

On 30<sup>th</sup> August, Sainsbury’s [announced](#) that it would be making a number of changes to its packaging labels across a range of fresh produce and dairy products. The move has already begun, with “best before” dates being removed from over 100 fresh lines, including pears, onions, tomatoes, and citrus fruit, with another 130 lines to follow over the coming weeks. Sainsbury’s hopes the move will halve food waste in its own operations by 2030 and help UK households save 11,000 tonnes of food.

In a slightly more unusual move, Sainsbury’s has also made the decision to remove “use-by” dates on all of its own-brand yoghurts, replacing them with best before dates, although that follows on from Morrison’s [announcing](#) earlier this year that it would move to best before dates for milk.

The move to ditch best before dates has been gaining traction, with supermarkets such as [Waitrose](#), [Asda](#), and [Marks & Spencer](#) also committing to removing best before dates and reduce waste. This arguably stems from [Tesco](#) taking the plunge in 2018, to be the first supermarket to drop the reference.

Use by dates are required for foods that are highly perishable from a microbiological perspective and therefore likely, after a short period, to constitute an immediate danger to human health (see further below). They are typically used for food that is required to be refrigerated, including dairy products such as yoghurts. However, Sainsbury’s has indicated that testing shows that its yoghurt is safe to eat past its expiry date. Best before dates are an indicator of quality rather than safety, meaning that once food has passed its best before date, it will be safe to eat after this date but may not be at its best, when it comes to flavour and texture.

The goal of these changes is to reduce waste and lessen environmental impact. The Waste and Resources Action Programme (WRAP) has published [research](#) showing that approximately 54,000 tonnes of yoghurt is wasted per year, of which 50% is believed to be unopened packs of yoghurt. However, businesses will need to be mindful of their food safety and labelling obligations.

## Regulatory Requirements – Overview

The relevant legislation setting out the underlying obligations for food business operators includes the UK-retained EU regulation on food information for consumers (Regulation (EU) No 1169/2011)(EU FIC) and the UK-retained EU General Food Law Regulation (Regulation (EU) No. 178/2002)(EU General Food Regulation), which are enforced in the UK under the General Food Regulations 2004, the Food Information Regulations 2014 and the Food Safety and Hygiene (England) Regulations 2013 (and, in the case of the Food Information Regulations and the Food Safety and Hygiene Regulations, under separate but similar regulations in the devolved nations).

In particular, the EU FIC also makes it mandatory to label pre-packaged foods with dates of minimum durability, and the EU General Food Regulation prevents unsafe food being placed on the market. The EU FIC provides that, after the use-by date, food shall be deemed unsafe.

In addition, the UK’s Food Safety Act 1990 makes it an offence to sell food that is not of the nature, substance or quality demanded, which can be relevant to the sale of spoiled food and drink products.

## Best Before Dates

In terms of specific requirements on format, the EU FIC prescribes the words “best before” when the date includes an indication of the day, or “best before end” in other cases. There is a general principle that the date shall consist of the day, the month and, possibly, the year, in that order and in uncoded format. However, in the case of some foods, the date format can be shortened depending on how long it will keep (the provisions allow other formats for durations longer than three months, and for foods which have a minimum durability date of 18 months or longer, an indication of the year is sufficient). Where necessary or appropriate, a description of the storage conditions is also required, in order for the product to keep for the relevant period.

Best before dates are not required under the EU FIC for:

- Fresh fruit and vegetables, including potatoes, that have not been peeled, cut or similarly treated (this exception underlies the recent move to remove dates for these types of products)
- Sprouting seeds and similar products such as legume sprouts
- Wines
- Alcoholic drinks with alcohol by volume of 10% or more
- Certain bakery goods
- Condiments including vinegar, cooking salt and solid sugar
- Sugary confectionery products

## Use-by Dates

As summarised above, a use-by date is only mandatory for pre-packed food (and drinks) that, from a microbiological point of view, are highly perishable and therefore likely, after a short period, to constitute an immediate danger to human health.

The EU FIC provides that, when applying a use-by date, steps should be taken to ensure that the words “use by;” followed by either the date or its location on the labelling (e.g. “see bottom of pack”), are included. As with best before dates, the date must consist of the day, the month and, possibly, the year, in that order and in an uncoded format (e.g. long format date such as 31 December 2020).

## Enforcement

A failure to comply with labelling requirements may be enforced by the service of an improvement notice under the Food Information Regulations 2014 (and separate but similar regulations in Wales and Northern Ireland). It is a criminal offence to fail to comply with such a notice. In Scotland, breaches of the labelling provisions may be prosecuted in the first instance. In all jurisdictions, breach of food safety requirements, or selling unsafe food, is an offence that can be prosecuted under the General Food Regulations 2004, the Food Safety and Hygiene (England) Regulations 2013 and/or the Food Safety Act 1990 (or equivalent provisions in the devolved nations, where applicable).

As we have previously [reported](#), fines for breaches of the requirements can be significant (with a supermarket being fined over £7.5 million for selling food beyond its use-by date in recent years).

## Conclusion

If a business is considering removing use-by dates from certain food products, then it should take reasonable precautions to ensure that those products are not highly perishable/are not likely, after a short period, to constitute an immediate danger to human health. For the removal of best before dates, if it is a pre-packaged product, the business should ensure that the product is of a type exempt from the requirement for dates of durability under the provisions of the EU FIC.

For both use-by and best before dates, the operator should also check that dates are in the correct format, and retailers must continue to remove produce from shelves that is past its use by date (and therefore deemed unsafe) and remove produce which has deteriorated such that it is not of suitable quality.

In many instances though, the consumer will need to consider whether the product is suitable for consumption after purchase. It is recommended by the [Food Standards Agency](#) to look for signs that the food has spoiled or is beginning to spoil (such as visible mould on bread), touch to see if foods are stale, or sniff/smell some dairy products to see if they have soured.

As environmental concerns continue to rise, along with the impact of the cost-of-living crisis and the potential for a food crisis, it is likely that we will start to see more retailers following the trend of scrapping best before dates – or see the trend being extended to additional product categories – so bearing these principles in mind is likely to be increasingly important both for businesses and consumers.

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