

UNITED KINGDOM
**LEGAL
GUIDE**
FOOD DONATION
LAW AND POLICY

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe in order to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

GFN is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



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INTRODUCTION

Purpose of This Guide

Food loss and waste is one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: during the initial harvest due to low market prices, because of high labor costs and demand for perfect-looking produce; by grocery stores and restaurants over-estimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land,⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ Collectively, this damage costs approximately \$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food destined for the landfill into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, non-governmental organizations that recover surplus, wholesome food and redirect the recovered food to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food insecure persons. As food insecurity, food loss, and food waste have continued to rise, innovative models of food recovery have emerged around the world.

However, uncertainty surrounds the laws and regulations most relevant to food donation. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) have partnered to create The Global Food Donation Policy Atlas.¹⁰ This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

THE PROJECT AIMS TO IDENTIFY AND EXPLAIN NATIONAL LAWS RELATING TO FOOD DONATION, ANALYZE THE MOST COMMON LEGAL BARRIERS TO PROMOTING GREATER FOOD DONATION, AND SHARE BEST PRACTICES AND RECOMMENDATIONS FOR OVERCOMING THESE BARRIERS.

This Legal Guide focuses on the United Kingdom (UK), a sovereign state consisting of the countries of England, Northern Ireland, Scotland, and Wales.¹¹ In the UK, 13% of households have marginal to very low food security and 13.1 million tons of food are wasted each year.¹² This food waste leads to annual greenhouse gas emissions of 25 million tons from the UK, not including those arising from food wasted at the farm level.¹³ FLPC and GFN, in collaboration with partners in the UK,¹⁴ have developed this resource to help food donors, food banks, charitable food redistributors, and other intermediaries (hereinafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that impact food waste and donation efforts.¹⁵ This Legal Guide also serves as a resource for individuals and institutions in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in the UK, this guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections take a closer look at the laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, and waste diversion laws that penalize food waste or require recovery.

State of Food Insecurity, Food Loss, Waste, and Recovery in the United Kingdom

Policies to prevent food loss and waste and promote food donation are critical for improving social and environmental conditions, especially in countries that otherwise enjoy steady, economic growth. Such is the case in the UK, which is faced with pervasive food insecurity, hunger, and malnutrition (e.g. undernutrition or obesity)¹⁶ despite having one of the world’s largest economies.¹⁷ The most recent data shows that an estimated 13% of UK households have marginal to very low food security, and 1.3% of the population experiences extreme hunger.¹⁸ Additionally, due to the high cost of nutritionally-dense foods compared to low-nutrient alternatives,¹⁹ over a quarter of the UK population suffers from malnutrition.²⁰ While these figures vary slightly for each of the countries of the UK, the data reflects consistent trends of food insecurity, hunger, and malnutrition.²¹

AN ESTIMATED 13% OF UK HOUSEHOLDS HAVE MARGINAL TO VERY LOW FOOD SECURITY AND 1.3% OF THE POPULATION EXPERIENCES EXTREME HUNGER. ADDITIONALLY, OVER A QUARTER OF THE UK POPULATION SUFFERS FROM MALNUTRITION.

These trends reflect a broader issue of income inequality, as the UK’s wealth disparity rate is among the highest in the world.²² In the UK, the top one percent of workers receive 17% of all income,²³ and the highest-earning 20% earn more than six times as much as the lowest-earning 20%.²⁴ Further, 17% of the population lives in relative poverty.²⁵ The government has promised to address this disparity and “level-up” the country.²⁶ However, the Office for National Statistics (ONS) recently confirmed that the income gap has remained relatively unchanged over the past few decades.²⁷

The outbreak of the novel coronavirus (COVID-19) in 2020 has only exacerbated these interrelated issues of food insecurity and economic inequality. The income gap in the UK has widened as low-wage workers are both more likely to lose their jobs due to shutdowns and have a higher mortality rate after contracting the virus, which increases the prevalence of food insecurity.²⁸ A recent survey found that an estimated 16% of the UK population has experienced food insecurity as a direct result of the pandemic and approximately 4.5% of the population has skipped meals due to a lack of food while the income gap across the UK has also widened.²⁹ While the true extent of the COVID-19 pandemic remains unknown, it is likely to have long-lasting effects on food insecurity, hunger, and malnutrition in UK and elsewhere.

The United Kingdom by the numbers

Population 65,761,117	Prevalence of moderate to severe food insecurity 8%	World Bank classification High income
Median age 40.6 years	Food Security Index 79.1	Human Development Index 0.920
GDP \$2.837 trillion	GINI Index (Income Inequality) 34.8	Food Loss & Waste (FLW) estimates 13.1 million tons
Poverty Rate 17%	Food Sustainability Index 70	

Source: The Global FoodBanking Network, March 2021

The UK government has developed several programs to reform the country's welfare state, and mitigate hunger and poverty. In 2010, the government introduced a new benefits system³⁰ featuring Universal Credit.³¹ In 2014, the UK Government also introduced the Universal Infant Free School Meal policy, which extended the availability of free school meals in England's junior schools.³² Since the COVID-19 outbreak, the UK government has initiated additional programs designed to protect citizens from hunger and the worst financial impacts of the lockdowns, including introducing a furlough scheme,³³ a £20 uplift in Universal Credit,³⁴ various sizeable grant packages to frontline charities,³⁵ and extending free school meals for children over the holidays.³⁶

Despite these efforts to promote greater food access, a significant amount of food that could be safely consumed by populations in need is too often wasted. Even though food waste has been reduced by 1.6 million tons per year since 2007,³⁷ around 7.3 million tons of food brought into UK homes each year are still thrown away.³⁸ An estimated 4.4 million tons of this waste could have been safely consumed by the original purchaser or redistributed to those in need.³⁹ The majority of food waste comes from households (estimated at 70 percent of all food waste in the UK by weight), and farms (estimated to be anywhere between 9% and 37%),⁴⁰ with less coming from manufacturers (at 16 percent), and a small fraction coming from retailers (at 3 percent).⁴¹

THE DEPARTMENT FOR ENVIRONMENT, FOOD, AND RURAL AFFAIRS DEVELOPED A WASTE HIERARCHY, WHICH OUTLINES STRATEGIES FOR REDUCING FOOD WASTE AND HIGHLIGHTS FOOD REDISTRIBUTION TO PEOPLE AS ONE OF ITS TOP PRIORITIES.

While no U.K.-wide legislation to prevent food loss and waste has been developed,⁴² some regulatory objectives and policies for food waste are in place.⁴³ For instance, the Department for Environment, Food, and Rural Affairs (Defra)—the UK regulatory body for environmental protection, food production and standards, agriculture, fisheries, and rural communities—developed a waste hierarchy, which outlines strategies for reducing food waste and highlights food redistribution to people as one of its top priorities.⁴⁴ The UK government also created a £15 million fund to support food waste initiatives and appointed a Food Surplus and Waste Champion to oversee the government's waste-reduction efforts.⁴⁵ Each country of the UK has supplemented these initiatives with their own food waste strategy.⁴⁶ For example, in 2018, England promulgated a plan for reducing food loss and waste and promoting food security.⁴⁷ While the specific targets of these plans vary among countries, they share a similar goal of addressing food loss and waste and food insecurity.⁴⁸

In addition to laws and policies of the UK countries, voluntary initiatives are advancing food waste reduction in the UK. As discussed later in this Legal Guide, the UK government has developed funding mechanisms for

voluntary initiatives and non-profit organizations dedicated to reducing food loss and waste.⁴⁹ The Waste and Resources Action Programme (WRAP) leads the way in providing such guidance.⁵⁰ WRAP has collaborated with Defra and the Food Standards Agency (FSA) to produce detailed food waste guidance documents for consumers, manufacturers, and retailers.⁵¹ Private sector actors have also signed onto the Courtauld Commitment 2025, which is a collaborative, voluntary initiative across different industries with the goal of reducing food waste by 20% by 2025.⁵²

THE UK GOVERNMENT HAS DEVELOPED FUNDING MECHANISMS FOR VOLUNTARY INITIATIVES AND NON-PROFIT ORGANIZATIONS DEDICATED TO REDUCING FOOD LOSS AND WASTE. THE WASTE AND RESOURCES ACTION PROGRAMME HAS COLLABORATED WITH DEFRA AND THE FOOD STANDARDS AGENCY (FSA) TO PRODUCE DETAILED FOOD WASTE GUIDANCE DOCUMENTS FOR CONSUMERS, MANUFACTURERS, AND RETAILERS.

Food recovery organizations, who have long been leading food waste reductions efforts through food donation in the UK, are also supporting these emerging initiatives. As of 2020, the UK has over 2,000 food recovery organizations, a sizeable increase from 29 in 2008.⁵³ FareShare UK, for example, is a key contributor to the food banking sector through their system of redistributing food from manufacturers and retailers to food recovery organizations as well as many other charities and community organizations. In 2019–20, FareShare redistributed 57.3 million meals, amounting to £14.1 million in savings to charities and the charities to whom it provided food, fed 933,178 people per week, the most food redistributed by FareShare prior to the pandemic.⁵⁴ However, 2020–21 has seen vastly increased demand for food from charities supporting vulnerable individuals due to the pandemic, which has resulted in FareShare receiving two grants totaling £26.5 million to purchase significant volumes of food on behalf of the UK government for redistribution as well as receiving £16.5 million worth of donated food from two UK retailers.⁵⁵

As the UK seeks to reduce food loss and waste and mitigate food insecurity, it is critical that food recovery organizations, charitable and non-profit organizations, and other voluntary initiatives involved in food waste reduction recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide will provide an overview of the UK food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF THE UNITED KINGDOM'S RELEVANT LEGAL FRAMEWORK

Familiarity with the UK's legal system may help food donors, food recovery organizations, and other stakeholders better understand the legal frameworks most relevant to food loss, waste, recovery, and donation in the UK. As previously mentioned, the UK is a sovereign state that includes the individual country members of England, Northern Ireland, Scotland, and Wales.⁵⁶ The UK is mostly governed by statute and case law rather than a written, codified Constitution.⁵⁷ As such, the legal system is heavily influenced by the UK legislature, known as Parliament, which is a bicameral body with a House of Commons and a House of Lords.⁵⁸ When developing law, UK Parliament can issue two different types of law; primary legislation, in the form of Public General Acts,⁵⁹ or secondary legislation, known as rules and regulations, in the form of delegated legislation.⁶⁰

Both UK primary legislation and secondary legislation is binding on the four countries that make up the UK.⁶¹ However, pursuant to the doctrine of devolution, Northern Ireland, Scotland, and Wales have certain delegated

or *devolved* powers and may adopt laws, policies, and regulations through their respective executive and legislative branches.⁶² Accordingly, there are four distinct legislatures and executive branches that influence policy within the greater UK (those of the UK, Northern Ireland, Scotland, and Wales). Additionally, as of 1998, Northern Ireland and Scotland have their own judicial systems and case law separate from the UK, while England and Wales still have a combined judicial system and case law.⁶³ Each devolved country has their own regulatory agencies and enforcement bodies to varying degrees as well.⁶⁴

Within this legal structure, the UK Parliament has retained or *reserved* certain powers,⁶⁵ including those related to foreign affairs, defense, and trade.⁶⁶ The *devolved* countries of Northern Ireland, Scotland, and Wales, however, are generally empowered to adopt policies concerning health and social care, education, agriculture, forestry, fisheries, and some taxation, among other issue areas.⁶⁷ Policies adopted by the UK in these areas will likely extend to England, which is not devolved, but has been granted some decentralized authority enabling it to adopt policies at the local or municipal level. As a result of this legal hierarchy, the UK Parliament and individual country governments may all have authority to adopt laws and policies that are relevant to food waste, recovery, and donation.

Further, prior to 2021, UK countries were also bound to legal instruments negotiated by the European Union (EU), of which the UK was a member.⁶⁸ With the European Union (Withdrawal) Act 2018 (EU(W)A), the supremacy of EU law over UK law was, in effect, repealed.⁶⁹ In addition to formalizing this withdrawal, the EU(W)A enshrined EU law into the UK legal system as ‘retained EU law.’⁷⁰ This was intended to ensure a smoother transition and to preserve a continuity in legal rules, while still preserving the UK’s right to repeal any retained EU laws. This Legal Guide discusses the retained EU law in effect at the time of writing, as well as UK law and the laws of devolved countries, to the extent that they impact food donation.

European Union Legal Frameworks

Much of the EU legal framework regarding food waste prevention, food safety, and food donation was established prior to the UK exit. From a foundational perspective, EU’s Waste Framework Directive (the Directive) created a mandate for Member States to adopt waste prevention and management provisions into their respective legislation and policy.⁷¹ Under the Directive, Member States are required to develop waste management plans that promote waste reduction—notably bio-waste reduction⁷²—and are subject to review against the Directive’s principles and goals every six years.⁷³ As such, each country in the UK adopted the Directive into their respective legislation and developed their own waste management plans.⁷⁴ However, these waste frameworks do not expressly mention food donation or food recovery.

A retained EU law governing food safety that applies in the UK today is the General Principles of Food Law that was adopted in the UK as General Food Law Regulation 178/2002.⁷⁵ The law was an EU Council Regulation—a binding regulation that is applicable to EU Member States.⁷⁶ The General Food Law Regulation 178/2002 created governing guidance for food in order to protect the health and interest of consumers⁷⁷ by focusing on science-based risk assessments,⁷⁸ the implementation of precautionary principles,⁷⁹ and transparency with the public.⁸⁰ While this regulation does not explicitly define food safety, the instrument requires Member States to enforce food safety, which impliedly applies to food donors and food recovery organizations.⁸¹

There are also binding EU regulations that pertain to food safety.⁸² The General Food Hygiene Regulations (Commission Regulations 852/2004 and 853/2004) promulgate specific requirements for food business operators that are designed to reduce the incidence of foodborne illnesses.⁸³ Also important to UK food law is the EU’s Food Information Regulation (FIR), which regulates the information displayed on food packages.⁸⁴ The FIR standardizes a date labeling scheme across the EU,⁸⁵ and was adopted, and is enforced, by each country of the UK.⁸⁶ The FIR standard plays an important role in food donation of past-date food, which will be discussed later in this Legal Guide.

As noted above, even though the UK will no longer be subject to new EU food law, existing legislation and regulations already codified into the UK legal system will remain in place unless the UK repeals these frameworks. Most of the retained EU law that concerns food safety, including the aforementioned instruments, align with the *Codex Alimentarius*, a collection of internationally recognized standards and practices relating to food, food production, and food safety,⁸⁷ which have significantly informed EU law.⁸⁸ The relevant *Codex* standards will be articulated later in this Legal Guide.

UK Legal Frameworks

Consistent with the EU's legal framework, the UK has also adopted country-specific laws and regulations that inform food donation within its individual countries. The Food Safety Act 1990 is the primary statutory authority for food safety in the UK and explicitly references food donation.⁸⁹ Initially, the Food Safety Act only applied to England, Scotland, and Wales,⁹⁰ but Northern Ireland adopted its provisions in 1991.⁹¹ The Food Safety Act covers activities throughout the food distribution chain and gives the UK government powers to make regulations on matters pertaining to food safety⁹² and consumer protection⁹³ including those associated with food donation.⁹⁴ The Act applies to all food businesses engaged in food sales or any supply of food involving a business.⁹⁵ By provision of the Food Safety Act, every country of the UK's governing food authority is directed to appoint food analysts,⁹⁶ who inspect food facilities and collect food samples, including samples from food recovery organizations, to ensure compliance with the Food Safety Act's provisions.⁹⁷

Another influential UK law affecting food donation is the Food Standards Act 1999.⁹⁸ The Food Standards Act created the Food Standards Agency (FSA), an independent agency responsible for developing food policies that protect against food-borne illnesses and unsafe labeling.⁹⁹ The FSA involves itself in matters connected with food safety and other interests of consumers in relation to food, including providing advice to consumers on proper food labeling, food safety measures, and food donation. Like the Food Safety Act, the Food Standards Act provides the FSA authority to oversee all food-related businesses, including food recovery organizations.¹⁰⁰ The FSA is distinct from Defra, in that the FSA seeks to protect public health, whereas Defra seeks to support food businesses.¹⁰¹

While the Food Safety Act and the Food Standards Act are the most relevant UK legal frameworks to food donation, other legal frameworks adopted by the UK also influence food recovery efforts. For example, the Consumer Protection Act 1987 imposes strict liability on manufacturers, importers, and, in some instances, suppliers of unsafe food.¹⁰² Further, WRAP, in partnership with Defra and FSA, provides extensive guidance that directly addresses safe redistribution of surplus food, among other food waste initiatives.¹⁰³ Also, the existing tax scheme of zero-rated VAT for food and drink for human consumption suggests the absence of any tax barriers to food donation.¹⁰⁴

Country-Specific Legal Frameworks

While food safety and date labeling are generally controlled by UK law (and previously EU frameworks), each country of the UK also has individual food laws (e.g. Scotland's Zero Waste Food Plan), that conform to the UK framework.¹⁰⁵ These countries have also adopted their own waste management plans that include similar overall goals in reducing food waste through food donation, but with different targets and approaches.

The UK countries have separate statutory instruments to enforce UK regulations. These enforcement instruments are largely the same, but may contain slightly different rules surrounding guidance for their respective enforcement agencies.¹⁰⁶ Additionally, the regulatory agencies and responsibilities for food donation law vary between the countries in the UK.¹⁰⁷ The FSA monitors and enforces food safety and hygiene in England, Northern Ireland, and Wales.¹⁰⁸ Further, the FSA is responsible for date labeling in Northern Ireland and Wales as well as Northern Ireland's nutrition policy.¹⁰⁹ In England, Defra and the Department of Health are responsible for food law enforcement and policy making, namely date labeling and nutrition.¹¹⁰ In Scotland, Food Standards Scotland (FSS) regulates food safety, date labeling, nutrition and other food policy.¹¹¹

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. All donated food should be safe for consumption and comply with applicable food safety laws and regulations. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills. Retained EU laws continue to impact food safety in countries of the UK as these laws were established prior to the UK exit. Also, the UK and its countries have established food safety laws that may impact food donations. It is important to note that the plethora of laws and regulations relating to food safety throughout the UK may cause confusion for food donors and food recovery organizations.

EU Council Food Safety Regulations

Certain retained EU law contain food safety rules that impact food donation in the UK and its countries. As previously mentioned, the most relevant regulations include General Food Law Regulation 178/2002,¹¹² General Food Hygiene Regulations,¹¹³ and FIR 1169/2011.¹¹⁴ These Regulations do not specifically address food donation, but do offer comprehensive requirements that impliedly extend to donated food.

General Food Law Regulation 178/2002 contains general, widely-applicable food safety laws.¹¹⁵ It prohibits supplying unsafe food,¹¹⁶ and requires food business operators—broadly defined to include any business that produces, processes, or distributes food¹¹⁷—to document all distributions to other businesses and to assist with removing distributed food that violates food safety laws from both the market and individual consumers.¹¹⁸ It also provides that any food intended for the market that is imported into or exported from the EU must comply with EU food laws.¹¹⁹ While the General Food Law Regulation 178/2002 does not specifically speak to food donation, it provides a comprehensive approach to guaranteeing the safety of food for human consumption, including that which is handled by food donors and food recovery organizations.

Regulations 852/2004 and 853/2004, known as the Food Hygiene Regulations,¹²⁰ provide additional requirements for preventing microbial contamination and are relevant for food donation.¹²¹ Under Regulation 852/2004, food business operators, including food donors and food recovery organizations, must both implement a tailored hygiene plan to identify, monitor, and control microbial hazards within their facilities, and comply with several general hygiene requirements.¹²² Regulation 853/2004 contains additional hygiene requirements for the preparation and distribution of food products of animal origin.¹²³ However, this Regulation does not apply to producers who supply only small quantities of animal-origin products either directly to the consumer or to local, direct-to-consumer retailers.¹²⁴ This may allow for smaller donations of such food products with lesser restrictions, presuming adherence to other applicable food laws.

Food Safety Act 1990

At the national level, the primary legislative instrument for food safety is the Food Safety Act 1990.¹²⁵ Although the Food Safety Act predates the European Union Council Regulations mentioned above, it has since been amended to align with the EU food-safety framework.¹²⁶ As amended, the Act prohibits: (1) rendering¹²⁷ food intended to be sold harmful to human health,¹²⁸ (2) selling food that is misidentified, contaminated, or past its prime and, as a result, harms the consumer;¹²⁹ and (3) selling food affixed with a label that falsely describes the food or is misleading.¹³⁰

The Food Safety Act expressly references food donations.¹³¹ The Food Safety Act provides that, in some instances—as long as the food complies with all other food safety requirements—food may be donated if the outer packaging is damaged but the primary packaging of the food product is not compromised.¹³² The Act also provides an extended definition of the term ‘sale,’ that implicates food donors and food recovery organizations.¹³³ In this extended definition, sale of food includes “the supply of food, otherwise than on sale, in the course of a business.” Further, according to the Food Safety Act, a ‘business’ includes not for profit food businesses.¹³⁴ Since food recovery organizations appear to qualify as food businesses under this act, they are likely bound by the Act’s provisions.

Country-specific Food Safety Legal Frameworks

Each country of the UK has enacted regulations to interpret and enforce the food safety requirements set out in the aforementioned EU authorities and the Food Safety Act.¹³⁵ For example, the General Food Regulations 2004 made certain provisions of Regulation 178/2002 enforceable in England, Scotland, and Wales, and amended the Food Safety Act to bring it into compliance with these provisions.¹³⁶ Northern Ireland made the same Regulation 178/2002 provisions enforceable through The General Food Regulations (Northern Ireland) 2004, which also amended the Food Safety (Northern Ireland) Order 1991.¹³⁷ In 2006, the UK countries enacted their respective statutory instruments to enforce Regulations 852/2004 and 853/2004.¹³⁸ In 2011, each country also enacted separate statutory instruments to enforce Regulation 1169/2011.¹³⁹ In 2013, England repealed The General Food Regulations 2004, as it applied to England and The Food Hygiene Regulations (England) 2006, and reenacted these provisions into a single enforcement instrument: The Food Safety and Hygiene Regulations (England) 2013.¹⁴⁰ However, despite enacting their respective regulations that interpret and enforce the authorities of the EU and the UK, no member country of the UK has supplemented these authorities with additional frameworks that explain how they relate to food donation or which specifically provide food safety guidance for food donation.

In sum, the UK has a myriad legal framework relevant to food donation including: retained EU law, UK law, and specific law of the individual countries of the UK. EU law applies to food distribution, including donation, and UK law applies to food recovery organizations. The Food Safety Act also applies to food donation of certain food products with damaged packaging and food recovery organizations regarding safe handling of food.

Date Labeling

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. Most food donors and food recovery organizations are cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. Further, while fresh products like fruits and vegetables may appear visibly spoiled when they are no longer safe to consume, it is more difficult to gauge packaged foods’ spoilage. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, date labels indicate freshness or quality rather than food safety for the vast majority of foods. Manufacturers use a variety of quality-based methods to determine the time frame for date labels, all of which are intended to reflect when the food will be at its “peak quality,” meaning when the food still retains its optimal freshness and taste.¹⁴¹ Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality¹⁴²—confusion that has previously been documented in the UK. In 2017, UK researchers found that, of the 2 million tons of food thrown away, an estimated one third was due to confusion¹⁴³ as to whether the date label referred to safety or quality.¹⁴⁴

To resolve this uncertainty and avoid unnecessary food waste, countries in the UK have since standardized and clarified their respective date labeling regimes to align with standards endorsed by the *Codex Alimentarius*¹⁴⁵ and codified in the FIR.¹⁴⁶ Consistent with the 2018 update to the *Codex Alimentarius*’ General Standard for

the Labeling of Prepackaged Foods,¹⁴⁷ the FIR imposes a dual date labeling scheme on most food items.¹⁴⁸ Specifically, the labeling scheme distinguishes between safety-based and quality-based date labels, requiring manufacturers to affix a safety-based date, expressed as “use by” only for food that is considered “highly perishable,”¹⁴⁹ and no longer safe to consume after the date.¹⁵⁰ For all other foods, manufacturers may affix a quality-based, “best before” date, after which food may still be perfectly safe to consume.¹⁵¹ While safety-based date labels are mandatory, it is important to note that manufacturers are not obligated to use quality-based date labels.¹⁵²

The UK government has long sought to clarify the distinction between safety-based and quality-based labels for purposes of consumption and donation, following the lead of the EU. In 2017, even before the 2018 update to the *Codex Alimentarius*’ General Standard endorsed the dual-date labeling standard, the EU Commission issued guidance explaining that food is presumed safe to consume after the quality-based “best before” date, and that food may therefore be donated and distributed after this date.¹⁵³ UK enforcement agencies, including Defra,¹⁵⁴ the FSA,¹⁵⁵ and the Zero Waste Scotland initiative,¹⁵⁶ similarly urge manufacturers to only affix “use by” dates to foods when there are safety-related considerations, and to otherwise use “best before” dates in order to reduce the probability of wasted food.¹⁵⁷ For consumers’ benefit, the FSA mandates that food may not be eaten after the “use by” date,¹⁵⁸ but clarifies that food may still be eaten after the “best before” date.¹⁵⁹

Other public sector and several private sector actors have helped bolster government efforts to promote greater industry and consumer awareness of the controlling date labeling scheme. WRAP, in particular, has emerged as a principle driving force in this policy space. In 2020, WRAP partnered with FSA and Defra to publish updated guidance on date labels in the context of donation and redistribution.¹⁶⁰ The guidance clarifies that food with a “best before” date **can legally** be sold, redistributed, and consumed after this date, thus, the UK government expressly permits the past quality date donation of food.¹⁶¹ This guidance also explicitly states that food **cannot** be sold, redistributed, or consumed after its “use by” date, unless the food has been safely frozen or cooked prior to the date.¹⁶² With support from government and food industry actors, WRAP has also launched and/or supported several nationwide consumer-awareness campaigns including “Love Food Hate Waste,”¹⁶³ and “Look, Smell, Taste, Don’t Waste,”¹⁶⁴ to encourage individuals to consume and donate food after the quality-based date.

Ultimately, the UK’s adoption of a standardized dual date labeling scheme that is endorsed by the *Codex Alimentarius* and the EU Commission; the codification and enforcement of this scheme in all UK countries; and supplemental guidance and awareness campaigns on the application of these labels in the context of donation has likely reduced food waste and promoted greater donation of safe food.

Liability Protections for Food Donation

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. This fear is particularly heightened when the applicable law provides for “strict liability,” *i.e.* a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting damage. Other countries, including the United States and Argentina, have established protections for both food donors and food recovery organizations that act in “good faith” to limit the likelihood that these actors will be held responsible for harm.¹⁶⁵ Unlike these countries, neither EU law nor UK law offer comprehensive liability protections for food donors or food recovery organizations. Given that there is no retained EU law that provides liability protections for food donation, this section will speak to UK law and its member countries only.

National law in the UK does not provide comprehensive legal protections for food donors and food recovery organizations or specifically address liability imposed on these actors. However, under existing frameworks, food donors and food recovery organizations are unlikely to face liability in the event that a beneficiary alleges harm arising from donated food. In the event of such a claim, the UK courts may consider the actions of food

donors and food recovery organizations pursuant to the Consumer Protection Act 1987 (CPA) and the Food Safety Act 1990.¹⁶⁶ The CPA imposes strict liability on importers and purported manufacturers of “unsafe food,” *i.e.* food that does not adhere to the food safety standards discussed in this Legal Guide, in the event that such food causes harm.¹⁶⁷ Under the CPA, suppliers of unsafe food may also be held strictly liable if the supplier does not identify the food’s manufacturer within a reasonable amount of time after receiving notification of the harm.¹⁶⁸

In principle, the CPA could be used to find a negligent food donor or food recovery organization liable; in practice, however, such actors are unlikely to face liability under the CPA. This is because, while the CPA states that to qualify as a supplier an organization must be engaged in, “selling, hiring out or lending . . . ; providing goods for any consideration . . . other than money; [or] giving the goods as a prize or otherwise making a gift of the goods,” it specifically omits “agricultural produce,” as a “good” for the purposes of this act.¹⁶⁹ Further, the CPA explicitly states that “water, food, feeding stuff and fertilizer,” are excluded from the definition of a “good” under the safety regulations section of the act.¹⁷⁰ As a result, food donors and food recovery organizations would not be held liable for harm to beneficiaries, even if the harm resulted from a donor’s or intermediary’s negligence in handling donated food.

Even if food donors and food recovery organizations qualify as “suppliers” under the CPA, they may still be able to avoid liability under the CPA’s defenses. Section 36 of the CPA states that any designer, manufacturer, importer, and supplier will be held liable if they do not ensure that a product they furnish is safe and without risks to the health of the consumer,¹⁷¹ however, such actors are exempt from responsibility if they comply with applicable law and other prevention measures.¹⁷² Food donors and food recovery organizations that adhere to the Food Safety Act 1990, for example, may be able to avoid liability. In most cases, food suppliers may avoid liability for violations by showing that all reasonable measures were taken to comply with the provision in question.¹⁷³ Typically, suppliers are not held liable by showing compliance with a food safety plan that accounts for and protects against the harm that occurred.¹⁷⁴ The CPA enables suppliers, manufacturers, and importers to defend against liability by showing that the food was safe when it was distributed or that the unsafe food did not cause the consumer’s harm.¹⁷⁵ Thus, while no specific liability protection exists for food donation, this broad defense and the limited scope of the negligence-based “supplier-consumer” relationship should offer some peace of mind to donors about the potential risks of liability stemming from food donation

Although current UK law does not provide comprehensive liability protection for food donations, liability-protection legislation has previously been introduced. The Food Waste Bill 2010–2012, which was introduced into the House of Commons in 2012, contained a liability protection provision modeled after the comprehensive liability protection afforded to food donors in the United States; however, this bill failed to pass.¹⁷⁶

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, while recipients of donated food are able to spend limited financial resources on other basic goods and services. But food donation can also be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost or could be sold for a small monetary value for animal feed or energy use. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food instead of donate it. Some countries are addressing this issue by offering tax incentives and removing financial barriers to food donation.

Incentives

Tax incentives can provide significant support for food donation efforts and for the reduction of food loss and waste. For example, corporate donors may be more likely to donate surplus food to food recovery organizations

if they receive a charitable deduction or credit to offset the cost of transportation and logistics. These tax incentives could help reduce the burden of the national income tax or other taxes levied on businesses. Income and gains generated by most corporate taxpayers in the UK, is taxed at a rate of 19%, with slightly higher rates levied on banks.¹⁷⁷ For completeness, it is important to note that in the Spring Budget on March 3, 2021, the Chancellor of the Exchequer—the head of the UK Treasury—announced that the UK corporation tax rate will be increased from 19% to 25% starting in 2023.¹⁷⁸

The UK does not explicitly offer tax relief from corporation tax to companies that make in-kind food donations. However, the UK does offer corporation tax relief to companies that make “qualifying charitable donations”¹⁷⁹ including gifts of money.¹⁸⁰ The UK company can set the amount of the “qualifying charitable donation” against its total profits, to the extent that it reduces their taxable total profits to zero.¹⁸¹ The deductible amount cannot exceed the amount that reduces the company’s taxable total profits to zero.¹⁸² This tax relief only applies to qualifying charitable donations,¹⁸³ *i.e.* donations made to a qualifying charity.¹⁸⁴ Further, the donor company must not itself be a charity¹⁸⁵ and the donor must not receive significant benefits from the charity in return for its gift.¹⁸⁶

Separately, under the Income Tax Act 2007, individual donors are eligible for tax relief on the basis of the governmental scheme, Gift Aid.¹⁸⁷ The Gift Aid grants tax relief to donating individuals, sole traders and partnerships—but not companies—and also provides this relief to the receiving charities, which may include certain food recovery organizations. Such tax relief may provide some benefit for charitable organizations receiving or distributing donated food. Yet, without tax incentives for the in-kind donation of safe, surplus, or otherwise unmarketable food, food donors may find it less expensive to discard food, and/or may recover food for a purpose other than hunger alleviation. Despite the provisions of these tax benefits for donations, the UK does not explicitly offer tax incentives for food donation.

Barriers

While certain tax schemes may encourage food donations, they may also be potential deterrents. In many countries the value-added tax (VAT), in particular, presents a financial barrier to donating food. The VAT is levied on a good or service at each stage of the supply chain, from production to the point of sale, whenever value is added. This tax is usually levied through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good, whereas the VAT credit is the amount invoiced to the VAT-registered business upon the good’s purchase. To ensure that the VAT does not deter donation, some governments exempt food donation from the VAT, adjust the amount of VAT transferred to the donation-receiving entity, or permit donors to reclaim the VAT paid on donated food.

Many countries adjust tax rates to accomplish policy objectives, reducing, for instance, rates on basic essentials, such as pharmaceuticals, healthcare, services, food, and education.¹⁸⁸ In the UK, the government has taken one such measure to reduce the likelihood that the VAT will deter food donation. While the UK applies a standard rate of 20% to the sale of most goods,¹⁸⁹ the vast majority of foods and drinks intended for human consumption are “zero rated.”¹⁹⁰ This means that the food is still VAT-taxable, but the rate charged to customers is 0%. If there is no VAT attached to the food item, taxpayers may offer this food for donation without concern about transferring and reclaiming the VAT since they will not have paid a VAT credit upon procuring such products. This implies that VAT is not a barrier to food donation, but, as articulated below, this may not always be the case.

The list of food items that qualify as “zero rated” is quite expansive, but it is not absolute. Certain foods, including confectionery, prepared or packaged foods, snacks, hot food, and ice cream, are subject to the standard VAT rate of 20%.¹⁹¹ A business cannot charge VAT to a charity, such as a food recovery organization, on exempt or ‘out of scope’ items.¹⁹² For the purposes of food donation, any non-qualifying “zero rated” food item is considered exempt. Under these specific circumstances, a food donor would likely be subject to the standard VAT rate of 20% and would not be eligible to reclaim the fee given that the food items are exempt. This may pose a barrier to donation, however, as previously mentioned, this does not apply to food items that are “zero rated.”¹⁹³

It is important to note that if food is donated for a nominal fee or if the food retains value as an “asset” the donation may be considered taxable if the business claimed input tax credit for it.¹⁹⁴ As such, if the donation is taxable, it may be cheaper for businesses to discard the food rather than donate it, incentivizing food waste.

Many businesses actively involved in food donation in the UK feel that the current tax policy does not present specific barriers unique to food donation but also does not offer any specific incentives to encourage it.¹⁹⁵ As a result, the tax policy does not financially motivate food donor businesses in the UK, which receive no monetary offset for the logistical and human capital costs they incur while donating food.

The UK government has sought to increase flexibility in the VAT scheme, particularly with respect to food items. In light of COVID-19, between July 15, 2020 and March 31, 2021, certain catering supplies and hot takeaway food that would normally be taxable at the standard VAT, were liable to a reduced rate of 5%.¹⁹⁶ Given the aforementioned tax provisions, it is likely that a food donor or food recovery organization will not have to pay VAT at the time of donation, making it such that the UK does not create a barrier to donation.

Donation Requirements or Food Waste Penalties

Some countries have created food donation requirements or imposed monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes). Such requirements or penalties aim to influence business behavior and promote sustainable food systems. There are no retained EU laws that impact the UK and its countries regarding such requirements or penalties. The UK does not have legislation requiring that businesses or consumers donate excess food, nor is there a national ban on sending food waste to landfills. Further, all the laws subsequently discussed in this section are designed for limiting waste going to landfills but none provide specific requirements or goals for donation of edible surplus food.

While no country-specific law requires the donation of excess food, multiple countries in the UK have enacted laws that ban, to an extent, sending food waste to landfills. For instance, the Scottish government passed and enacted a number of food waste provisions under their Waste Regulations of 2012, pursuant to their Environmental Protection Act of 1990.¹⁹⁷ This regulation requires that food be collected separately for all food businesses producing more than 5kg of food waste per week, except in rural areas,¹⁹⁸ which are enumerated by a table of postcode units that distinguish between rural and non-rural postcodes.¹⁹⁹ The regulation also bans sending food collected as recycling to incinerators or landfills.²⁰⁰ Additionally, the regulation includes a provision that bans sending any “biodegradable municipal waste”, which includes food waste, to landfills, and bans landfills from accepting any “biodegradable municipal waste,” designed to start on January 1, 2021.²⁰¹ This bans all food waste coming from households, and any other waste that the Scottish Environment Protection Agency (SEPA) deems to be similar to household waste—this includes retail and hospitality sector waste.²⁰² However, due to the difficulty in preparing local authorities and waste management companies for the deadline, SEPA decided to postpone full enforcement until 2025.²⁰³

Like Scotland, Northern Ireland also requires food businesses producing more than 5kg of food waste per week to have separate food waste collection.²⁰⁴ Additionally, the Northern Ireland regulation requires that district councils provide receptacles to households for separate food waste collection at the household level,²⁰⁵ which has saved an estimated 1 million tons of food from landfills between 2015 and 2019.²⁰⁶

Neither England nor Wales have food waste landfill bans at the time of this publication. However, in 2018, England introduced a new waste strategy with the goal of eliminating food waste to landfills by 2030.²⁰⁷ As part of the strategy, England intends to require separate food waste collection from every household and applicable businesses by 2023.²⁰⁸ Additionally, England intends to require annual reporting of food surplus and food waste by food businesses,²⁰⁹ which England would enforce under the legal powers of an Environmental Bill that the UK government proposed in January 2020.²¹⁰ If the Bill is passed, it would help the government enact the landfill ban provisions of its waste reduction strategy.²¹¹ Like England, Wales also discussed separating food waste in their waste strategy but has not introduced specific regulations or timelines for implementation.²¹²

Government Grants and Incentives

Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that will make food donation more efficient and sustainable. Several time-bound grants and initiatives have existed at both the UK level and within the individual countries of the UK to indirectly and directly promote food donations and reduce food waste.

At a national level, the UK does not have funding specifically aimed at food waste reduction and food donations. However, the UK Research Institute (U.K.RI) is a major source of grant funding for food-related initiatives. Innovate UK is a U.K.RI program that provides grant funding for technology and innovative solutions in many different sectors,²¹³ and has made awards to several innovative food-related initiatives in the past—for example, BakePlan received £43,600 in funding to develop an AI system that specializes in demand-forecasting software that advises supermarket bakers and other in-store food production staff on the right products to make at the best times of the day, thus improving product availability, freshness, and sales in an effort to reduce food waste in the retail industry.²¹⁴ Additionally, U.K.RI invested over £5 million in 2020 towards training the next food system leaders.²¹⁵ These grant programs, in addition the country-specific grant programs, have already aided in the effort to reduce food waste and improve food donation in the UK, and may continue to do so with the financial incentives they provide to businesses.

Within the UK, government funds aimed at food waste reduction and diversion are most prevalent in England. England's Resource Action Fund, announced by Defra in 2019, established an £18 million fund towards projects focused on “diverting, reducing, and better managing waste” in England.²¹⁶ The fund is aimed at resource efficiency projects in England that improve areas of food, plastic, textiles, recycling infrastructure, and litter by providing both small and large grants in order to achieve this goal.²¹⁷ One of the grants funded by the Resource Action Fund is the Citizens Food Waste Behavior Change Grant, which awards between £25,000 and £100,000 to small- or medium-sized businesses and non-profit public organizations working on “intervention” projects that encourage citizens to waste less food.²¹⁸ Another grant funded by the Resource Action Fund is the Value From Food Waste Small Scale Grant, which awards between £20,000 and £100,000 to projects demonstrating biochemical processing options for hard-to-tackle food waste in England.²¹⁹

Other countries have also adopted initiatives, as seen in Scotland, where the Waste Prevention Implementation Fund has benefited many businesses from an average cost-savings of £5,000 per year attributable to food waste.²²⁰ Scotland also issues Small Medium Enterprises (SME) loans with 15% cash back to small and medium sized businesses working in conservation efforts, such as waste reduction.²²¹ Also, in Wales, while no government grant specifically addresses food waste, the Welsh Government's Circular Economy Fund is a £6 million fund that supports both small and large projects aimed at increasing recycling in Wales,²²² which could impact food waste reduction.

Miscellaneous

In addition to the relevant laws addressed in the above sections, there may be other UK-wide, UK member country-specific, metropolitan authority, or local council or borough laws, policies, plans, and/or guidance that impact food donation efforts in the UK. For example, the Common Framework Scrutiny Committee, a committee of the House of Lords, made recommendations to the FSA about the Food and Feed Safety and Hygiene Provisional Framework in the UK now that the exit from the EU has taken place.²²³ These recommendations aim to provide more clarity on the streamlining of food safety policies within the countries of the UK to ensure that there is efficiency and accountability. It is also important to note that the UK government presently offers financial incentives for owning and operating Anaerobic Digestion (AD) facilities among other domestic renewable heat

systems.²²⁴ While AD does mitigate food waste, the driver for this incentive is the UK government's commitment to finding renewable sources of energy.²²⁵ AD also diverts food away from food donation as it incentivizes businesses to create biogas instead of incentivizing businesses for donation.

CONCLUSION

This Legal Guide is intended to identify the UK's current laws, policies, and programs that relate to food waste or food donation. While the UK government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. Among the most recent developments are a mandatory policy that standardizes date labels in adherence to the *Codex Alimentarius*, food safety laws and regulations like the Food Safety Act 1990 and the guidance disseminated through the Waste and Resources Action Programme (WRAP) that reference food donation, and a number of education campaigns geared towards consumer awareness regarding food waste.

This Legal Guide provides a starting point from which policymakers, private and charity sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for a dialogue about food loss and waste prevention and the value of food recovery to the UK's food security, economic stability, and environmental sustainability. A separate document produced under the Global Food Donation Policy Atlas sets forth policy recommendations specific to the UK to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in the UK, donors, intermediaries, and policymakers should investigate the laws identified in this guide and seek additional legal counsel, if necessary.

ENDNOTES

- ¹ FOOD & AGRIC. ORG. OF THE U.N. (FAO), GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), <http://www.fao.org/3/a-i2697e.pdf>.
- ² *Id.*
- ³ HARV. L. SCH. FOOD L. & POL’Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴ FAO, FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES: SUMMARY REPORT 6 (2011), <http://www.fao.org/3/i3347e/i3347e.pdf>.
- ⁵ *Id.*
- ⁶ FAO, FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015), <http://www.fao.org/3/a-bb144e.pdf> [hereinafter FAO Wastage Footprint Report 2015].
- ⁷ *Id.*
- ⁸ FAO ET AL., THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 2019: SAFEGUARDING AGAINST ECONOMIC SLOWDOWNS AND DOWNTURNS 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf>. This number has likely increased due to the novel coronavirus (COVID-19) pandemic. Projections indicate that the crisis may add between 83 and 132 million people to the total number of undernourished in the world in 2020. *See also* FAO ET AL., THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 2020: TRANSFORMING FOOD SYSTEMS FOR AFFORDABLE HEALTHY DIETS 3 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf> [hereinafter 2020 FAO STATE OF FOOD SECURITY & NUTRITION REPORT].
- ⁹ G.A. Res. 70/1 at 22 (Oct. 21, 2015). “By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.” *Id.*
- ¹⁰ The Global Food Donation Policy Atlas project would not be possible without the support of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice; those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law. Note: DLA Piper UK LLC did not review sections on food safety law.
- ¹¹ *United Kingdom*, BRITANNICA.COM, <https://www.britannica.com/place/United-Kingdom> (last visited Mar. 30, 2021).
- ¹² OFFICE OF NAT’L STATISTICS (ONS) DEP’T FOR WORK & PENSIONS (DWP), FAMILY RESOURCES SURVEY, 2019/20, HOUSEHOLD FOOD SECURITY IN THE UNITED KINGDOM (March 25, 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972868/Ch9_Household_Food_Security_ods [hereinafter ONS FAMILY RESOURCES SURVEY]; WASTE & RES. ACTION PROGRAMME (WRAP), FINAL REPORT: FOOD WASTE IN PRIMARY PRODUCTION IN THE UK (July 2019), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-food-waste-in-primary-production-in-the-UK.pdf> [hereinafter WRAP FINAL REPORT ON FOOD WASTE]; *See also* WRAP, DEFRA, & FSA, REDISTRIBUTION LABELLING GUIDE (May 2020), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-surplus-food-redistribution-labelling-guide-May-2020.pdf> [hereinafter WRAP DATE LABELING GUIDE] (discussing that avoidable food waste equates to £13 billion in value).
- ¹³ WRAP FINAL REPORT ON FOOD WASTE 2019, *supra* note 12.
- ¹⁴ FLPC would like to express its gratitude to FareShare UK for its contribution to this guide, as well as many other NGOs, businesses, and government agencies who shared input with the FLPC team.
- ¹⁵ In the UK, “food banks” refer to food pantries, which are usually smaller, community distribution centers where hungry families can receive food, and “charitable food redistributors” refer to food banks, which are non-profits that safely store food that will soon be delivered to local food programs, like a food pantry.
- ¹⁶ SELECT COMMITTEE ON FOOD, POVERTY, HEALTH AND THE ENVIRONMENT, HUNGRY FOR CHANGE: FIXING THE FAILURES IN FOOD, 2019–21, HL 85, c. 3 (UK) [hereinafter SELECT COMMITTEE: FIXING FAILURES IN FOOD]; THE TRUSSELL TRUST, STATE OF HUNGER A STUDY OF FOOD INSECURITY AND POVERTY IN THE U.K. (2019), <https://www.stateofhunger.org/wp-content/uploads/2019/10/State-of-Hunger-Executive-Summary-Digital.pdf>; *See* 2020 FAO STATE OF FOOD SECURITY & NUTRITION REPORT, *supra* note 8 (classifying 27.5% of the UK population as obese in 2016).
- ¹⁷ According to The World Bank, the United Kingdom’s GDP is the world’s sixth-largest. *GDP (current US\$) – United Kingdom*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GB> (last visited Mar. 30, 2021).
- ¹⁸ *See* ONS FAMILY RESOURCES SURVEY, *supra* note 12; *See generally* 2020 FAO STATE OF FOOD SECURITY & NUTRITION REPORT, *SUPRA* NOTE 12. The FAO defines “moderate food insecurity” to include people who “have reduced the quality and/or quantity of their food and are uncertain about their ability to obtain food due to lack of money or other resources,” and has defined “severe food insecurity” to include people who have gone a day or more without eating because they have run out of food. *Hunger and Food Insecurity*, FAO, <http://www.fao.org/hunger/en> (last visited Mar. 30, 2021).
- ¹⁹ *See* SELECT COMMITTEE: FIXING FAILURES IN FOOD, *supra* note 16 (finding only 53% of households spend enough on groceries each week to be able to afford the government’s guidance for a healthy diet and finding healthy foods are “three times more expensive, calorie for calorie, than less healthy alternatives.”).
- ²⁰ *See* 2020 FAO STATE OF FOOD SECURITY & NUTRITION REPORT, *SUPRA* NOTE 12.
- ²¹ *Household food insecurity in the U.K.*, ENUF, <https://enuf.org.uk/household-food-insecurity-uk> (last visited Mar. 30, 2021); Carl Baker, *Obesity Statistics*, HOUSE OF COMMONS LIB. 9–17 (2020).
- ²² *Income inequality*, ORG. FOR ECON. COOP. & DEV., <https://data.oecd.org/inequality/income-inequality.htm> (last visited Mar. 30, 2021).
- ²³ Larry Elliot, *Top 1% of British earners get 7% of nation’s income*, GUARDIAN (May 21, 2020), <https://www.theguardian.com/money/2020/may/21/top-1-of-british-earners-get-17-of-nations-income>.
- ²⁴ ONS, TOP INCOME ADJUSTMENT IN EFFECTS OF TAXES AND BENEFITS DATA: METHODOLOGY (Feb. 25, 2020), <https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/compendium/economicreview/february2020/topincomeadjustmentineffectsoftaxesandbenefitsdatamethodology> [hereinafter ONS TOP INCOME ADJUSTMENTS REPORT].
- ²⁵ *See* SELECT COMMITTEE: FIXING FAILURES IN FOOD, *supra* note 16. “Relative poverty” is defined as “income below 60% of the median household income.” 2.8 of the 11 million people living in relative poverty are children. *Id.*
- ²⁶ Richard Partington, *U.K. income inequality greater than previously thought, says ONS*, GUARDIAN (Feb. 25, 2020), <https://www.theguardian.com/inequality/2020/feb/25/uk-income-inequality-greater-than-previously-thought-says-ons>.
- ²⁷ ONS TOP INCOME ADJUSTMENTS REPORT, *supra* note 24.
- ²⁸ William Schomberg, *COVID crisis could worsen existing UK inequality, think tank says*, REUTERS (June 10, 2020), <https://www.reuters.com/article/us-health-coronavirus-britain-inequaliti/covid-crisis-could-worsen-existing-uk-inequality-think-tank-says-idUSKBN23H3JS>.
- ²⁹ Alex Ledsom, *U.K. and U.S. Food Insecurity In 5 Staggering Numbers*, FORBES (Sep. 22, 2020), <https://www.forbes.com/sites/alexledsom/2020/09/22/uk-and-us-food-insecurity-in-5-staggering-numbers/?sh=4d87b2ae4748>.
- ³⁰ DWP, UNIVERSAL CREDIT: WELFARE THAT WORKS (Nov. 2010), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf; *See generally* *New to Universal Credit: Is it for Me?*, UNIVERSAL CREDIT, <https://www.understandinguniversalcredit.gov.uk/new-to-universal-credit/is-it-for-me/> (last visited Feb. 18, 2021).
- ³¹ Despite the potential of this program to alleviate poverty, through helping people work, there were a multitude of problems associated with the roll out in some of the systems design features in relation to food poverty. Rachel Loopstra et al., *Austerity, sanctions, and the rise of food banks in the UK*, BMJ (2015), <https://>

www.bmj.com/content/350/bmj.h1775.long.

³² Nick Clegg et al., *Free school lunch for every child in infant school* (Sept. 17, 2013), <https://www.gov.uk/government/news/free-school-lunch-for-every-child-in-infant-school>.

³³ Faisal Islam, *Budget 2021: Rishi Sunak to extend furlough scheme until September*, BBC NEWS (Mar. 3, 2021), <https://www.bbc.com/news/business-56259094>.

³⁴ Robert Wright, *Universal credit uplift extended by six months*, FINANCIAL TIMES (Mar. 3, 2021), <https://www.ft.com/content/c6b5ff03-b0b5-4f2b-b3f9-259f2a0be445>.

³⁵ DWP, *New winter package to provide further support for children and families* (Nov. 8, 2020), <https://www.gov.uk/government/news/new-winter-package-to-provide-further-support-for-children-and-families>.

³⁶ Haroon Siddique, *Marcus Rashford forces Boris Johnson into second U-turn on child food poverty*, GUARDIAN (Nov. 8, 2020), <https://www.theguardian.com/education/2020/nov/08/marcus-rashford-forces-boris-johnson-into-second-u-turn-on-child-food-poverty>.

³⁷ ENVIRONMENT, FOOD AND RURAL AFFAIRS COMMITTEE (EFRA), *FOOD WASTE IN ENGLAND, 2016–7*, HC 429 (UK) [hereinafter EFRA COMMITTEE: FOOD WASTE IN ENGLAND].

³⁸ WRAP DATE LABELING GUIDE, *supra* note 12 (discussing that avoidable food waste equates to £13 billion in value).

³⁹ *Id.*

⁴⁰ Although the exact number is not known it is estimated to be anywhere between 9 and 37 percent. *Id.*

⁴¹ WRAP, *FOOD SURPLUS AND WASTE IN THE U.K. — KEY FACTS* (Jan. 2020), <https://wrap.org.uk/sites/default/files/2020-11/Food-surplus-and-waste-in-the-UK-key-facts-Jan-2020.pdf>.

⁴² This is to say that the countries of the UK as well as some of the retained EU law do have some related policies as will be covered later in the report.

⁴³ When the UK was a part of the EU, the EU passed relevant food loss and waste laws that were adopted by the UK and its countries. These laws remain in place as retained law following the UK exit.

⁴⁴ DEPARTMENT FOR ENVIRONMENT, FOOD & RURAL AFFAIRS (DEFRA), *WASTE HIERARCHY GUIDANCE* (2011), <https://www.gov.uk/government/publications/guidance-on-applying-the-waste-hierarchy> (Discussing waste prevention, followed by redistribution as the two top priorities for overall food waste reduction).

⁴⁵ *Id.* In 2019, £5 million of the £15 million fund was made available to redistribution organizations that work with food businesses to reduce surplus production.

Defra & The Right Hon. Thérèse Coffey MP, *Cutting food waste: game-changing fund opens* (Jan. 11, 2019), <https://www.gov.uk/government/news/cutting-food-waste-game-changing-fund-opens>. The government additionally created a separate £500,000 Food Waste Reduction Fund, which administers grants to charities and non-profit organizations working to combat food insecurity. WRAP, *SURPLUS FOOD REDISTRIBUTION IN THE UK 2015 TO 2018*, <https://wrap.org.uk/sites/default/files/2020-08/WRAP-Food-Surplus-Redistribution-2015-to-2018.pdf> (last visited Mar. 30, 2021); See *Waste Prevention Implementation Fund*, (Jan. 26, 2021), <https://www.mygov.scot/waste-prevention-implementation-fund/>; See THE SCOTTISH GOVERNMENT, *Waste Prevention Implementation Fund: Guidance note for applicants*, ZERO WASTE SCOT., <https://energy.zerowastescotland.org.uk/sites/default/files/Waste%20Prevention%20Implementation%20Fund%20-%20Guidance%20notes%20for%20applicants%20v6.pdf> (last visited Mar. 30, 2021) (detailing a funding scheme for small- and mid-sized businesses aimed at reducing waste); See, *Innovate UK*, UK RSCH. & INNOVATION (U.K.RI), <https://www.ukri.org/councils/innovate-uk/> (last visited Feb. 18, 2021) (discussing a national grant program for technology-related or innovative projects that have been awarded to multiple food waste reduction initiatives in the past).

⁴⁶ See DEFRA, *OUR WASTE, OUR RESOURCES: A STRATEGY FOR ENGLAND* (2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765914/resources-waste-strategy-dec-2018.pdf [hereinafter ENGLAND: OUR WASTE, OUR RESOURCES]; See THE SCOTTISH GOVERNMENT, *SCOTLAND'S ZERO WASTE PLAN* (2010), <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2010/06/scotlands-zero-waste-plan/documents/00458945-pdf/00458945-pdf/govscot%3Adocument/00458945.pdf> [hereinafter SCOTLAND'S ZERO WASTE PLAN]; see DEP'T OF AGRIC., ENV'T & RURAL AFFAIRS, *NORTHERN IRELAND WASTE PREVENTION PROGRAMME* (2019), https://www.daera-ni.gov.uk/sites/default/files/consultations/daera/Waste%20Prevention%20Programme%202019%20-%20Stopping%20Waste%20in%20its%20Tracks_3.pdf [hereinafter NI WASTE PREVENTION PROGRAMME]; See WELSH ASSEMBLY GOV'T, *TOWARDS ZERO WASTE: THE OVERARCHING WASTE STRATEGY DOCUMENT FOR WALES* (2010), <https://gov.wales/sites/default/files/publications/2019-05/towards-zero-waste-our-waste-strategy.pdf> [hereinafter WALES: TOWARDS ZERO WASTE].

⁴⁷ ENGLAND: OUR WASTE, OUR RESOURCES, *supra* note 46. The English government pledged to: (a) publish data on food waste; (b) consider mandatory waste reporting and waste targets for certain businesses; (c) publish recommendations for waste-reduction in the hospitality sector; (d) prioritize waste reduction in promulgating new food standards for hospitals; (d) introduce restrictions on unfair business practices that lead to food waste; and (e) survey food businesses to identify best food waste prevention strategies. *Id.*

⁴⁸ ENVIRONMENT, FOOD AND RURAL AFFAIRS COMMITTEE (EFRA), *FOOD WASTE IN ENGLAND, 2016–7*, HC 429 (UK) [hereinafter EFRA COMMITTEE: FOOD WASTE IN ENGLAND].

⁴⁹ EFRA COMMITTEE: FOOD WASTE IN ENGLAND, *supra* note 48.

⁵⁰ See generally WRAP, *WRAP – Circular Economy & Resource Efficiency Experts*, <https://wrap.org.uk/> (last visited Mar. 30, 2021).

⁵¹ WRAP DATE LABELING GUIDE, *supra* note 12.

⁵² EFRA COMMITTEE: FOOD WASTE IN ENGLAND, *supra* note 48; WRAP, *Surplus Food Redistribution Working Group*, <https://www.wrap.org.uk/content/surplus-food-redistribution-working-group-0> (last visited Mar. 30, 2021). The Courtauld Commitment aims to do the following: identify and disseminate best practices to increase the amount of food redistributed for human consumption; develop an effective monitoring and reporting system for redistribution; and initiate pilot projects to test and evaluate new redistribution strategies. *Id.*

⁵³ GLORIA TYLER, *FOOD BANKS IN THE UK*, HOUSE OF COMMONS LIB. (Nov. 4, 2020), <https://researchbriefings.files.parliament.uk/documents/CBP-8585/CBP-8585.pdf>.

⁵⁴ FareShare, *FareShare 2019/2020 Annual Report* (2020), <https://fareshare.org.uk/annual-reports/>.

⁵⁵ See also *Our Impact*, FareShare, <https://fareshare.org.uk/what-we-do/our-impact/> (last visited on Mar. 30, 2021). Food recovery organizations in the UK saw an 89% increase in number of users for April 2020 compared to April 2019. Additionally, FareShare distributed twice as much food in May 2020 as it did in the week preceding the lockdown in March 2020. See EFRA COMMITTEE: FOOD WASTE IN ENGLAND, *supra* note 48. At the time of publication, the total numbers resulting from the COVID-19 pandemic are not known.

⁵⁶ *United Kingdom*, BRITANNICA.COM, <https://www.britannica.com/place/United-Kingdom> (last visited Mar. 30, 2021).

⁵⁷ Sarah Carter & Hester Swift, *Researching Legal System of the United Kingdom*, GLOBALEX (Feb. 2020), https://nyulawglobal.org/globallex/United_Kingdom1.html#_1.1_Background_ [hereinafter *Researching Legal System of the UK*]; See *Constitutional differences with Britain*, BRITANNICA.COM, <https://www.britannica.com/place/United-States/Constitutional-differences-with-Britain> (last visited Mar. 30, 2021).

⁵⁸ *Researching Legal System of the UK*, *supra* note 57.

⁵⁹ See generally *Search Results*, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/ukpga/2020> (last visited on Mar. 30, 2021) (listing UK Public General Acts enacted in 2020).

⁶⁰ *Researching Legal System of the UK*, *supra* note 5757.

⁶¹ See *Understanding legislation*, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/understanding-legislation> (last visited Mar. 30, 2021); See also *UK Parliament: Parliament's Authority*, UK PARLIAMENT, <https://www.parliament.uk/about/how/role/sovereignty/> (last visited Mar. 30, 2021).

62 See Northern Ireland Act 1998, c. 47 (UK), <https://www.legislation.gov.uk/ukpga/1998/47/contents> (last visited Mar. 30, 2021); see Scotland Act 1998, c. 46 (UK), <https://www.legislation.gov.uk/ukpga/1998/46/contents> (last visited Mar. 30, 2021); See Government of Wales Act 1998, c. 38 (UK), <https://www.legislation.gov.uk/ukpga/1998/38/contents> (last visited Mar. 30, 2021); See also *Researching Legal System of the UK*, *supra* note 57 (noting that Northern Ireland has not had an executive body since 2017).

63 *Id.*

64 See FOOD STANDARDS AGENCY, FOOD STANDARDS AGENCY FOOD AND FEED LAW GUIDE (July 2020), <https://www.food.gov.uk/sites/default/files/media/document/food-and-feed-law-guide-july-2020.pdf> [hereinafter FSA FOOD LAW GUIDE] (describing different enforcement responsibilities associated with food law).

65 *Researching Legal System of the UK*, *supra* note 57 (discussing reserved subjects including foreign affairs, defense, and national security).

66 UK CIVIL SERVICE, DEVOLUTION: FACTSHEET, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770709/DevolutionFactsheet.pdf.

67 UK CIVIL SERVICE, DEVOLUTION: FACTSHEET, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770709/DevolutionFactsheet.pdf.

68 *European Union*, BRITANNICA.COM, <https://www.britannica.com/topic/European-Union> (last visited Mar. 30, 2021).

69 The supremacy of EU laws over national laws was defined in the European Communities Act 1972. *Id.*; see also European Union (Withdrawal) Act 2018, c. 16.

70 Catherine Barnard, *Where does Brexit leave UK law?*, UK CHANGING EUR. (Apr. 17, 2019), <https://ukandeu.ac.uk/where-does-brexit-leave-uk-law/>.

71 Waste Framework Directive 2008/98, art. 4 (EC) (prioritizing prevention first, then preparation for re-use, recycling, other recovery, and lastly disposal). It is important to note that the UK has taken the practical steps necessary to adopt EU legislation into UK law to provide continuity post-UK exit from the EU. As of January 1, 2021, the UK is free to make changes to its legislation if it so chooses, including on those laws adopted through EU legislation. *Id.*

72 *Id.* at art. 22, 28 (defining bio-waste as an abbreviation of biodegradable waste, or waste made of organic material, which includes food waste).

73 *Id.* at art. 30.

74 See The Waste (England and Wales) Regulations 2011, SI 2011/988; See The Waste (Scotland) Regulations 2012, SI 2012/148 [hereinafter Scotland Waste Regs.]; See The Waste (Northern Ireland) Regulations 2011, SR 2011/127 [hereinafter NI Waste Regs.]; See ENGLAND: OUR WASTE, OUR RESOURCES, *supra* note 46; See SCOTLAND'S ZERO WASTE PLAN, *supra* note 46; See NI WASTE PREVENTION PROGRAMME, *supra* note 46; See WALES: TOWARDS ZERO WASTE, *supra* note 46. It is important to note that, since their inception, minor amendments relating to pollution and recycling have been made to the aforementioned Scotland and Northern Ireland regulations but they are not relevant for the purposes of this report.

75 General Principles of Food Law Regulation 178/2002, art. 1 (EC) [hereinafter Food Law Regulation 178/2002];

76 Treaty on the Functioning of the European Union, art. 288. ("To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.").

77 Food Law Regulation 178/2002, *supra* note 82.

78 *Id.* at art. 6.

79 *Id.* at art. 7.

80 *Id.* at art. 9–10.

81 *Id.* at art. 17.

82 Commission Regulation 852/2004, 2004, O.J. (EC) [hereinafter Comm'n Reg. 852/2004]; Commission Regulation 853/2004, 2004, O.J. (EC) [hereinafter Comm'n Reg. 853/2004].

83 Comm'n Reg. 852/2004, *supra* note 82; Comm'n Reg. 853/2004, *supra* note 82.

84 See Food Information Regulation 1169/2011 (EU) [hereinafter FIR 1169/2011].

85 *Id.*

86 See The Food Information Regulations 2014, SI 2014/1855 (Eng.) [hereinafter England FIR 2014/1855]; See The Food Information (Scotland) Regulations 2014, SI 2014/312 [hereinafter Scotland FIR 2014/312]; See The Food Information Regulations (Northern Ireland) 2014, SR 2014/223 [hereinafter NI FIR 2014/223]; See The Food Information (Wales) Regulations 2014, W.S.I. 2014/2303 (W. 227) [hereinafter Wales FIR 2014/2303].

87 See FAO & World Health Org. (WHO), *Codex Alimentarius International Food Standards*, <http://www.fao.org/fao-who-codexalimentarius/home/en/> (last visited on Mar. 30, 2021).

88 See Accession of the European Community to the Codex Alimentarius Commission 2003/822 (EC) [hereinafter Codex Alimentarius Commission 2003/822].

89 See Food Safety Act 1990, ch. 16 [hereinafter Food Safety Act].

90 *Id.*

91 The Food Safety (Northern Ireland) Order 1991, SI 1991/762 [hereinafter NI Food Safety Order].

92 Food Safety Act, *supra* note 89, at pt. II, § 7.

93 *Id.* at pt. II, §§ 14, 15.

94 *Id.*; See also THE FOOD SAFETY ACT 1990—A GUIDE FOR FOOD BUSINESSES, FOOD STANDARDS AGENCY (2009), <https://www.food.gov.uk/sites/default/files/media/document/fsactguide.pdf>.

95 Food Safety Act, *supra* note 89, at pt. I, § 2.

96 *Id.* at pt. III, § 27.

97 *Id.* at pt. III, § 29.

98 Food Standards Act 1999, ch. 28 [hereinafter Food Standards Act]; Consumer Protection Act 1987 c. 43 [hereinafter Consumer Protection Act].

99 Food Standards Act, *supra* note 98, at §§ 1, 6; Environment, Food, and Rural Affairs—Seventh Report, ch. 2, HOUSE OF COMMONS (2005), <https://publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/469/46905.htm>.

100 Food Standards Act, *supra* note 98.

101 Environment, Food, and Rural Affairs—Seventh Report, *supra* note 99.

102 Consumer Protection Act, *supra* note 98, at §§ 2, 3. Suppliers are held liable for failing to identify the manufacturer of unsafe food within a reasonable amount of time of receiving notification that the food has caused harm. *Id.*

103 See generally WRAP, *Resources*, <https://wrap.org.uk/resources> (last visited Mar. 30, 2021).

104 VAT rates, HMRC, <https://www.gov.uk/vat-rates> (last visited Mar. 30, 2021).

105 SCOTLAND'S ZERO WASTE PLAN, *supra* note 46.

106 See, e.g., The Food Hygiene Regulations (Northern Ireland) 2006, SI 2006/3, Schedule 6 [hereinafter NI Food Hygiene Regs.].

107 See FSA FOOD LAW GUIDE, *supra* note 64; See Food Standards Scotland, *About Us*, <https://www.foodstandards.gov.scot/about-us> (last visited Mar. 30, 2021).

108 See FSA FOOD LAW GUIDE, *supra* note 64.

109 See generally Food Standards Agency, *About Us: Who We Are*, <https://www.food.gov.uk/about-us/who-we-are?navref=main> (last visited Mar. 30, 2021); See also Food Standards Agency, <https://www.gov.uk/government/organisations/food-standards-agency> (last visited Mar. 30, 2021).

110 See FSA FOOD LAW GUIDE, *supra* note 64.

111 See Food Standards Scotland, *supra* note 107.
112 General Food Law Regulation, *supra* note 75.
113 Comm'n Reg. 852/2004, *supra* note 82; Comm'n Reg. 853/2004 *supra* note 82.
114 FIR 1169/2011, *supra* note 84.
115 General Food Law Regulation, *supra* note 75, at art. 1.
116 Food is unsafe if it is harmful to human health or not suitable for human consumption due to misidentification, contamination, or decay. *Id.* at art. 14. Article 14 of the Regulation states the "Food shall not be placed on the market if it is unsafe," and Article 3 defines "placing on the market" to mean "the holding of food... for the purpose of sale, including offering for sale or any other transfer, whether free of charge or not." *Id.* at art. 2, 3, 14.
117 EC 178/2002 defines "food business" as "any undertaking, whether for profit or not... carrying out any of the activities related to any stage of production, processing, and distribution of food." General Food Law Regulation, *supra* note 75, at art. 3.
118 *Id.* at art. 18, 19. For specific requirements for food business operators related to product tracing, withdraws, and recalls. See GUIDANCE ON FOOD TRACEABILITY, WITHDRAWS AND RECALLS WITHIN THE UK FOOD INDUSTRY, FOOD STANDARDS AGENCY, FOOD STANDARDS SCOTLAND (Mar. 2019), <https://www.food.gov.uk/sites/default/files/media/document/food-traceability-withdrawals-and-recalls-guidance.pdf>.
119 General Food Law Regulation, *supra* note 75, at art. 11, 12.
120 See, e.g., The Food Hygiene Regulations (England) 2006, SI 2006/14 ¶ 2 [hereinafter England Food Hygiene Regs.].
121 Comm'n Reg. 852/2004, *supra* note 82, at art. 5; Comm'n Reg. 853/2004, *supra* note 82, at art. 5; *General food law*, FOOD STANDARDS AGENCY (Jan. 23, 2018), <https://www.food.gov.uk/business-guidance/general-food-law#food-hygiene-legislation>.
122 Comm'n Reg. 852/2004, *supra* note 82, at art. 5. These requirements include: ensuring food is stored at appropriate temperatures; removing food waste from rooms with food "as quickly as possible;" rejecting food that "might reasonably be expected to be... unfit for human consumption;" and ensuring the integrity and cleanliness of food wrapping and packaging. *Id.* at Annex II.
123 Comm'n Reg. 853/2004, *supra* note 82, at art. 1. Included in this instrument are specific temperature requirements for storage and transport, and a prohibition on distributing products of animal origin that do not contain a health or identification mark. *Id.* at art. 5, 2004.
124 *Id.* at art. 2.
125 The Food Safety Act applies to England, Scotland, and Wales. Food Safety Act, *supra* note 89. The food safety rules for Northern Ireland were enacted separately, through the Food Safety (Northern Ireland) Order 1991 ("the Order"). NI Food Safety Order, *supra* note 91. The Order contains the same food-safety provisions and definitions as the Act, with the exception of the definition of "injurious to health," which is construed more broadly under the Act than under the Order. The Food Safety Northern Ireland Order 1991, art. 5(3), SI 1991/762 (directing fact-finders to consider only (a) the effect of the food on the health of the consumer and (b) the cumulative effect of the food when consumed "in ordinary quantities").
126 *General Food Law*, FOOD STANDARDS AGENCY (Jan. 23, 2018), <https://www.food.gov.uk/business-guidance/general-food-law#food-hygiene-legislation>.
127 Under the Act, "rendering" refers to: adding a substance to the food, removing a substance from the food, and processing or treating the food in any way. Food Safety Act, *supra* note 89, at pt. II, § 7, ¶1.
128 Under the Act, food is considered harmful to human health if it affects the short or long-term health of consumers or subsequent generations, is likely toxic if consumed in large enough quantities, or is harmful to a particular subgroup of the population and is intended for that subgroup. Food Safety Act, *supra* note 89, at pt. II, § 7, ¶2 (referencing Comm'n Reg. 178/2002, *supra* note 112, art. 14).
129 Food Safety Act, *supra* note 89, at pt. II, § 14, ¶1 (prohibiting selling food "to the purchaser's prejudice" that is "not of the nature or substance or quality demanded by the purchaser").
130 Under the Act, a label is misleading if it "is likely to mislead as to the nature, or substance, or quality of the food," even it also contains an accurate statement concerning the food's composition. Food Safety Act, *supra* note 89, at pt. II, § 15.
131 *Food safety for community cooking and food banks*, FSA, <https://www.food.gov.uk/safety-hygiene/food-safety-for-community-cooking-and-food-banks> (last visited Dec. 3, 2020).
132 *Id.*
133 Food Safety Act, *supra* note 89, at pt. I, § 2, ¶¶ 1–2.
134 *Id.*; See also *Id.* at pt. 1, § 1 ¶ 3. Business "means any business in the course of which commercial operations with respect to food or food sources are carried out." [emphasis added] *Id.*
135 See, e.g., The General Food Regulations 2004, SI 2004/3279 (making key provisions of EC 178/2002 enforceable in England, Scotland, and Wales and bring the Food Safety Act into compliance with these provisions).
136 The General Food Regulations 2004, SI 2004/3279.
137 The General Food Regulations (Northern Ireland) 2004, SI 2004/2005.
138 England Food Hygiene Regs., *supra* note 120; NI Food Hygiene Regs., *supra* note 106; The Food Hygiene (Scotland) Regulations 2006, SI 2006/3 [hereinafter Scotland Food Hygiene Regs.]; The Food Hygiene Regulations (Wales) 2006, SI 2006/31 [hereinafter Wales Food Hygiene Regs.].
139 England FIR 2014/1855, *supra* note 86; NI FIR 2014/223, *supra* note 86; Scotland FIR 2014/312, *supra* note 86; Wales FIR 2014/2302, *supra* note 86.
140 England Food Hygiene Regs., *supra* note 120. The enforcement provisions are largely the same for each country, but they are enforced by two different agencies: the FSA enforces the regulations in England, Northern Ireland, and Wales, and the FSS enforces the regulations in Scotland. See FSA FOOD LAW GUIDE, *supra* note 64; Food Standards Scotland, *supra* note 107. Additionally, there are some slight variations in the Schedule provisions, which promulgate guidance for enforcement agencies. Compare Scotland Food Hygiene Regs., *supra* note 138, with, e.g., Wales Food Hygiene Regs., *supra* note 138. For example, The Food Safety and Hygiene Regulations (England) 2013, The Food Hygiene Regulations (Northern Ireland) 2006, and The Food Hygiene Regulations (Wales) 2006 generally require foods susceptible to pathogenic growth to be kept at temperatures below 8°C, while the Food Hygiene Regulations (Scotland) 2006 generally requires foods to either be chilled at an unspecified temperature or kept at a temperature above 63°C. Scotland Food Hygiene Regs., *supra* note 138; Wales Food Hygiene Regs., *supra* note 138.
141 HARV. L. SCH. FOOD L. & POL'Y CLINIC & NAT. RES. DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (Mar. 2017), http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate_-March-2017.pdf [FLPC DON'T WASTE, DONATE]
142 See Debasmitta Patra et al., *Evaluation of global research trends in the area of food waste due to date labeling using a scientometrics approach*, 115 FOOD CONTROL (Sept. 2020) (discussing that global confusion over date labels leads to food waste).
143 See WRAP DATE LABELING GUIDE, *supra* note 1212; See WRAP FINAL REPORT ON FOOD WASTE 2019, *supra* note 12; See also WRAP, FINAL REPORT: HOUSEHOLD FOOD AND DRINK WASTE IN THE U.K. (Nov. 2009), https://www.wrap.org.uk/sites/files/wrap/Household_food_and_drink_waste_in_the_UK_-_report.pdf (discussing that in 2008, consumers discarded about 22% of food due to confusion over labeling); See also WRAP FINAL REPORT ON FOOD WASTE 2019, *supra* note 12.
144 See WRAP DATE LABELING GUIDE, *supra* note 12; See also WRAP, REDISTRIBUTION CHECKLIST: DATE LABELS, STORAGE ADVICE AND FREEZING FOR FOOD SAFETY (Apr. 2020), https://wrap.org.uk/sites/default/files/2020-08/WRAP-Surplus_food_redistribution_labelling_checklist_0.pdf [hereinafter WRAP REDISTRIBUTION CHECKLIST]; See also WRAP, *Surplus food redistribution labelling guidance* (Apr. 21, 2020), <https://wrap.org.uk/resources/guide/surplus-food-redistribution-labelling-guidance>.

145 Codex Alimentarius Commission 2003/822, *supra* note 88. The Codex Alimentarius is a collection of internationally recognized standards, codes of practice, guidelines, and other recommendations relating to food, food production, and food safety. *Id.*

146 FIR 1169/2011, *supra* note 84. The FIR replaced the previous UK Food Labelling Regulations of 1996. See OXFORDSHIRE COUNCIL, NEW REGULATIONS RELATING TO FOOD LABELLING (2014); Food Labelling Regulations 1996, SI 1996/1499 (UK). The FIR is an EU law that sets forth a standardized dual date labeling scheme, which is mandatory across the EU.

147 See Codex Alimentarius Commission, *General Standard for the Labeling of Prepackaged Foods*, CXS 1-1985 (Revised in 2018).

148 Certain foods are exempt from this date labeling requirement, like table salt and herbs, as well as produce, baked goods, and certain alcoholic beverages. FIR 1169/2011, *supra* note 80, at Annex 5; *Id.* at Annex X, ¶ 1.

149 *Id.* at art. 24 (defining highly perishable as “likely after a short period to constitute an immediate danger to human health.”).

150 FIR 1169/2011, *supra* note 84, at art. 9, ¶ f.

151 *Id.*

152 *Id.*

153 See *EU guidelines on food donation*, EUROPEAN COMMISSION (Oct. 16, 2017), https://ec.europa.eu/food/sites/food/files/safety/docs/fw_eu-actions_food-donation_eu-guidelines_en.pdf.

154 See *Food Labelling*, DEFRA (Apr. 3, 2013), <http://www.defra.gov.uk/food-farm/food/labelling/>.

155 See *Best before and use by dates*, FOOD STANDARDS AGENCY (Jan. 8, 2018), <https://www.food.gov.uk/safety-hygiene/best-before-and-use-by-dates>.

156 See *Clearer date label guidance could cut food waste*, ZERO WASTE SCOTLAND, NOV. 29, 2017 <https://www.zerowastescotland.org.uk/press-release/clearer-date-label-guidance-could-cut-food-waste>.

157 See *Guidance Food Labelling: giving food information to consumers*, DEFRA (Nov. 29, 2017), <https://www.gov.uk/guidance/food-labelling-giving-food-information-to-consumers>; See WRAP DATE LABELING GUIDE, *supra* note 12; see *Clearer date label guidance could cut food waste*, *supra* note 156.

158 *Guidance on the application of date labels on food*, DEFRA (Sept. 2011), <https://www.reading.ac.uk/foodlaw/label/dates-defra-guidance-2011.pdf>; See *Best before and use by dates*, *supra* note 155; See *Clearer date label guidance could cut food waste*, *supra* note 156.

159 See *Best before and use by dates*, *supra* note 155; See *Clearer date label guidance could cut food waste*, *supra* note 156.

160 WRAP DATE LABELING GUIDE, *supra* note 12; See also WRAP REDISTRIBUTION CHECKLIST, *supra* note 145; See also *Surplus food redistribution labelling guidance*, *supra* note 145.

161 WRAP DATE LABELING GUIDE, *supra* note 12. It also important to note that foods expected to keep for more than 3 months but no longer than 18 months, such as canned goods and some frozen food, may have a “best before end” date label that has the same connotation as a “best before” date with the donation rules attributable to “best before” dated products still applying. *Id.* at 10.

162 *Id.* at 3.

163 WRAP, *Love Food Hate Waste*, <https://lovefoodhatewaste.com/> (last visited Mar. 30, 2021).

164 *Past May Date? Look, Smell, Taste, Don't Waste*, TOO GOOD TO GO INT'L (2020), <https://toogoodtogo.co.uk/en-gb/campaign/commitment>; Rebecca Smithers, *Cut food waste at home by sniffing and tasting, urges new campaign*, GUARDIAN (Jan. 23, 2021), <https://www.theguardian.com/environment/2021/jan/23/cut-food-waste-at-home-by-sniffing-and-tasting-urges-new-campaign>.

165 See, e.g., The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1).

166 Consumer Protection Act, *supra* note 98, at §§ 1, 2, 3; Food Safety Act, *supra* note 89, at pt. II, § 35.

167 Under the CPA, a “product” is defined as “any good or electricity.” Consumer Protection Act, *supra* note 98, at § 1(2)(c). The Act imposes liability on producers of unsafe produce, and defines “producer” as “the person who manufactured [the product].” *Id.* at §§ 2(2)(b), 3(1). Liability is only imposed on importers who “imported the product into a member State from a place outside the member States in order to supply it to another, in the course of any business.” *Id.* at § 2(c). A product is deemed unsafe if it causes death, personal injury, or property damage. *Id.* at § 3(1).

168 *Id.* at § 2(3). Because the CPA does not specify what constitutes a reasonable amount of time, what is considered reasonable depends on the facts of the case. *Id.*

169 *Id.* at pt. I, §§ 1(2),

170 *Id.* at pt. II, § 11(7)(b).

171 *Id.* at pt. I, § 36.

172 *Id.* at pr. V, § 39(1).

173 Food Safety Act, *supra* note 89, at pt. II, § 35; England Food Hygiene Regs., *supra* note 120, at art. 12(1); Wales Food Hygiene Regs., *supra* note 138, at art. 11(1); Scotland Food Hygiene Regs., *supra* note 138, at art. 11(1); NI Food Hygiene Regs., *supra* note 106.

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183 *Id.* at § 190.

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205 *See* NI WASTE PREVENTION PROGRAMME, *supra* note 46 (district councils are local government representation for the purpose of local governance in Northern Ireland).

206 *See* NI Waste Regs., *supra* note 74.

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