

# Food labelling: on the Cusp of Change

## Jonathan Goulding and Anna Medvinskaia

Food labelling in the United Kingdom is governed by the 1996 Food Labelling Regulations (“the FLR”). The regime is tremendously prescriptive and complicated, attracting criminal sanctions for non-compliance. Compliance will not be rendered any easier however, as these rules are about to be replaced by yet more complicated ones. The Food Information Regulations 2014, which provide for the enforcement of Regulation 1169/2011 (“the Food Information Regulation”), are due to come into force on 13<sup>th</sup> December of this year (2014).<sup>1</sup>

The FLR have been on the statute books since 1<sup>st</sup> July 1996. They repealed previous food labelling Regulations when they came into force and were subsequently amended to implement Directive 2000/13/EC on food labelling.

### The General Food Labelling Requirement

The core provisions on food labelling are to be found in part II of the FLR, which applies to food which is ready for delivery to the ultimate consumer or to a catering establishment.

The general labelling requirement is contained in regulation 5 of the FLR, which requires all food to which Part II applies to be marked or labelled with:

- (i) the name of the food;
- (ii) a list of ingredients and the quantity of certain ingredients or category of ingredients;
- (iii) the appropriate durability indication;

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<sup>1</sup> A number of provisions are already in force however (see reg. 1(6)), whilst others are due to come into force in December 2016 (see reg. 1(7)) and December 2018 (see reg. 1(8)). A number of regulations will also cease to have effect in December 2021 (see reg. 1(9)).

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- (iv) any special storage conditions or conditions of use;
- (v) the name or business name and an address or registered office of either or both of –
  - (a) the manufacturer or packer, or
  - (b) a seller established within the European Community.
- (vi) particulars of the place of origin or provenance of the food if failure to give such particulars might mislead a purchaser to a material degree as to the true origin or provenance of the food; and
- (vii) instructions for use if it would be difficult to make appropriate use of the food in the absence of such instructions.

It is a criminal offence to sell any food which is not marked or labelled in accordance with the provisions of Part II of the FLR (reg. 44(1) FLR), punishable on summary conviction to a fine not exceeding level 5 on the standard scale, which at present is £5,000.

The specific labelling requirements are compulsory for all food covered by Part II, subject to a number of exceptions provided for in regulation 4(2) FLR, which must be addressed by practitioners when advising a client about a specific food product. In general terms however the FLR apply to most everyday packaged food products.

### Marketing names

In addition to the general labelling requirements set out in regulation 5, Part II of the FLR contains further regulations setting out more specific rules for compliance. For example, regulation 9 provides that the name of a food may consist of:

- a name or description; or

- a name and description,

and may contain more than one word.

According to the authors of Butterworth's Law of Food and Drugs, this regulation allows a product to bear an attractive marketing name, so long as additional words are used to satisfy the requirements of regulation 8.

Regulation 8, in turn, provides that if no legal or customary name is available for a food (such as “cheese”), a descriptive name may be used provided it is

“sufficiently precise to inform a purchaser of the true nature of the food and to enable the food to be distinguished from products with which it could be confused and, if necessary, shall include description of its use”.

#### List of ingredients

Regulations 12 and 13 prescribe the manner of presentation of the information relating to the ingredients of the food product.

The list of ingredients must be headed or preceded by a heading which consists of or includes the word “ingredients” (reg. 12) and when a food is marked or labelled with a list of ingredients, the ingredients should be listed in descending order of weight, determined as at the time of their use in the preparation of the food (reg. 13).

#### Appropriate durability indication

Most foods require an appropriate durability indication (i.e. a ‘best before’ date or a ‘use by’ date), unless they are excepted by regulation 22. A ‘use-by’ rather than a ‘best before’ date should be used in the case of food that

“from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health”.

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Regulation 20 governs the use of minimum durability indications (i.e. ‘best before’ dates), which must be indicated by the words ‘best before’, followed by the date up to (and including) which the food can reasonably be expected to retain its specific properties if properly stored. Further, any storage conditions which need to be observed if the food is to retain its specific properties until that date must be included.

Regulation 21 provides that where a food requires a ‘use by’ date, it shall be indicated by the words ‘use by’ followed by the date up to (and including) which the food, if properly stored, is recommended for use, and any storage conditions which need to be observed.

‘Use-by dates’ are the most controversial area in the FLR. The matter was recently considered by the Supreme Court in *Torfaen County Borough Council v. Douglas Willis Limited* [2012] [2013] UKSC 59. The Supreme Court was asked whether the offence under regulation 44(1)(d) of the FLR of selling food after the date shown in a ‘use by’ date relating to it required the prosecution to establish that the food was of the type that was required to have a ‘use by’ date under the Regulations.

The Supreme Court concluded that the offence was committed if food was sold beyond its ‘use by’ date, without the need for any analysis of whether it was of a type that was likely after a short period to constitute an immediate danger to human health.

#### Other labelling requirements

As can be seen from regulation 5, the FLR also set out prescriptive rules about any special storage conditions, name of the manufacturer or packer, particulars of place of origin and instructions for use in certain cases. These requirements must all be complied with to avoid falling foul of the FLR. In addition, the FLR contain a number of product-specific labelling requirements (see regs. 29 to 34C).

#### What next?

It can be seen that the FLR provide complex rules in respect of food labelling. It is not going to get easier. The FLR are due to be revoked by the Food Information Regulations 2014, which provide for the enforcement of the Food Information Regulation. This Regulation has been in force since November 2011, but will not apply in the UK until 13<sup>th</sup> December 2014, with the exception of the obligation to provide nutrition information (the table in mandatory form containing information about the nutritional content of the food), which will apply from 13<sup>th</sup> December 2016.

The Food Information Regulation will bring a number of important changes. Perhaps the most important change is that food sold beyond its 'use by' date will be deemed to be unsafe food even if, from a microbiological point of view, it would be fit for human consumption. Further, it will make the provision of nutrition labelling compulsory in all foods, not only where a nutritional claim is made, as is the position now.

The Food Information Regulation and the UK Regulations that provide for its enforcement must now be in the minds of all those involved in the manufacturing of food for public consumption. The scope of these Regulations will be the subject of another article to appear shortly on this website.

Jonathan Goulding

Anna Medvinskaia