



## Legal NewsBITE: Food and Drink Quarterly

March 2021

### UK Consultation on Enforcement of Restrictions on Products High in Fat, Salt and Sugar (HFSS)

A [consultation](#) on the enforcement of new HFSS restrictions in a retail setting ran until 22 February 2021. It related to changes due to come into force in April 2022, covering a wide range of product categories, including soft drinks, crisps/snacks, breakfast cereals, confectionery, ice cream, cakes, biscuits and ready meals. The consultation sought views on the text of the draft regulations and the government's proposed technical definitions of in-store areas where promotions of multibuy/extra free HFSS products will be restricted (namely store entrances, aisle ends and checkouts for stores over 2,000 square feet and "equivalent" locations online). It is proposed that equivalent locations online will include the homepage; the promotion of HFSS products when a customer is browsing other food categories (i.e. landing pages); and "view basket" or "proceed to payment" pages.

### Russia Update: Mandatory Digital Marking for Food and Beverages and Changes to Declaration of Conformity Procedures

This year, certain foods and beverages imported into the Russian Federation should be marked by means of identification (Data Matrix Code) and registered in the [Russian track and trace digital system](#) before they undergo customs procedures. The government of the Russian Federation has stipulated dates for the introduction of mandatory digital marking as follows:

- from 1 June 2021 – cheese and ice cream
- from 1 September 2021 – dairy with storage period for more than 40 days
- from 1 December 2021 – dairy with storage period for less than 40 days (inclusive)

Digital marking trials of bottled drinking water have been extended until 1 June 2021. From 1 April 2021 to 31 August 2022, a trial is being conducted on the marking of beer, and certain types of low-alcohol drinks. Manufacturers participate in the trials on a voluntary basis.

The requirements do not apply to goods that undergo customs procedures to be exported outside the Eurasian Economic Union (EAEU); samples of goods intended for testing in order to assess the conformity with the requirements of technical regulations; goods that are sold in duty-free shops; goods imported by individuals for personal use; and a number of limited exceptions.

From the date digital marking of goods is introduced for the relevant product-types, transportation, purchase and sale of unmarked goods by legal entities and individual entrepreneurs will be prohibited.

All of these product categories (and other types of food and drink), except for some specialised food products, e.g. athletes and dietary nutrition, baby food, etc. where the Certificate of Registration is required, will also be affected by changes to procedures for declarations of conformity (EAC Declarations) in Russia. For further details, please see our [article](#) on these changes.

### Application of Single-use Plastic Directive (SUPD) from 3 July 2021

EU Directive 2019/904 on the reduction of the impact of certain plastic products on the environment (SUPD) sets out a number of restrictions (i.e. bans) and requirements that will begin to apply from 3 July 2021, to a number of specified single-use plastic (SUP) items across the EU. Banned products will include cotton buds, disposable cutlery and crockery, drinking straws, stirrers and balloon sticks made of plastic, as well as take-away food containers, drinking cups and receptacles made of polystyrene. A number of producers are developing plastic-free alternatives ahead of the regulations coming into force, although the SUPD includes an expansive definition of plastic, which will potentially "capture" many uses of polymers (except natural polymers that have not been chemically modified), for example, when a polymer is also used as a coating on a product to protect the exterior surface. For further detail, please see our [briefing paper](#) when the SUPD was issued in late 2018.

The SUPD is, of course, part of wider plastics policy measures to take into account; and we also have briefing papers available on the [Green Deal](#) and updated [Circular Economy package](#), which contain information about further plans for plastics policy at EU level.



### UK's First Injunction Secured Under Trade Secrets Regulations

US company Celgard, LLC has secured an interim injunction against its rival, Chinese company Shenzhen Senior Technology Material Co Ltd (Senior), that prevents Senior from importing or supplying its battery accessory products into the UK. The court found there was a likelihood that Senior had misused Celgard's confidential information and trade secrets, and that the UK was the most appropriate forum to try the dispute. The judgment makes clear that claimants retain their equitable rights in confidential information and have additional rights under the Trade Secrets Regulations.

This is the first injunction under the relatively new UK Trade Secrets Regulations 2018, based on the EU Trade Secrets Directive. The judgment, which has now been confirmed on appeal to the Court of Appeal, contains a number of helpful clarifications on the approach that the UK courts will take to the protection of confidential information, particularly on a cross-border basis. These principles will apply to the protection of recipes and product formulation in the food sector, as well as to other types of trade secret. For further details on the case and the judgment, please see our [blog](#).

## Food Standards Agency (FSA) Updates Guidance on Allergen Law Changes Ahead of October 2021

In February, the FSA updated its [guidance](#) on the changes that will take effect on 1 October 2021 for foods that are “prepacked for direct sale” (PPDS foods). PPDS foods are foods that are packaged at the same place where they are offered for sale/sold to consumers (excluding products that are only packaged on request by the consumer). Typical examples might include sandwiches made on site at a shop and displayed in a fridge or display unit for consumers to self-select, as well as products that are pre-packed on site and kept behind the counter. The changes will require such products to be labelled with ingredients; and the allergens will need to be highlighted in the ingredients list, in the same way that they are for other types of prepacked food. These changes will primarily impact the retailers of these foods. However, they will also mean that retailers require more information from their suppliers, to help meet the obligations.

## UK Government Chemist Article on the Impact of COVID-19 on Food Fraud

The [article](#) identified a small increase in official food fraud alerts since the onset of the pandemic and greater press coverage of these incidents. The definition of food fraud, as referred to in the article, includes deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging; or false or misleading statements made about a product for economic gain. The article refers to concerns prompted by counterfeiting and fraud seen in sanitiser products and personal protective equipment (PPE); and reports that the Food Authenticity Network have concluded that “the conditions created by the pandemic have increased food fraud vulnerability but that there was insufficient evidence of ‘dramatic’ increases in specific COVID-19-related food fraud incidents”. It is likely that authorities will continue to monitor for evidence of food fraud in light of such concerns.

## Consultation on Proposed Amendments to UK’s Domestic Food Law (and Unfortified Flour Exemptions)

The Department for the Environment, Food and Rural Affairs (DEFRA) is consulting on changes to certain rules in England for products including meat, fruit curds, mincemeat, spreadable fats and flour, following the end of the Brexit transition period. The proposal is to remove the recognition clauses from the relevant product-specific regulations to require imports from the EU/EEA and Turkey to meet England’s standards in future, as other countries have to (products from these countries were previously permitted to be sold in England, even though they did not meet national standards, because of the principle of “mutual recognition” of each other’s goods within the EU). However, to ensure manufacturers can retain access to non-fortified flour, there is also a proposal to extend provisions allowing the selling of such flour for export, to also include the use of such flour in manufacturing products destined for export. The [consultation](#) is open until 22 March 2021.

## UK CBD Update – Complaint Against CBD-infused Gin Upheld and Deadline for Novel Food Applications Approaches

The Portman Group issued a [press release](#) summarising the [decision](#) and the complaint, which related to an alleged association with, acceptance of, or allusion to, illicit drugs and an alleged suggestion that the product had therapeutic qualities, can enhance mental or physical capabilities, or change mood or behaviour. Both grounds were upheld.

As we have previously reported, novel food applications must be submitted for ingestible CBD products by 31 March 2021. The FSA has [reminded](#) operators that only products that were on sale in February 2020, and are linked to a validated novel foods application, should remain on sale from 1 April 2021.

## European Commission Opens Formal Investigation Into Suspected Anticompetitive Practices by Mondelēz in the EU

As we reported previously, Mondelēz, one of the biggest producers of chocolate, biscuits and coffee in the EU, was the recipient of “dawn raids” at several of its premises in the EU by the European Commission as part of an investigation into suspected anticompetitive practices. The Commission has now published a press release confirming a formal antitrust investigation to assess whether Mondelēz has restricted competition in a range of national markets by hindering the cross-border trade between EU member states, which would be in breach of EU antitrust rules.

In particular, the Commission will investigate certain potentially anticompetitive practices by Mondelēz, including:

- Possible limitations of the sales territories within the EU through agreements that determine in which member state a trader can or cannot sell the products, or that restrict passive sales
- Possible curtailing of parallel trade through agreements that raise prices or limit volumes specifically for customers that trade the products across member states
- Possible agreements with customers not to engage in parallel trade or not to procure products from parallel trade, *inter alia*, in exchange for payments or other forms of compensation
- Possible restrictions on the languages used on packaging either unilaterally or through agreements with traders, thereby creating friction on sales to certain other EU member states
- Possibly refusing to supply certain traders with a view to restricting imports into certain markets

The opening of an investigation does not automatically mean that the European Commission has concluded there has been any infringement of the competition rules, nor does it prejudge the outcome of the investigation itself. There is no statutory time limit within which the investigation must be concluded.

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