



Department  
for Environment  
Food & Rural Affairs

[www.defra.gov.uk](http://www.defra.gov.uk)

**Defra Public Consultation**  
**Food Information Regulations 2013**  
**November 2012**

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

This document/publication is also available on our website at:

[www.defra.gov.uk/consult/open](http://www.defra.gov.uk/consult/open)

Any enquiries regarding this document/publication should be sent to us at:

**Food Information for Consumers consultation,  
Food Policy Unit,  
Department for Environment, Food and Rural Affairs  
Area 7E Millbank, 17 Smith Square,  
London SW1P 3JR**

Or by email to [labelling@defra.gsi.gov.uk](mailto:labelling@defra.gsi.gov.uk)

## Contents

Summary .....	1
Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) 1	
Background.....	2
The domestic statutory instrument (SI) <i>Food Information Regulations 2013</i> .....	2
National Measures .....	2
Enforcement .....	3
Application Dates .....	3
Alternatives to regulation and minimising costs .....	4
Statutory Review .....	4
Annex 1.National Measures; Definitions and claims on alcoholic drinks.....	5
Annex 2. Ice Cream, Cheese and Cream. ....	9

# Summary

## Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC)<sup>1</sup>

Defra has launched a public consultation on the Government's plans to make underpinning domestic legislation (*Food Information Regulations 2013*) to enable the FIC to be enforced in the UK.

Business and consumer groups, enforcement authorities and members of the general public are invited to contribute their views on the legislation and on an Impact Assessment and guide to compliance that Defra has prepared.

In line with the Government Consultation Principles<sup>2</sup>, the consultation will last for 12 weeks.

The aims of FIC are to improve the information provided to consumers so that they are able to make informed choices about the food they buy, and to update legislation to reflect current industry practice and consumers' changing information needs.

The proposed Statutory Instrument, the *Food Information Regulations 2013*, will also make things simpler for businesses by replacing 14 pieces of legislation with a single set of Regulations.

In bringing in legislation in support of FIC, existing regulations will be revoked. Most of the impacts of this is discussed in the Impact Assessment (IA) however there are additional questions related to

- Alcohol claims and
- Ice cream, and cheese and cream

These are discussed further in Annexes 1 and 2 of this document.

Consultees are invited to comment on these documents. The following summary is intended to help stakeholders understand what the changes mean, and to provide an overview of their impact. An Impact Assessment which includes specific consultation questions on the various impacts of the legislation has been prepared by Defra working with the Department of Health, Food Standards Agency and equivalent organisations in Northern Ireland, Scotland and Wales.

Consultees are also asked to respond to the following general questions;

---

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

<sup>2</sup> <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

- Do you agree with the proposed approach outlined in option 1 in which regulatory burden is, wherever possible avoided? Specifically, do you agree with the proposed approach to national measures outlined in that section below? (see paras 3-7)
- Do you agree with the proposed approach to enforcement, which avoids immediate front-line offences except where non-compliance poses an immediate risk to consumers? (see para 8)

## Background

- 1) FIC is a large technical Regulation covering a number of high profile issues including:
  - Mandatory nutrition declaration and voluntary front of pack nutrition labelling;
  - Ingredients and nutrition labelling of alcoholic drinks;
  - Provision of information for non-prepacked foods;
  - Clarity of food labels and minimum font size;
  - Labelling of vegetable oil including palm oil;
  - Labelling of engineered nano-materials;
  - Quantity labelling;
  - Country of origin labelling;
  - Labelling and information on allergenic ingredients.

## The domestic statutory instrument (SI) *Food Information Regulations 2013*

- 2) FIC was published in the Official Journal of the European Union on 22 November 2011. As an EU Regulation, it is directly applicable. This means that, as a matter of law, operators will have to comply with the provisions of FIC from the dates that they apply. However it is necessary for the Government to put in place domestic legislation in order to enforce the FIC provisions and in order to take advantage of derogations that serve UK interests (and which otherwise would not apply). The **Statutory Instrument (SI)** will take advantage of FIC derogations and will provide enforcement provisions to allow enforcement authorities to take action where food information is not provided correctly in accordance with FIC.

## National Measures

- 3) The FIC provides a number of options for derogations and other national measures to be taken. Where these reduce the burden on businesses to provide information our preferred option is that these measures are used. Where they would place additional burdens on industry, use of the national measure is being avoided.
- 4) The SI contains a derogation in relation to **milk and milk products in glass bottles** intended for reuse and a derogation for **minced meat that does not meet the compositional requirements of FIC**. In the case of 'doorstep delivery' milk, this avoids an additional burden to the sector. In the case of minced meat, producers that

take advantage of the derogation will have to indicate that they are doing so by use of a national mark, compliant with the provisions of Article 13.2 and 13.3, indicating that the product is sold only for the UK market but otherwise it enables existing trade to continue. These derogations are therefore included in the preferred option.

- 5) There are two provisions that are not in the preferred option, but which would, if taken, maintain current practice. These are the mandatory quantitative indication of ingredients (**QUID**) declaration on meat products sold not prepacked, and the provision that the **name of food** (with or without some or all of the mandatory particulars accompanying name of food set out in Annex VI of the Regulation) should always be provided on food sold not prepacked. These are discussed further in the IA. **Standalone sections of the SI covering these provisions have been included in addition to the main SI, to be used in the event that a decision is made to include them.**
- 6) The SI also amends domestic legislation to remove a legislative obstacle affecting the transitional measures in the FIC that allow business to voluntarily adapt to some FIC provisions early. Where, under the FIC transitional arrangements, there is a choice for operators to either use the old form of nutrition declaration or use the new FIC form, the SI will amend current domestic legislation that would otherwise provides for the old form of declaration to be used. This will allow businesses the flexibility to take on board the nutrition labelling changes as part of their scheduled re-labelling cycles rather than being tied to a particular date.
- 7) The SI, by revoking the Food Labelling Regulations (FLR) 1996, removes a number of UK national measures which had been introduced in addition to the previous EU requirements. Annex 1 poses a number of questions on these, specifically claims on alcoholic drinks, with the intention to seek consultees' views on their continuing relevance and necessity.

## Enforcement

- 8) The SI provides an opportunity to introduce new and simpler enforcement provisions. It is intended that the front line measure for the majority of provisions will be an improvement notice. This would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate and the labelling contravention or issue should be elevated to formal enforcement action. If the conditions set by an improvement notice are not met this will be a criminal offence. Front-line criminal offences are also proposed where there is a contravention of FIC requirements relating to food allergen indications to protect public health. Businesses will have the opportunity to appeal against an improvement notice. This will provide a valuable safeguard.

## Application Dates

- 9) Some of the provisions of the FIC relating to the designation of minced meat will apply from 1<sup>st</sup> January 2014. Most of the provisions of FIC will apply from 13<sup>th</sup> December 2014. However some provisions, namely the requirement to provide nutrition information on a mandatory basis, will apply from 13<sup>th</sup> December 2016. The Regulation also contains some transitional provisions that are already in force. Basically, current

labelling provisions and most of the new requirements will apply in parallel until 13<sup>th</sup> December 2014, a period of three years from the date the Regulation entered into force. The aim is to allow businesses to make changes to their labels in line with their scheduled labelling cycles thereby dramatically reducing cost to business. To facilitate this, the provisions amending the Food Labelling Regulations 1996 will come into force in 2013. This removes a legal obstacle for businesses choosing to provide mandatory nutrition labelling in the new format early and on a voluntary basis.

## Alternatives to regulation and minimising costs

- 10) **We are legally obliged to put in place provisions to ensure that the FIC is enforced.** Because a directly applicable EU Regulation is involved, the scope to use alternatives to regulation is limited. However, consideration has been given to make sure that enforcement provisions are proportionate. All derogations have been considered and wherever possible are being utilised to minimise the requirements on UK businesses.
- 11) The making of the new domestic regulations to implement enforcement provisions for FIC is being done in the context of a review of the national labelling legislation and other legislation associated with labelling and of the Red Tape Challenge Existing national measures in the areas covered by the FIC are being reviewed; any duplication with the FIC is being removed. The enforcement provisions to underpin the FIC will avoid gold plating, while meeting our EU obligations. Derogations and national measures (see section above, paras 3-7) are available that benefit the UK industry or maintain UK industry practice. Final decisions made on possible derogations and national measure will take into account the views expressed in the consultation.
- 12) Food policy is a devolved matter. We will continue to work closely with Wales, Scotland and Northern Ireland in relation to the making of the domestic legislation to underpin the FIC, ensuring a consistent and coordinated approach with the other UK nations where possible. However, the other UK nations may take a different approach to take account of their legal structure and policy views.

## Statutory Review

- 13) The draft SI includes a provision for a review of the regulations 5 years after the majority of provisions bite. This will help ensure we have the chance to re-evaluate in areas where concerns are being raised. As this is a European Regulation, we are aware of the need to influence European thinking on updating the Regulation. There are a number of areas in the Regulation where the Commission is committed to review the provisions. In some cases this is to consider the need for further requirements. On important political issues, such as country of origin labelling and front of pack nutrition labelling, the impact will be assessed in due course to ensure the provisions are meeting the intended objectives and to allow for further refinement at European level and potentially further harmonisation if needed.

# Annex 1.National Measures; Definitions and claims on alcoholic drinks

## Introduction

The current legislation, the Food Labelling Regulations (FLR) 1996 (as amended), contains a number of “**national measures**” which set out definitions of and conditions for the use of certain terms on **alcoholic drinks**. When the FLR 1996 are revoked, from 13 December 2014, some of these definitions and/or their associated conditions will no longer be defined in law.

The purpose of this paper is to seek consultees' views on the value of retaining these definitions as national measures. We are also seeking views on whether they should be absorbed into voluntary guidelines, if these terms are not retained as “national measures”.

The change in the regulations will also give us the opportunity to amend the definitions either to make their conditions of use clearer or to remove inconsistencies with other provisions that may have come into force more recently. There is also an opportunity to consider the addition of further terms that are currently not defined in law.

## National terms for labelling alcoholic drinks currently defined by FLR 1996

The FLR 1996 define the conditions for the use of the following terms relating to alcoholic drinks:

- “**low alcohol**” can only be used for drinks with an alcoholic strength by volume (ABV) of not more than 1.2%
- “**alcohol-free**” for drinks with an ABV of not more than 0.05%
- “**dealcoholised**” for drinks with an ABV of not more than 0.5%
- “**non-alcoholic**” in the composite name “non-alcoholic wine” (subject to certain conditions)

## Position following revocation of FLR 1996 (from 13 December 2014)

In our view, all four of the claims listed above would still be permissible following revocation of FLR 1996.

The separate Nutrition and Health Claims Regulation (**NHCR** – Regulation (EC) No. 1924/2006) will continue to provide for (subject to national measures) **but not define** use of the term “**low alcohol**” following revocation of FLR 1996. The term “low alcohol” will therefore no longer be defined by law in the UK once the FLR 1996 are revoked. (It should be noted that the NHCR is less stringent than FLR 1996 as far as the conditions imposed on use of the term “low alcohol” are concerned. FLR 1996 permit use of the term only where the drink has an ABV of not more than 1.2%. The NHCR, on the other hand, provides for use of this claim where the ABV exceeds 1.2%..)



The claims "**alcohol-free**", "**dealcoholised**" and "**non-alcoholic**" are not explicitly covered by the NHCR, although the latter does provide for the UK to develop and implement "relevant national rules" regarding "*nutrition claims referring to.... the... absence of alcohol in beverages which normally contain alcohol*". Like "low alcohol", the terms "alcohol free", "dealcoholised" and "non-alcoholic" will therefore no longer be defined by law in the UK once the FLR 1996 are revoked.

These four terms would still be covered by the general rules set out in the Food Safety Act 1990 (Section 15), which requires that labelling should not mislead as to the nature, substance or quality of the food. Whether a breach of this more general provision had occurred would be for the courts to decide. Whilst case law would develop over time, this is a costly process, and, in the absence of specific conditions of use for these terms, there would be no clarity for the industry in the short to medium term on how and when these terms could be appropriately used. Any wider interpretation of the terms, than is currently the case, may also lead to consumer confusion, especially if applied inconsistently across different alcoholic beverages.

## Other alcohol-related claims provided for by the NHCR

In addition to the term "low alcohol", the NHCR provides for claims such as "**reduced alcohol**" and "**reduced energy**" (including for drinks containing more than 1.2% ABV), subject to national rules.

While there are, at present, no national rules controlling a "**reduced alcohol**" claim, the Government recommends, as a matter of best practice, that such claims only be made when the alcohol value is reduced by at least 30%. This is consistent with the "reduced [name of the nutrient]" claim in the Annex of the NHCR.

Similarly, the Government view on "reduced energy" claims on alcohol is that the energy value should be reduced by at least 30%, in line with the criteria for the claim "energy-reduced" in the Annex of the NHCR.

## Conclusion

The conditions for use of certain terms on the labels of alcoholic drinks permitted on a national basis by the FLR 1996 and the NHCR are summarised in the Appendix.

We would welcome consultees' views on the following questions:

- Should the terms "**low alcohol**", "**alcohol-free**", "**dealcoholised**" and "**non-alcoholic**" and their respective conditions of use be retained as national measures beyond 12 December 2014? Please provide reasons for your position.
- If these terms are retained, should they remain as currently defined? If you would advocate change, what changes would you like to see made and why?
- If these terms are no longer defined in law, should they be defined by voluntary agreement, as "best practice" or in official guidelines? Please give reasons for your answer.

- As defined above, are the terms “**reduced alcohol**” and “**reduced energy**” useful and usable on all categories of alcohol? For example: is a 30% reduction requirement for the use of both of these terms both reasonable and practical for all categories of alcohol drink?
- Are there any other terms relating to alcohol that we should consider defining in national legislation or voluntary guidelines in order to support our ambition to reduce the units of alcohol sold and to have a wider range of “lower” alcohol products on the market? If so, what terms would you like to see defined and how do you suggest defining them? Please provide reasons for your position.

**Claims on alcoholic drinks permitted by food labelling regulations 1996 (FLR 1996) and nutrition and health claims regulation (NHCR)**

<b>Claim</b>	<b>Up until (and including) 12 December 2014</b>	<b>From 13 December 2014</b>
<b>Low alcohol</b>	<b>FLR 1996:</b> Not more than 1.2% ABV <sup>3</sup>	<b>NHCR:</b> Permitted for alcoholic drinks in excess of 1.2% ABV.
<b>Alcohol-free</b>	<b>FLR 1996:</b> Not more than 0.05% ABV	Term no longer defined by law.
<b>Dealcoholised</b>	<b>FLR 1996:</b> Not more than 0.5% ABV	Term no longer defined by law.
<b>Non-alcoholic</b>	<b>FLR 1996:</b> Permitted in composite name “non-alcoholic wine” (subject to certain conditions)	Term no longer defined by law.
<b>Reduced alcohol</b>	<b>NHCR:</b> Specifically permitted for drinks in excess of 1.2% ABV.  <b>UK best practice:</b> Alcohol reduced by at least 30%.	<b>NHCR:</b> Permitted for drinks in excess of 1.2% ABV.  <b>UK best practice:</b> Alcohol reduced by at least 30%.
<b>Reduced energy</b>	<b>NHCR:</b> Specifically permitted for drinks in excess of 1.2% ABV.  <b>No specific UK legislation</b> controlling “reduced energy” claim on alcohol. Therefore, our view is that the criteria for the “reduced energy” claim in the annex of the NHCR should be used on alcoholic beverages. For example, you could simply state: “reduced energy – 30% fewer calories”	<b>NHCR:</b> Permitted for drinks in excess of 1.2% ABV.  <b>No specific UK legislation</b> controlling “reduced energy” claim on alcohol. Therefore, our view is that the criteria for the “reduced energy” claim in the annex of the NHCR should be used on alcoholic beverages. For example, you could simply state: “reduced energy – 30% fewer calories”.

<sup>3</sup> ABV = Alcoholic strength by volume

## Annex 2. Ice Cream, Cheese and Cream.

We have to decide whether it is necessary to carry forward all or some of the provisions relating to ice cream, cheese and cream that are in regulation 42 of, and Parts II and III to, the Food Labelling Regulations 1996. If the provisions are not carried forward then they cease to have legal force in the UK when the Food Labelling Regulations are revoked on 13th December 2014.

Regulation 42 of FLR, make restrictions on the composition of ice cream and dairy ice cream such that the names 'ice cream' and 'dairy ice cream' must not be used in the labelling of products that do not meet the requirements specified in the Regulations. These compositional standards correspond to those in 'Euroglace', voluntary standards which have been agreed by industry federations across the EU.

Regulation 42 and Parts II and III of the Food Labelling Regulations, make restrictions on the composition of certain types of cheese and cream such that the names appearing in the Regulations must not be used in the labelling of products that do not meet the requirements specified in the Regulations.

With the cheeses specified, this includes a maximum percentage of water in each named cheese, and that the amount of milk fat in any of those named must not be less than 48%. With the creams specified, it includes the minimum percentage of milk fat as well as other attributes, for example that 'whipped cream' has been whipped, or that 'sterilised cream' has been sterilised.

These Regulations do not apply to products which are brought into Great Britain from other European states where they are legally sold. The same restriction would apply in any national provisions that came in to replace them.

Some of the cheeses covered are additionally covered by Protected Designation of Origin (PDO) status, these being blue and white Stilton and single Gloucester. The PDO specifications for these do not overlap the provisions of the Regulations.

Cheddar cheese is covered by a Codex standard which includes compositional requirements.

Apart from these, the English cheeses covered are; Derby, Leicester, Cheshire, Dunlop, Double Gloucester, Caerphilly, Wensleydale, Lancashire.

### Questions;

Is it necessary to carry forward the ice cream, cheese and cream provisions?

What market failure would the provisions be put in place to correct?

If a market failure exists, is there a more appropriate non-regulatory solution?