

FOOD DONATION

What are the legal issues?



Supermarkets and other businesses that supply food to consumers are under increasing pressure to minimise the amount of food that they waste. The amount of waste can be vast. Figures published by Tesco, for example, revealed that its food waste for the financial year 2014-2015 amounted to over 55 tonnes. The logical and ethical solution would seem to be for businesses to donate to good causes food that would otherwise go to waste. But what are the legal challenges to this?

One issue which is often cited as a bar to waste food donation is legal liability. Under English law, businesses are not permitted to exclude liability for death or personal injury as a result of negligence. Business therefore have limited legal means of protecting themselves against claims that somebody became ill as a result of eating the donated food. This problem is exacerbated by the fact that – following donation – the business is unlikely to have much control over how the food is stored and handled.

For many years now, retailers in the USA have had the protection of the Bill Emerson Good Samaritan Food Donation Act, which enables "apparently wholesome" food to be donated without liability (except where there is gross negligence on the part of the retailer). In France, law makers have recently gone even further, by banning supermarkets from throwing away or destroying unsold food.

Where do things stand in the UK?

The Food Waste (Reduction) Bill 2015-16 is currently making its way through the legislative process. If and when it passes into law it will require large retailers to disclose information on their levels of food waste, and require them to reduce food waste by 30% by 2025, including by entering into formal agreements with redistribution organisations. Unlike its US

equivalent, however, the Bill contains no express provisions to relieve retailers of the legal liability that they would otherwise bear. The Bill does require the Government to consult with supermarkets, food manufacturers, food distributors and food redistribution organisations on the terms of such formal agreements. Given that concerns about legal liability are bound to feature heavily in the responses to any consultation, it is possible that we may see some form of compromise on the issue.

Despite the lack of a legal framework on waste food donation, many supermarkets already have programmes to distribute food that they are not in a position to sell. Although this can expose them to risks, these can be mitigated by implementing processes such as ensuring only certain types of food are donated and checking that the food is still fit for consumption.

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