

Department for Environment, Food and Rural Affairs

Food Information Regulations 2013

Summary of responses

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Purpose

The Public Consultation on Food Information Regulations (FIR) ran from 7th November 2012 to 30th January 2013.¹ . These regulations are the underpinning domestic legislation, to enable Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) to be enforced in the UK.

The consultation summarised the FIC and the domestic Statutory Instrument (SI) FIR, gave an overview of the options for derogations and other national measures and outlined the proposed approach to national measures and enforcement (option 1) as well as alternative options (option 2).

Stakeholders were invited to offer views and evidence on the legislation, Impact Assessment (IA) and guide to compliance that Defra had prepared. The consultation sought comments on:

- The proposed approach to national measures
- The value of retaining provisions around certain alcoholic drink terms and compositional requirements for ice cream, cheese and cream.
- The proposed approach to enforcement.

In total, 108 responses were received, 63 from organisations and 45 from members of the public. In addition to the formal consultation responses, the Department for Environment, Food and Rural Affairs (Defra), the Food Standards Agency (FSA) and the Department of Health (DH) have engaged with industry stakeholders around a number of issues since the consultation ended.

This summary paper provides an overview of the responses received, highlighting some of the key themes and messages which emerged from the responses. This paper also highlights the decisions taken on the approaches to national measures, derogations and enforcement. With the exception of the approach to enforcement (which, because of different legal regimes in place in the different countries of the UK, is necessarily different), all decisions have been made collectively in the UK. The Northern Ireland Assembly, Scottish Parliament and the Welsh Assembly Government have been consulted and fully involved throughout the process.

¹ The consultation paper and other relevant published papers can be found at:
<https://www.gov.uk/government/consultations/food-information-regulations-fir-2013>

Proposed approach to national measures

Respondents expressed a range of views regarding the proposed approach to national measures and many responses had a mixed view of the different national measures rather than strongly supporting either option presented in the consultation paper.

Derogation - milk and milk products in glass bottles intended for reuse

All consultees who responded on this issue support the derogation for not requiring labelling with all the mandatory particulars of milk and milk products presented in glass bottles intended for reuse. This is because it avoids unnecessary additional burden and enables an effective re-use of materials. It is supported by a respondent who is the only major milk processor to use glass bottles for most packaging.

In line with wider Government better regulation policy to take up any EU derogations available for the benefit of UK businesses and in line with consulted parties' responses, we will be including this derogation in the new Regulations.

Derogation – minced meat

There is both support and opposition for the derogation on compositional standards for minced meat.

There is broad support for the derogation from the industry sector; it would allow cheaper products containing more fat and connective tissue to remain on the market, allowing the use of cuts of meat in minced meat that may otherwise have been discarded, or otherwise de-valued. Refusing the derogation may also have meant adding prime cuts of meat to minced meat in order to meet the composition criteria. Other stakeholders independent of the industry, for example **Which?**, were not opposed to allowing the derogation.

The derogation was opposed by Department of Health, as well as other health-based stakeholders, on public health grounds as it would allow minced meat to be placed on the market with an excess of thirty percent fat for minced pork or, in the case of minced beef, over twenty percent fat. It is also opposed on the grounds that the consumer would not be properly informed by what might be a discrete 'national mark'. Some consulted parties have stated that were it to be allowed, such a mark should make explicit that it does mean a higher fat content.

Additionally, UK meat industry are not happy that the current accepted (UK) designations of 'lean minced beef' (generally accepted as between ten -twelve percent fat) will no longer be able to be used as EU criteria requires this to be equal to/less than seven percent fat. The derogation will not solve this problem because, regardless of whether the derogation

is taken up or not, 'lean minced meat' from any meat species will have to comply with the seven percent fat (and twelve percent collagen/meat protein ratio) criteria.

Finally, we have considered the impact of the decision on this derogation may have on small independent butchers. Survey evidence shows that in general, these businesses sell minced meat significantly lower in fat than the major retailers so there will be significantly less of an impact on them than on the major multiples. However there may be an impact on a small number of these businesses that should be taken into consideration.

Balancing the costs and benefits of this issue is challenging. On the one hand, it is important that we do not place any unnecessary burden on business, or remove cheaper food products from the market. The requirements for collagen content have no discernible impact on public health. On the other hand the creation of a 'two tier' market where some minced meat on sale conforms to the criteria in the Regulation and some does not could be confusing to many consumers and may encourage the marketing of high fat products, including from outside the UK (as in most of the EU the derogation will not be taken up), particularly in low-income areas.

Taking the above into account, we have decided to allow the derogation, allowing minced meat to be marketed that does not meet the criteria in the Regulations, as long as products are clearly labelled with a national mark. We expect that fat levels will continue on their current downward trajectory but will be checking that this happens. A review will be undertaken at three years following the date of application of these provisions in order to enable us to consider whether the derogation has had adverse public health impacts and should continue.

Name of food for loose foods

The majority of respondents, particularly those from industry and enforcement groups support retaining the existing provision requiring name of food for loose foods. Key views around keeping the provision which emerged were:

- It helps to maintain a level playing field between sellers of loose food and those of prepacked food
- It helps the consumer remain informed
- It provides absolute clarity for enforcement officers, which it has been argued that a reliance on general consumer protection laws would not.

The UK devolved administrations in Northern Ireland, Scotland and Wales also support retention of the provision.

Certain retailers hold a neutral view, expressing that they would ensure consumers were always provided with adequate food labelling information regardless of whether it was a legal necessity.

Responses which supported the option of not retaining the existing provision included the view that under Unfair Commercial Practices (UCP) legislation, consumer protection is provided and confusion avoided as the name of the food must be provided where it is not obvious what the food is.

The overwhelming support for retaining this provision in national legislation leads us to support its retention. There is no additional burden to the current baseline, and the benefits in terms of consumer protection, enforcement clarity and level playing field for business are considerable.

For these reasons we propose to maintain mandatory name of food labelling provision for loose foods in the Food Information Regulations.

Meat Quantitative Ingredient Declaration (QUID) for loose meat products

The vast majority of respondents support retaining the existing provision requiring meat QUID for loose meat products, with a clear view that the measure provides clarity for consumers and a level playing field for producers and retailers.

An enforcement body explained further that this measure enables independent butchers to differentiate their higher quality products from mass produced meat products. There was also a concern among enforcement respondents that reliance on UCP could lead to problems as it could prove difficult to enforce and hard to frame an offence of misleading consumers in a case where no description of a product is provided. A specific food labelling offence is preferable to one of general consumer protection.

The UK devolved administrations in Northern Ireland, Scotland and Wales also support retention of the provision.

Some of those respondents who were neutral or supported abandoning the provision thought it highly likely that the information would continue to be provided voluntarily should the provision not be kept.

The overwhelming support for retaining this provision in national legislation leads us to support its retention. There is no additional burden to the current baseline, and the benefits in terms of consumer protection, enforcement clarity and level playing field for business are considerable.

Current provisions not covered by FIC

Alcoholic drinks terms

Almost all respondents from industry, consumer, academic, not-for-profit and enforcement groups who provided comments on whether or not to retain the current measures for alcoholic drinks covering 'low alcohol', 'alcohol free', 'de-alcoholised' and 'non-alcoholic' and their respective criteria, supported retention on health and safety and legal grounds.

There is some concern that some of the terms in use may be ambiguous. For example 'reduced alcohol' or 'de-alcoholised' are comparative terms and do not tell the consumer what the strength is of the drink they are purchasing.

Equally, there is also some concern that consumers are accustomed to current terms and rely on them alone without regard to information such as alcohol by volume (ABV) when selecting products to purchase/consume.

The clear preference is that designations should be clear and consistent, and that ambiguous terms should not be given official sanction.

There was some concern surrounding trade across borders within the EU. On the one hand it was felt by one respondent that maintaining the current UK provisions could pose challenges with the import of prepacked alcohol products from other EU member states due to the variance in alcohol terms. On the other hand it was felt by some respondents that the measures should be maintained but the terms developed and brought in line with wider EU terms in order to ease trade barriers across the EU.

The majority of consumer groups support legal definition as the only way to safeguard consumer interests ahead of commercial interests. 'Lower strength' and universal labelling is welcomed by the majority of industry and consumer groups. Responses from consumers support stronger unit labelling.

There are a number of linked agendas, including public health, road safety, business innovation and opportunity, so how we address these terms need to be looked at in the round rather than as a single issue.

In particular the Public Health Responsibility Deal aims to remove a billion units of alcohol from the UK market through, among other things, improving consumer choice for lower alcohol products. While this provides a business opportunity for food business operators (FBOs) to market new products, there is a risk that rapidly changing market for these products could let in confusing and possibly misleading business practices unless a clear and agreed approach is taken by business and Government.

Given the overall support for retaining legislation for alcohol terms, we propose the following way to take these forward. We can delay the revocation of the existing provisions in the Food Labelling Regulations 1996 following the 'coming into force' date of FIR for a further four years, whereupon they will lapse unless further legislation is made in the meantime. This gives the industry and stakeholders, in consultation with Government and enforcement bodies, adequate time to further develop and refine the criteria linked to the terms.

Ice-cream, cream and cheese

Respondents from industry, consumer and enforcement groups prefer to have ice-cream, cream and cheese standards in place, though with additional flexibility to be able to place new products on the market for example 'low fat' variants of varieties of cheese. There is particularly strong support from one retail respondent for retaining cheese and cream provisions to protect consumers and ensure common compositional standards. The problem is that the current provisions in the Food Labelling Regulations 1996 are very limited in scope, applying to only twelve cheeses and restrictive in effect, setting minimum fat levels. In addition, they only apply to cheeses produced in the UK; a cheese legally sold in another Member State of the EU that meets overarching EU regulatory measures may be placed on the UK market regardless of our national measures on the basis of 'mutual recognition', in place to prevent protectionist restrictions on trade.

For cheese, in order to provide the flexibility within national regulations, new national regulations would need to be made, which would be contrary to the Government's objective to reduce regulation. In reaching a solution that benefits consumers and industry we plan to delay the revocation of the relevant existing provisions in the Food Labelling Regulations 1996 following the 'coming into force' date of FIR for a further four years, whereupon they will be revoked unless further legislation is made in the meantime. This gives the cheese/cream industry, along with consumers and working with Government, adequate time to consider the way forward on cheese and cream compositional and labelling provisions.

For ice-cream, the situation is simpler. Currently a product that is made with fresh cream, fruit and sugar may often not be called 'ice-cream' as it does not contain the required amount of milk protein, while a product made with reconstituted dried milk and vegetable oil may be so called. The case that this benefits consumers was not convincingly made during the consultation while the case for removing the national measure, putting UK producers on a level playing field with other EU producers, was. There is a standing and widely respected voluntary agreement, the European Ice Cream Association's (Euroglaces) 'Code for Edible Ices'² which can take the place of the mandatory national

² The Euroglaces 'Code for Edible Ices' can be found at:

http://euroglaces.eu/en/upload/docs/Edible_ices_codes/Code%20for%20Edible%20Ices%20Version%202013.pdf

measures, providing industry with the flexibility it requires to be able to bring new products to market and meet consumer expectations. We propose to allow the regulations in respect of ice-cream to lapse on the 13th December 2014 which is when the majority of the new Regulations come into force.

Proposed approach to enforcement

Improvement Notices (IN)

Responses about INs were mixed but overall respondents are more in favour of the proposed IN approach than against it.

The vast majority of enforcement bodies who commented on IN are in favour of the proposed approach for a number of reasons, including:

- IN provide enforcement bodies with a formal action to take in the case of infringements not related to food safety, which does not involve the resources needed for action through the magistrates' court
- If an appeal is raised, the tribunal, which will build up expertise on the subject, will be able to provide a useful and structured ruling.

The majority of respondents from industry are also broadly in favour of the approach to IN but share some concerns. In particular, in most cases INs should be used once informal measures in achieving compliance have been exhausted and in any case, not as an alternative to informal action..

The IN approach is not supported by the majority of those who responded from the retail sector including the main representative body (BRC). This is because it is perceived as not de-regulatory in that it introduces a further and unnecessary level of enforcement between informal and formal action.

Other respondents who do not support the IN approach had various concerns, including:

- Sending out the message that food fraud will not be taken seriously at a time when it is, in one respondents view, increasing
- Concerns over the interpretation of the "person responsible" for an offence.

In Scotland, FSA do not propose to adopt the IN approach for the time being subject to wider consideration of enforcement strategy to be adopted by its new food body.

In Wales, the IN approach will not be adopted.

While there is a balance in the arguments for and against this measure, it is in line with the Government's wider stated objectives to de-criminalise where appropriate, to reduce burdens on businesses and reduce time and costs spent by courts in dealing with prosecutions where possible. The failure to comply with the improvement notice would be a criminal offence under the Regulations. This approach does not affect criminal

prosecutions being taken under other legislation, e.g. for fraud (if appropriate) or under the General Food Regulations 2004.

In the case of labelling provisions that affect food safety, e.g. allergen labelling provisions, it is intended that frontline criminal sanctions will be retained under the regulations.

Where a business does not agree with an Improvement Notice, an appeal process is available which effectively 'stops the clock' for the time allowed to comply, until the appeal has been heard.

For these reasons we propose to go ahead with the proposed Improvement Notice approach for labelling offences that do not affect public safety.

Other themes

Several other themes which were not covered in the consultation emerged from the responses; the comments have been noted and are summarised below.

Country of Origin and place of provenance labelling

Support was expressed for country of origin labelling particularly with feasible transition periods and for place of provenance to go further to include method of production.

This was not an issue covered in this consultation. However we note the views expressed and the Government will continue to support clear and honest country of origin information that consumers need to make informed purchasing decisions.

Allergens

The majority of consultees support education and training campaigns for consumers and the hospitality sector to raise awareness of allergens. Some enforcement bodies urge clarifying allergens declarations to ensure consumer protection. Tesco urge balancing consumer needs with compliance and burden on industry.

A number of responses, with very similar responses, expressed doubt that allergen information could be reliably and consistently provided in catering outlets other than in written format. They thought that allowing cafes' and restaurants' serving staff to correctly communicate this important information exposed food allergic consumers to risk of misunderstanding, perhaps increased by the number of non-English speaking staff working in these environments. (See 'Campaigns' section further on).

FSA have a wealth of experience in these issues and are happy that the catering industry can cope with this flexibility and introduce effective allergen labelling with the flexibility of being able to offer this information without it necessarily having to be written down. Moreover it is important that some businesses are able to provide the information in this way, for example businesses taking orders over the phone.

The proposed way forward is to allow allergen information to be provided orally so long as strict conditions are adhered to. In practice, most catering businesses will probably opt for providing the information in written form, on menus or on signage but FSA will work with industry to ensure that whatever way it is provided, it is consistent and reliable.

Vegetarian and vegan labelling

Some respondents advocate legally binding 'vegetarian' and 'vegan' terms and one respondent supports clarifying 'vegan' and urge providing comprehensive point-of-sale

information on animal use for ingredients, processing aids, testing of novel foods on animals and other food production aspects.

There is a provision in FIC (article 36 (3)(b)) which requires the European Commission to adopt implementing acts around the voluntary use of the terms vegetarian and vegan to provide consistency in the meaning of the terms and ensure that consumers are not misled.

Vegetable oil labelling

One respondent explained that businesses may need to reconfigure internal systems to generate the necessary information required in the ingredients list.

Mandatory nutrition declaration and voluntary front of pack nutrition labelling

There is both support and opposition for the mandatory nutrition declaration and voluntary front of pack nutrition labelling. One respondent strongly supports children GDAs for consumers and urge Commission published intake values. Voluntary 'front of pack' nutrition labelling has been the subject of recent industry and Government action.³

Clarity of food labels and minimum font size

One respondent believes ensuring clarity of food labels and minimum font is likely to involve major design changes requiring additional time and costs, perhaps greater than envisaged by regulators.

Engineered nano materials labelling

A number of responses, seemingly in response to a campaign, support clear engineered nano materials labelling (see 'Campaigns' section further on).

Alcoholic drinks

A respondent supports compulsory energy declaration and traditional terms that are not nutrition claims i.e. tonic wine etc. Another respondent advocates mandatory declaration of all ingredients and nature and origin of processing aids used in alcoholic drinks to increase consumer awareness.

³ Further details of the Front of Pack Nutrition Labelling Scheme can be found at: <https://responsibilitydeal.dh.gov.uk/front-of-pack/>

Campaigns

Three campaigns in response to the consultation paper were identified:

- Four responses were received in reaction to a campaign largely regarding the voluntary traffic light system for food labelling, which share a concern that the red, amber and green categories will show certain nutrients in an unfavourable light.
- Six responses were received which expressed concern about whether clear and consistent allergen information can be provided in catering outlets other than in written format.
- Twenty-two responses were received which shared a concern that GM-fed labelling is not being covered under FIC and FIR.

We have taken note of the views expressed in these campaigns and they will be considered in future policy discussions.

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Any enquiries regarding this document/publication should be sent to us at:

labelling@defra.gsi.gov.uk