Steps to Cyber Security: A Board Level Responsibility”, which is sourced from material provided by the [National Cyber Security Centre](#). In the event that an incident occurs, effective crisis management is key. The release of the FSA guide is a clear sign that crisis management plans should be reviewed and, if necessary, TACCP plans should be updated. Combined with the fact that draft Issue 8 of the BRC Standard for Food Safety refers to failures of, or attacks on, cybersecurity and ensuring that premises and brands are protected from attack (as well as products), food businesses would be well advised to learn from recent high-profile cyberattacks, such as that on the NHS. Remember, a robust TACCP plan should also ensure compliance with data protection obligations, which are all the more important given the impact of the General Data Protection Regulation coming into force next year and the possibility of heavy fines for failure to safeguard personal data from cyberattacks. The [consultation](#) on draft Issue 8 of the BRC Standard closes on 31 December.

**Nicola Smith**, Director, Environmental, Safety & Health

**Carlton Daniel**, Partner, Intellectual Property & Technology

## US: Food and Beverage Sugar Levels Remain a Target for the Plaintiffs’ Bar

The alleged dangers of excessive caloric sweetener consumption remains a hot target for the American plaintiffs’ bar. A new, putative class action filed in a California federal court accuses Mondelēz of deceptively marketing its *beVita* product line as “part of a balanced breakfast” despite the “dangers of ... excessive sugar consumption to which the products contribute”. In a [Food Navigator](#) piece about the lawsuit, our US lawyers identify strategies that food manufacturers can employ to challenge class certification and the merits of such false advertising claims.

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## Minimum Unit Price for Alcohol in Scotland to Be Introduced May 2018 (and Wales to Follow?)

Following the decision of the Supreme Court on 15 November that legislation in Scotland setting a minimum price per unit of alcohol was a “proportionate means of achieving a legitimate aim”, the Scottish government has announced that it plans to introduce Minimum Unit Pricing on 1 May 2018. A public [consultation](#) will run to 26 January 2018 on the Scottish government’s preferred price of 50 pence per unit of alcohol. It is worth noting that legislators in Wales may follow suit. The Welsh government launched a [consultation](#) on the introduction of a minimum unit price for alcohol back in 2015, but halted proposals following the legal challenge to the scheme in Scotland. However, a minimum price Bill is back on the cards and may follow under the Wales Act next year.

**Nicola Smith**, Director, Environmental, Safety & Health

## Supply Chain Sustainability

A focus on supply chain sustainability for a food business is not only ethically sound, but can have a positive impact on value and long-term profitability. Supply chain sustainability is the increasing practice of monitoring and guiding suppliers to ensure your own sustainability values are reflected. In an era where information on businesses’ ethical practices are readily available, customers are frequently holding companies accountable for provenance and their suppliers’ social and environmental impact. Many major food and drink brands have made environmental commitments, particularly in relation to recycled packaging, reduction in use of energy and water, CO2 emissions and food waste (especially waste sent to landfill). In their article on LexisNexis, [Simon Garbett](#), [Ian Skinner](#) and [Sarah Rathke](#) provide a guide on how an organisation can create and implement an effective supply chain sustainability programme tailored to their business, ensure proper focus on human rights and environmental concerns, combat corruption and mitigate risks. The article can be accessed on LexisNexis, but those without a [LexisNexis](#) subscription can contact us by [email](#) to obtain a copy.

**Simon Garbett**, Partner, Litigation, Birmingham

## Report on Parliamentary Inquiry Into Standards in Poultry Processing: Potential Wider Ramifications for FBOs

The Environment, Food and Rural Affairs Committee has now published its [report](#) following the Inquiry into press reports and undercover footage of alleged practices at a chicken processing plant. The evidence sessions investigated the role and performance of the FSA, the local council and accreditation bodies (as well as the plant itself). The government’s response is awaited, but it is worth noting that the report flagged concerns over the “apparent laxity of the oversight” of the facility by the regulatory agencies. It commented that, “any risk management assessment which did not give this plant the highest priority and the most stringent levels of security is flawed”. There is a suggestion that compulsory CCTV proposals (for slaughterhouses) should be extended to include cutting plants. However, of potentially wider implication is the possibility that these apparent criticisms will lead to more frequent local authority inspections, or at least a different system for risk analysis of frequency.

It is also clear that the committee supports the FSA’s desire (and request for funding) to have the remit of the Food Crime Unit extended to include an investigatory function, as well as intelligence gathering. Again, this has the potential to have much wider ramifications for FBOs, particularly when combined with the conclusion that the “patchwork nature of the accreditation process” makes it “relatively simple for someone to game the system and hide infractions, by opting out of unannounced inspections, for example”. Food businesses might, therefore, want to review procedures and training for staff on dealing with inspections by regulatory agencies and accreditation bodies; and internal reporting facilities for employees to raise concerns direct with management.

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**Nicola Smith**, Director, Environmental, Safety & Health

## Mandatory Display of Food Hygiene Rating on the Cards for England?

The FSA has published a [report](#) by its Chief Scientific Adviser that confirms mandatory display of the food hygiene rating score drives up food safety compliance. Businesses in Wales and Northern Ireland are currently required to display scores, but to date, England and Scotland have not followed suit. It is clear, though, that the FSA is committed to the introduction of a mandatory requirement in England.

**Nicola Smith**, Director, Environmental, Safety & Health