

We reported in [November](#) on the EU Food Information for Consumers Regulation (the "EU FIC"), which will apply in the UK from 13 December 2014. Following a three month consultation which closed some 18 months ago, regulations to enforce certain provisions of the EU FIC in England were finally laid before Parliament on 15 July and a summary of responses to the consultation has also been published by DEFRA. These regulations are the Food Information Regulations 2014 (the "2014 Regulations").

As set out in our earlier newsletter, the EU FIC will mean a number of significant changes for the labelling of pre-packed food; and also for the provision of information on non-pre-packed foods, including food sold in a wide range of business premises, incorporating pubs; hotels; restaurants; take-aways; cafés; and to non- pre-packed foods supplied by caterers, for example, in staff canteens, at functions or wedding buffets.

### **Enforcement**

In England, with the implementation of the new labelling regime, the primary mechanism for enforcement will be Improvement Notices rather than prosecutions. The 2014 Regulations make it an offence to fail to comply with an Improvement Notice. Many food business operators may be familiar with Improvement Notices for dealing with food hygiene issues. There will be an appeal process available if an Improvement Notice is contested, which will effectively 'stop the clock' for the time allowed to comply, until the appeal has been heard.

However, failure to comply with allergen labelling/ information requirements for both pre-packed and loose foods may still be dealt with from the outset as a criminal prosecution. The penalty under current fine levels is £5000 per offence (level 5). However, if the proposed changes to fine levels under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are implemented in due course, magistrates will have the authority to impose an unlimited fine per offence (please see our recent blog article [Increased and Unlimited Fines In The UK Magistrates' Court: The Realm Of The Speeding Motorist?](#) on this issue).

In addition, the summary of responses to the consultation notes that the Improvement Notice approach does not affect criminal prosecutions being taken under other legislation for fraud where appropriate.

Improvement notices will not be adopted for breach of the 2014 Regulations in Wales, nor in Scotland (subject in Scotland to the wider consideration of enforcement strategy to be adopted by its new food body). There is no reason given in the consultation document as to why Improvement Notices will only be adopted under this legislation for enforcement in England.

Responsibility for the information on labels under the EU FIC rests with the operator under whose name the food is marketed or the importer into the EU (so for 'own brand' products, the responsibility will therefore rest with the brand). However, even operators (including retailers) who do not affect the information at all, must not supply food which they know or presume has non-compliant labelling.

### **Allergen Information**

Under the rules in the EU FIC, the 14 food allergens listed (including peanuts, milk, eggs and cereals containing gluten) will need to be specifically highlighted to customers for both pre-packed and loose foods.

For loose foods, for example, non-prepacked foods on a delicatessen counter, or food in a restaurant, the summary of consultation responses confirms that in England, operators will be able to provide allergy information in the ways that best suit their individual business, including orally if strict conditions are adhered to. Other means of providing the information could include a menu, a chalkboard, or sign/ notice. It may be more difficult to demonstrate effective compliance if a business relies only on verbal communication by staff, but oral information may be the only option for some businesses, for example those taking orders by phone.

Therefore, if they haven't done so already, hospitality and leisure operators selling non pre-packed food should review their menus, train staff, engage with suppliers as to ingredients and review food preparation (in terms of cross-contamination) over the coming months, to ensure that they will be in a position to comply with the 2014 Regulations from 13 December 2014 onwards. Beer is classed as food and therefore allergen information should also be available for draft beers (allergens for beer may include cereals and sulphites).

The new allergen requirements will also apply to labels on pre-packed foods. Pre-packed foods are single items for presentation as such to the final consumer (or mass caterers) consisting only of the food and the packaging, for example a packet of crisps, or a bottle of beer. Pre-packed foods containing any of the 14 allergenic ingredients must be labelled so that the allergenic ingredients are clearly referred to. Allergens must be emphasised in the ingredients list of a product using a different typeset (for example bold) and a number of operators have already amended their current labels in line with the new requirements.

The 'allergy information boxes' that customers in the UK are familiar with will not be permitted if they repeat the allergens in the ingredients list, but can be used to refer customers to the ingredients list. Alcohol, including wine, will not be exempt from allergen requirements and producers will need to provide allergen information where ingredients are derived from one or more of the 14 allergens specified in the regulations.

## Additional Requirements

Other changes for pre-packed foods in the EU FIC include font size requirements for general mandatory particulars; use by dates to be given on each individual pre-packed portion; and the introduction of compulsory country of origin labelling for certain products. Compulsory nutrition labelling will be in force from 13 December 2016. Any voluntary nutrition labelling provided before 13 December 2016 but after 13 December 2014, will be required to be given in the new format.

## Retention of National Measures

The 2014 Regulations retain the existing national requirement to name non-pre-packed foods (which is not a specific requirement of the EU FIC). This means that for loose foods, the legal name of the food (if there is one e.g. for certain fish species), or the customary name (e.g. 'bakewell tart') or a descriptive name which indicates the true nature of the food, must be given. The name must appear on a label attached to the food, or (which is more likely for loose foods) on a notice, ticket or label that can be easily read by a customer in the place where they choose that food.

The summary of responses to the consultation confirms that this stance has been adopted to help the customer remain informed, keep a 'level playing field' with sellers of pre-packed food and provide clarity for enforcement officers. In addition, for loose meat products, the existing national requirement to state the quantity of certain ingredients will be retained.

For alcoholic drinks, the terms 'low alcohol', 'alcohol free', 'de-alcoholised' and 'non-alcoholic' will continue to be applicable in the medium term. These terms are currently defined by the Food Labelling Regulations 1996:

- Low alcohol (not more than alc. 1.2% by volume)
- Alcohol free (not more than alc. 0.05% by volume)

- De-alcoholised (not more than alc.0.5%)
- Non-alcoholic (for non-alcoholic wine made from unfermented grape juice intended exclusively for communion or sacramental use).

The Government intend to delay the revocation of these existing provisions following the 'coming into force' date of the EU FIC for a further four years (which they are permitted to do). After this time, they will, however, lapse, unless further legislation in the meantime.

Similarly, the existing provisions in the 1996 Food Labelling Regulations for cheese and cream compositional and labelling standards will not be revoked for a further four years. However, for ice-cream specific provisions will lapse (the summary of consultation responses notes that the European Ice Cream Association's voluntary 'Code for Edible Ices' provides industry with the flexibility it requires and meets customer expectations.

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