

<b>Title:</b> The Food Information Regulations 2014  <b>PIR No:</b> 2014/1855  <b>Original IA/RPC No:</b> Defra 1443  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b> None <a href="#">Click here to enter text.</a>  Contact for enquiries: <b>Athene.Dilke@defra.gov.uk</b>	<b>Post Implementation Review</b>
	<b>Date:</b> 19/08/2019
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 13/12/2014
	<b>Recommendation:</b> Keep
<b>RRC Opinion:</b> N/A <a href="#">Choose an item.</a>	

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

(a) To meet the requirement in EU law to implement Regulation (EU) No. 1169/2011 on Food Information to Consumers (FIC).

FIC consolidates and updates general food and nutrition labelling, it removes confusing overlaps between Member States' national legislations and EU legislation and ensures a level playing field between Food Business Operators (FBOs). FIC aims to: (i) ensure that essential information regarding food safety is provided to consumers, (ii) act against the market failure of asymmetric information between producers/retailers and consumers, and (iii) ensure the proper functioning of the internal European and wider international market.

The Food Information Regulations (FIR) implement FIC and thereby ensure that the objectives of FIC are realised.

(b) To meet England's domestic policy aims by including a proportionate, effective and risk-based approach to the enforcement of the directly applicable EU FIC.

The policy aimed to provide a flexible and proportionate system of offences and penalties for the enforcement of non-compliance with EU-harmonised food labelling legislation (FIC). A change to the previous enforcement regime was taken forward with a move away from the across-the-board use of frontline criminal offences and towards a more proportionate and targeted regime using improvement notices. A backstop criminal offence was put in place to allow for situations where there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine. Criminal offences continued to be used for the contravention of certain provisions, namely mislabelling of foods containing allergens because a failure to comply with the allergen provisions may result in a risk to consumer health and safety. Businesses have the opportunity to appeal against an improvement notice to the First-Tier Tribunal.

(c) To take advantage of allowed derogations and national measures where appropriate. Derogations are exemptions or exceptions granted from a regulation, directive or treaty. National measures are the national rules adopted or maintained by an EU Member State. National measures are not permitted when rules are harmonised unless expressly authorised and where used, must not give rise to obstacles to free movement of goods. As FIC is harmonised EU legislation, the national measures utilised by the UK are expressly authorised within FIC.

These are the derogation and national measures included in FIR:

- (i) An EU-permitted national measure requiring the name of the food to be given for certain foods that are not pre-packed and foods that are packed on the sales premises at the consumer's request or pre-packed for direct sale.
- (ii) An EU-permitted national measure requiring a 'quantitative indication of ingredients' (QUID) of the meat content of non-prepacked meat products. Note: this did not include non-prepacked meat products sold by mass caterers ready-to eat by the final consumer.
- (iii) A derogation of not requiring all the mandatory particulars (ingredients lists etc.) for milk and milk products presented in glass bottles intended for re-use. This avoids unnecessary additional burdens and enables an effective re-use of materials.
- (iv) A derogation which allows for the sale of minced meat that does not comply with the fat and/or collagen compositional requirements of EU FIC. Such products will have to be labelled with a national mark indicating that they are for the UK market only.
- (v) An EU-permitted national provision allowing information on allergens for non-prepacked foods to be provided in any effective manner, including orally. Where oral communication is used, there must be clear indication via a label attached to the food, or on a notice/menu/ticket/label that the allergen information can be obtained from a member of staff. Unlike the national provisions relating to the name of the food and the quantity indicator for products containing meat, this national provision applies in the case of non-prepacked foods sold by mass caterers to a final consumer and provision is therefore made allowing for the necessary information to be given on a menu.
- (vi) The revocation of national composition and labelling rules on cheese, cream and alcohol-related descriptions on 13th December 2018. During the four years from the coming into force date of the EU FIC, work was done with consumers, industry and enforcement authorities to consider what, if anything, might be appropriate in terms of the future control and protection of these products.
- (vii) An EU-permitted national measure which requires that the words "irradiated" or "treated with ionising radiation" must be provided when irradiated food products or food products containing an irradiated ingredient are sold in bulk and when irradiated ingredients are used in certain pre-packed foods. This implements certain provisions of Article 6 of Directive 1999/2/EC which go beyond the general requirement in the EU FIC for providing this indication for irradiated food and replaces a similar provision in the Food Labelling Regulations 1996.
- (viii) To implement certain provisions of Article 6 of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ No L 66, 13.3.1999, p. 16).
- (ix) To implement the second paragraph of subparagraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council relating to cocoa and chocolate products intended for human consumption (OJ No L 197, 3.8.2000, p. 19).
- (x) To amend the Food (Lot Marking) Regulations 1996, in England, to take account of the repeal and replacement of Council Directive 89/396/EEC (OJ No L 186, 30.6.1989, p.12) by Directive 2011/91/EC of the European Parliament and of the Council on indications or marks identifying the lot to which a foodstuff belongs (OJ No L 334, 16.12.2011, p. 1).

## 2. What evidence has informed the PIR? (Maximum 5 lines)

The projected net annual impact on business of the Food Implementation Regulations (FIR) was £0 per annum, according to the Impact Assessment. Given that the overall cost of implementing these regulations was set at -£6,700, which represented the cost of enforcers changing over to the new enforcement regime, this will be an extremely light touch review. This review was carried out in July and August 2019 through discussions with a range of stakeholders and an assessment of available data from enforcement agencies, as well as relevant externally commissioned research by Defra.

This review primarily focused on whether the enforcement provisions (including improvement notices) as provided by the Food Information Regulations 2014 (FIR) are fulfilling their objectives. In addition, this review looked at the effect of the national measure on minced meat. During our discussions with stakeholders, there was no mention of the effect of other national measures or derogations included in FIR. Following [statutory guidance on proportionality \(Producing Post Implementation Reviews- Principles of best practice\)](#), we have made efficient use of existing information and not sought further responses on these matters.

Defra's food labelling team engaged with key personnel from meat production trade associations (National Craft Butchers and the British Meat Processors Association), as well as the Food Standards Agency and local Trading Standards Officers, both of whom handle enforcement. In addition, the labelling team spoke to colleagues from enforcement agencies in the devolved administrations.

This review utilised two pieces of research commissioned by Defra: The baseline evaluation of EU Food Information to Consumers (Defra, 2014)<sup>1</sup>; and the Follow-Up Study of EU Food Information to Consumers (Defra, forthcoming)<sup>2</sup>. The studies aimed to understand the impact of FIC, and by extension, FIR, on consumers and businesses. Both studies utilised the same mixed-methods design involving both qualitative and quantitative research with consumers and businesses. The approach consisted of: a rapid evidence assessment; an omnibus survey of over 1600 main shoppers in the UK; in-store and online accompanied shops (90 observations), telephone surveys with over 1000 food businesses; and in-depth qualitative interviews with large food business (7 in the baseline and 15 in the follow up). The results of this research showed improvements in access to and use of food information by consumers, although the research did note that engagement with labels was still fairly low.

The broader, ongoing work of the food labelling team also fed into this analysis, including Defra's continuous engagement with various stakeholder groups, each convening several times per year, over a number of years. These groups include:

- The EU Working Group on the provision of food information to consumers;
- The Food Business Expert Group, which deals with a range of implementation and interpretation issues;
- The Food Labelling and Standards Enforcement Group (Trading Standards Regulation Representation); and
- The Food and Drink Federation Food Law and Labelling Committee.

Defra has already undertaken a specific review of allergen labelling<sup>3</sup>. This topic was out of scope for this review and not included to avoid duplication.

<sup>1</sup> Defra (2014). *Baseline evaluation of EU Food Information to Consumers*.

<sup>2</sup> Defra (forthcoming). *Follow Up Study of EU Food Information to Consumers*.

<sup>3</sup> Defra and FSA (2019). *Consultation outcome: Summary of Responses and government response*. <https://www.gov.uk/government/consultations/food-labelling-changing-food-allergen-information-laws/outcome/summary-of-responses-and-government-response>

### 3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The policy objectives have been fully realised. Domestic regulations were put in place to implement FIC. Businesses have been able to comply and enforcement has been in line with expectations. Trading Standards Officers and other representatives of enforcement agencies have emphasised that Improvement Notices are useful enforcement tools and that overall compliance has been good. Moreover, national measures have provided necessary flexibility for both consumers and businesses.

With regards to the impacts of these regulations on businesses, Defra's baseline evaluation and follow up study of FIC (Defra, 2014 and Defra, forthcoming) looked at whether the main objectives of FIC had been achieved and how key indicators had changed from the baseline study. The results of this research suggest that the way FIC has been implemented through the FIR has not represented an undue burden for businesses. In particular, the research noted that:

*'Despite incurring some costs, overall the changes [to FIC and FIR] have had little impact on businesses [...].'* Of the businesses that incurred costs, only a small number [5-10% of retailers and manufacturers surveyed] described this as a heavy burden. (Defra, forthcoming, Section 7.2 p. 38).

The same research suggested that consumer confidence in food labels is at a higher level following the implementation of Regulation (EU) No. 1169/2011 on Food Information to Consumers by the Food Information Regulations 2014:

*"There was [also] an eight-percentage point increase from the baseline study in the proportion of shoppers who feel labels provide accurate information, rising from 70% to 78%... Many further noted that they trusted that the information provided would be accurate enough for them to assess both the content and quality of the product. A small number reasoned that this was because they had recently noticed that 'additional scrutiny' had been placed on food producers and manufacturers to ensure the accuracy of food information."* (Defra, forthcoming, Section 2.2, p. 13)

With regards to the national measure on minced meat, the members from National Craft Butchers and the British Meat Processors Association stated that businesses had found this derogation useful and would prefer that the Regulation continued in its current form. A representative from Food Standards Scotland stated that it was difficult for UK meat producers to meet EU compositional standards for minced meat, especially with regards to the exact ratios of fat and connective tissue, and that this derogation therefore prevented undue burden from falling to businesses.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed:



Date: 02/09/2019

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

It was assumed that consumer confidence in labels would be strong following the coming into force of Food Information Regulations 2014 (FIR) as these regulations implement the Food Information to Consumers Regulations (FIC) and provide an effective enforcement regime for ensuring compliance with FIC. The predicted effect of implementation of FIC was that it would improve the protection of consumers from misleading food information.

It was assumed that there would be some small scale financial costs for local authorities associated with familiarising themselves with the new enforcement provisions in FIR (around £6,700), but that overall the costs to businesses of changes to enforcement provisions would be low.

It was also assumed that this version of FIR, including the derogations and national measures, would not put undue burden on business, following consultation with businesses about what form the legislation should take. The current form of FIR allows for the retention of the national measure on minced meat which allows FBOs to produce meat that is appropriate to the UK market place but does not comply with EU compositional standards.

### 5. Were there any unintended consequences? (Maximum 5 lines)

Anecdotal evidence from Trading Standards indicated that improvement notices might be an imperfect tool in situations where a food label breaches multiple provisions of food labelling legislation because of the way different provisions of the regulation interact and because the advice on the use of improvement notices is to provide individual, highly specific, improvement notices for each breach. FIR provides for 71 different breaches for which notices may be served, and sometimes more than one type of breach may apply to a specific labelling issue, making it difficult for enforcement officers to decide how to proceed in such situations. This suggests that the lack of clarity around protocol for enforcing multiple breaches in a single product was an unintended consequence of the move to improvement notices.

No unintended consequences were observed regarding the derogation on minced meat, though an unexpected outcome observed by members of the meat processing trade associations was that the stratification of the types of minced meat on sale in the UK has become clearer to consumers.

### 6. Has the evidence identified any opportunities for reducing the burden on business?

(Maximum 5 lines)

No. As projected in the IA, FIR has had little to no financial impacts on businesses. The Impact Assessment projected £0 net costs to businesses and the Kantar research on the impacts of FIC and FIR (Defra, forthcoming) suggested that the combined costs of implementing both sets of regulations (FIC and FIR) did not represent a heavy burden for the majority of businesses.

Specifically, the members of the meat producers trading association who were surveyed were clear that the FIR as they stood were satisfactory and that they would not welcome further changes to the legislation having become accustomed to the standard legislation. This suggests that there are no opportunities for reducing burden on businesses in this area.

**7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? (Maximum 5 lines)**

As full participants in the European Commission Working Group on FIC 1169/2011 we have access to information from other Member States about potential costs to businesses arising from labelling legislation. There has been no indication so far that the UK's implementation is significantly more or less stringent to that in other EU Member States.