

Background

Nutrition in the form of sugar content has come under media spotlight again recently with the new government [childhood obesity strategy](#) criticised by a celebrity chef in a Channel 4 “[Dispatches](#)” programme. The strategy confirms the well-publicised “sugar tax” on soft drinks but does not go so far as to ban adverts on “unhealthy food” during programmes commonly watched by children, or the promotion of sweets at supermarket checkouts.

In the wake of all this attention, it is worth remembering that the legal requirements in relation to nutrition information on foods change in December 2016 in any event, under EU Regulation (EU) No. 1169/2011 on the provision of food information to consumers (the “EU FIC”). As a Regulation, the provisions are directly applicable in all Member States, including the UK. Post Brexit, the future applicability of this Regulation is as yet uncertain, but at the very least in the interim period it will continue to govern the provision of food information in the UK.

The EU FIC came largely into force on 13 December 2014. The regulations required food business operators to: (i) make allergen information available for non-pre-packed/loose foods for the first time; (ii) highlight allergens in lists of ingredients for pre-packed foods; (iii) ensure food information is more legible (for example by introducing a minimum font size on labels); and (iv) include mandatory origin labelling in certain circumstances. However, the EU FIC will also require a **mandatory nutrition declaration** for most pre-packed products from **13 December 2016**.

The Requirements: Pre-packed Foods

The mandatory nutrition declaration must include: energy value; and the amounts of fat, saturates, carbohydrate, sugars, protein and salt. Although many of us in the UK are familiar with nutrition information being provided on pre-packed foods, this is the first time that the information will be compulsory under EU law. Furthermore, the EU FIC not only makes the provision of information mandatory for most pre-packed products, it also prescribes which nutrition information must be given and the way in which the information must be shown.

The regulation requires nutrient information to be given per 100ml or 100g, although portion information can also be given voluntarily. The nutrients must be given in a particular order specified under the regulation, usually in table form and of a minimum font size. Information on supplementary nutrients (including mono-unsaturates, polyunsaturates, polyols, starch, fibre, vitamins and minerals) is voluntary but if given, again must be in a specified order.

Some of the requirements of the EU FIC will be less familiar for UK consumers, for example, the requirement for energy information to be given in kilojoules, as well as calories. Furthermore, the nutrition declaration will need to be on the “back of pack”. In the UK, front of pack information has been fairly common for a number of products over recent years. Under the EU FIC, voluntary front of pack declarations are permitted but if these are provided, they must be in the correct order and per 100g/100ml. As such, front of pack “traffic light” labelling would not be prohibited under the provisions of the EU FIC (although there are of course complaints from other member states that this labelling scheme represents a barrier to trade into the UK market).

Use of the term “recommended daily amount” or “RDA” is also not permitted under the EU FIC (this is replaced by “reference intake” or “RI”). Annexes to the Regulation details what the daily reference intakes for adults are. The percentage of reference intakes for nutritional values may be included, but this is not mandatory (except for vitamins/minerals).

Alcohol over 1.2% is currently exempt from the mandatory requirement, along with some other products, including teas, coffees and chewing gum. However, there have been calls from MEPs over recent years to require alcoholic drinks producers to include calorie information, so this may be an area to watch for the future.

The requirements in relation to how the nutritional information is shown have applied since December 2014 to any products where nutritional information was given voluntarily.

Given the likely time frames for any producer to process packaging/artwork changes on a pre-packed food product, together with the fact that nutrition information is given for lots of products in the UK already, it is perhaps the case that many products are already compliant with the nutrition requirements of the EU FIC. However, in the “countdown” to 13 December, it may be sensible for food producers and retailers to check that any required changes have been made.

Non Pre-packed Food

There is no requirement for nutrition information to be provided at all for non-prepacked food (for example, food sold in a restaurant or on a delicatessen counter). However, if nutrition information is provided voluntarily for such foods, the format provided must be either: the full “mandatory” nutrition declaration; energy value only; or energy, plus fat, saturates, sugars and salt.

Enforcement

In England and Wales, the primary enforcement mechanism for these provisions will be improvement notices, but failure to comply in Scotland may be dealt with from the outset as a criminal offence. In Scotland, enforcement authorities also have the power to seize or detain food where it appears that food information law is being contravened.

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