Department
for Environment
Food & Rural Affairs

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The Food Information Regulations 2013

Guide to compliance

November 2012

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Introduction

1. This guide to compliance has been produced with the aim of providing informal, non-statutory guidance on the Food Information Regulations 2013 which are being consulted on between November 2012 and January 2013.

2. The following abbreviations are used;

- Food Information Regulations 2013 (FIR 2013)

- EU Food Information for Consumers Regulations (EU FIC)

3. The consultation including the draft FIR 2013 SI can be found here http://www.defra.gov.uk/consult/2012/11/07/fir-2013/

4. This guidance should be read with those Regulations. These Regulations will enable enforcement authorities to enforce Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (EU FIC). The EU FIC can be found here http://eur-lex.europa.eu/LexUriServ/LexUriServ.doc

5. Further technical guidance will be developed by the EU Commission in relation to EU FIC at a later date. Unless otherwise stated, references are given to the EU FIC for ease of use.

6. The Guide focuses on the requirements of FIR 2013 but includes an annex covering both general and nutrition labelling in EU FIC. It does not include best practice advice or interpretations of text.

7. The guide is aimed at Food Business Operators (FBOs) and enforcement officers.

8. Depending on the food business activity, other pieces of food labelling legislation may apply, such as Genetically Modified (GM) labelling, and specific rules in some other areas not covered by the EU FIC.

Provisions of the Food Information Regulations 2013 (FIR 2013)

The scope of the regulation

9. Any FBO supplying food to the public and mass caterers, or intended to be sold to the public and mass caterers, will be covered to some degree by FIR 2013. Private individuals preparing and providing food for an event are not covered unless they are preparing that food in the course of their business activities as an FBO. So, the occasional handling, preparation, storage and serving of food by private persons at events such as church, school or village fairs are not covered unless the activity is being carried out in the course of the person's business as an FBO. Foods supplied by catering services provided by transport undertakings when the place of departure is on the territories of one of the Member States are also covered.

Application dates

10. The EU FIC entered into force on 13th December 2011 but its provisions do not have to be complied with until they start to apply. The EU FIC sets out the application dates for its provisions. Some provisions start to apply in 2014. Some of the nutrition labelling requirements will start to apply in 2016. This timescale allows for the requirements to be implemented in the normal product / labelling cycle by the food industry.

11. The application dates are:

- 1 January 2014 – For the rules on the composition and labelling of minced meat;
- 13 December 2014 – For the general labelling rules, and if provided, a nutrition declaration must use the format set out in the EU FIC from this date;
- 13 December 2016 – For the rules on the mandatory nutrition declaration needed for most pre-packaged foods.

Derogation relating to milk and milk products

12. The requirements laid down in Article 9(1) and 10(1) of the EU FIC do not apply to milk or milk products presented in a glass bottle, where the glass bottle is intended for reuse.

Derogation relating to minced meat

13. Part B of Annex VI of the EU FIC gives the compositional criteria for the labelling of minced meat.

14. Minced meat sold as such in England does not need to comply with the compositional requirements in Part B of Annex VI to the EU FIC. However, if it does not comply with those requirements it must be labelled with the UK national mark "□" along with the explanatory text "For UK market". If it does comply with the compositional requirements in the table in point Part B of Annex VI to the EU FIC, then the minced meat does not need to carry the mark.

Non-prepacked foods: Allergen information

Article 44

15. In general, under the EU FIC non-prepacked foods are exempt from all labelling requirements; however, information about allergens has to be provided under that Regulation. These obligations apply in addition to any other obligations that may apply to non-prepacked foods under other legislation, e.g. the Unfair Commercial Practices Directive.

16. In the case of allergens, FBOs will need to provide information if any of the foods / ingredients listed in Annex II of the EU FIC are used in the preparation of the foods they supply. This does not include these substances being present through cross-contamination.

17. The information can be supplied on the menu, on chalk boards, tickets or provided verbally by an appropriate member of staff as well as in other formats made available to the consumer. It must be clear and conspicuous, not hidden away, easily visible, and legible. If the information is to be provided verbally by a member of staff then it is necessary to make it clear that the information can be obtained by asking a member of staff by means of a notice, menu, ticket or label that can easily be seen by customers. It is no longer enough for an FBO to say that they do not know whether or not a food contains an allergen listed in Annex II and deny any knowledge, nor is it enough to say that all their foods may contain allergens. Allergen information must be specific to the food, complete and accurate. This also applies to food prepacked for direct sale, such as from deli counters, bakeries or sandwich bars.

18. Information on any Annex II allergens used in foods must be made available to the final consumer or to mass caterers. The information must be correct. Inaccurate or incomplete information about allergenic ingredients used in foods sold non-prepacked or pre-packed for direct sale would be a breach of the EU FIC. An FBO must not refuse to provide allergen information on foods served nor give the wrong information on a menu or through verbal communication.

Irradiated foods

Article VI

19. Point 3 of Part A of Annex VI to the EU FIC requires that foods treated with ionising radiation are labelled with the words ‘irradiated’ or ‘treated with ionising radiation’ as stated in Directive 1999/2/EC concerning foods and food ingredients treated with ionising radiation. Where an irradiated product is used as an ingredient in another product, the same words must accompany its designation in the list of ingredients.

20. For irradiated foods, or foods containing an irradiated ingredient, which are sold in bulk (for example non-prepacked foods), the same words must appear together with the name of the product on a display or notice above or beside the container in which the products are placed.

21. The requirement to indicate that an ingredient has been irradiated applies even in the case of compound ingredients where the inclusion of the ingredient in the list of ingredients would otherwise not be compulsory under the provisions of point 2 of Part E of Annex VII to the EU FIC

22. These provisions apply to the labelling of irradiated foods intended for either the ultimate consumer or catering establishments. The Food Irradiation (England) Regulations 2009, as amended, provide requirements on the documentation for irradiated foods which are not ready for the ultimate consumer or catering establishment as well as other restrictions on the sale of irradiated food.

Enforcement

23. The provisions of the EU FIC are directly applicable requirements and FBOs must comply with them.

24. FIR 2013 will give food authorities (this includes local authorities and port health authorities) the powers to take action to ensure that FBOs comply with the EU FIC.

25. Where a food authority authorised officer has reason to believe that a business is not complying with the requirements of the EU FIC, they can take action to ensure compliance. The action taken will be based on the Authority's established enforcement policies and procedures.

26. The action taken by enforcement officers will be proportionate, evidence based and in line with the 'hierarchy of enforcement' approach used in other areas of food law enforcement. The enforcement officer may choose a low level intervention such as a written warning or more formal action depending on the nature and the public health implications of the non-compliance.

27. Under the FIR 2013, an enforcement officer may issue an improvement notice requiring the FBO to comply with a provision of the EU FIC specified in Schedule 3 to the FIR 2013. If the FBO does not comply with an improvement notice then they are guilty of a criminal offence and a criminal prosecution can be brought against the FBO. Likewise, where there is a breach of relevant allergen labelling requirements, a criminal offence will be committed and the enforcement officer may decide to prosecute the FBO for that offence

28. Where a 'use by' date is exceeded, action should be taken under the General Food Regulations 2004 (S.I. 2004/3279) which enforce the food safety requirements of Regulation (EC) No 178/2002. In this case, the issuing of improvement notices would not be an option. However, a criminal offence will be committed and the enforcement officers may prosecute the FBO for the sale of 'unsafe' food. Information on the requirements of Regulation (EC) No 178/2002 can be found here http://www.food.gov.uk/enforcement/regulation/foodlaw/

Improvement notices

29. Officers may issue an improvement notice where there has been a failure by a FBO to comply with any of the provisions of the EU FIC listed in Schedule 3 to the FIR 2013 SI.

30. If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with such a provision, the officer may, by an Improvement Notice served on that person:

    (a) state the officer's grounds for believing that the person is failing to comply with the FIR (with specific reference to their Food business and what in practice they are doing or failing to do);

    (b) specify what provision (or provisions) of the EU FIC has (have) been breached;

    (c) specify what measures are needed to be taken by, the person in order to secure compliance with the EU FIC; and

    (d) The date by which the person must put the measures in place.

    (e) The detail of the right of appeal will also be included in the notice.

31. Any person who fails to comply with an improvement notice commits an offence.

32. The notice may require the food business operator to remove products from sale until the contravention of the EU FIC has been addressed. This may involve the removal of the non- compliant food from the market on either a temporary basis (for example,

where re-labelling will address the non –compliance) or permanently (for example, where a reformulation of the product is required).

33. ‘Over labelling’ or ‘over stickering’ of the product label with a corrected version may be required or removal of an incorrect label and replacement with a correct label should be considered if possible.

34. If a business has a registered partnership with a Primary Authority, then the authorised officer will be expected to discuss any enforcement action with the Primary Authority. Similarly Home Authority arrangements should be taken into account.

Offences

35. A person commits an offence if they do not comply with an improvement notice served on them under FIR 2013.

36. A person commits an offence if they fail to comply with the requirements of the EU FIC relating to the provision of information on ingredients causing food allergies and / or intolerances listed in Annex II (Article 9(1) (c), Article 21(1) (a), the second subparagraph of Article 21(1), Article 44(1 a)). A criminal prosecution may be brought against an FBO in these cases.

Penalties

37. A person found guilty of an offence under FIR 2013 is liable to a fine not exceeding level 5 on the standard scale (currently £5,000).

Appeals

38. Any person served with an improvement notice may appeal against that notice to the First-tier Tribunal. Further information can be found here http://www.justice.gov.uk/about/hmcts/tribunals

Powers of entry

39. At the time of writing there is cross government review of the powers of entry provision to food law enforcement officers under the broader area of food law enforcement. This is being carried out under the new Protection of Freedoms Act 2012. The powers of entry in section 32 of the Food Safety Act 1990 - which apply in the case of the enforcement of FIR 2013 - will be reviewed as part of that exercise. In the meantime, the powers of entry are modified so that they can be used so that an enforcement officer can enter premises to check whether a provision of the EU FIC specified in Schedule 3 to the FIR 2013 SI is being complied with.

Application of the provisions of the Food Safety Act 1990

40. The application provisions applying section 10 of the Act and associated provisions (with modifications) will enable an improvement notice to be served to require

compliance with specified provisions of the EU FIC and specified provisions of regulations 5 and 6 of the FIR 2013

41. As usual, certain general provisions (with modifications) of the FSA 1990 will apply to the national FIR 2013 SI in respect of general matters such as: 'that food is intended for human consumption', 'defence of due diligence', etc. (regulation 10(4) of, and Part 3 to, Schedule 2 to the FIR 2013 SI).

42. Powers of entry under FIR 2013 will be line with the broader food law enforcement powers used by local authorities.

Review of these Regulations

43. The provisions of the FIR 2013 SI must be reviewed before 13 December 2019.

Annex 1 Further information on Regulation 1169 / 2011 (EU Food Information for Consumers)

Fair information practices

Prohibition on misleading information

Article 7, 6, 26(2), 36(2)

44. There are general, wide ranging controls on misleading descriptions in food in various legislation including the Food Safety Act 1990 and the Consumer Protection from Unfair Trading Regulations 2008. Article 16 of General Food Law Regulation (EC) 178/2002 states that:

    "without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers".

45. The EU FIC also contain a requirement not to mislead and to provide accurate, clear and easy to understand information

46. The label also needs to be viewed in its entirety and the use of a pictorial representation on the label may imply information about that food and therefore must not mislead.

Prohibition on food information attributing health benefits to any food subject to certain derogations

Article 7.1 (b) (c),

47. Food information must not suggest that a food may prevent, treat or cure a human disease. Neither should it refer to such properties either on the label or through

advertising etc. However, there is an exemption from this requirement for bottled waters.

Responsibilities

Requirement on a food business operator to ensure the presence and accuracy of food information

Articles 8(2), 1(3) and the first subparagraph of Article 54(1)

48. Under Article 9(1) (h) of the EU FIC, the operator under whose name the food is marketed is responsible for the food information and needs to ensure the presence and accuracy of the food information in accordance with the applicable food information law and requirements of relevant national provisions. For imported food where the operator is not established in the EU, the importer may be responsible for the food information. Everyone else in the food supply chain has to take responsibility for ensuring that the information is accurate and must not supply food which they know or presume to be non-compliant with the law. FBOs not supplying directly to the consumer need to ensure that their customers have sufficient information to allow their customers to comply with the EU FIC. This requirement relates to both prepacked and non-prepacked food and includes giving allergen information although is not exclusive to that area.

Requirement on a food business operator not to supply non-compliant food

Article 8(3) 1(3) and the first subparagraph of Article 54(1)

49. This applies to all sections of the supply chain. However, there is greater onus on some parts of the supply chain than others to check the details. However, even the smallest business must check some of the details on the label, for example to check whether the language is correct or the date mark has not expired.

Restrictions on the modification of information accompanying a food

Article 8 1(3) and the first subparagraph of Article 54(1)

50. FBOs may change the information on a label but if they do so they become responsible for the information they change. This will enable FBOs to freeze a product if it is appropriate to do so. If a FBO does change the information they become responsible for the accuracy of the information. A FBO freezing a product would need to indicate the new date and give the appropriate conditions of use and storage instructions.

Obligation to ensure and verify compliance with food information law etc.

Article 8(5) Articles 1(3) and the first subparagraph of Article 54(1)

51. The EU FIC makes it an overarching obligation of a food business operator to comply with all food labelling requirements issued under EU law and relevant national provisions and to verify that those requirements are met.

Requirement to transmit information relating to non-prepacked foods

Article 8(6) Articles 1(3) 6 and Article 44 and the first subparagraph of Article 54(1)

52. Businesses at all stages of the food chain are required to provide information relating to non-prepacked food intended for the final consumer or for supply to mass caterers. This information must be given to food businesses in the next stage of the supply chain to enable the provision of mandatory food information for the final consumer.

Requirement relating to the mandatory particulars required by Articles 9 and 10 of the Food Information Regulation

Article 8(7) Articles 1(3) and the first subparagraph of Article 54(1)

53. Businesses supplying food that is intended for the final consumer but that are marketed prior to sale to the final consumer and food intended for supply to mass caterers for preparation, processing or splitting up must ensure that mandatory food information appears on the packaging, label or accompanying documentation.

Requirement on a food business operator to provide sufficient information to other food business operators

Article 8(8) Articles 1(3) and the first subparagraph of Article 54(1)

54. This article is to ensure there is proper communication between FBOs throughout the food supply chain that enables FBOs down the chain to fulfil their legal obligations.

Requirement relating to the presentation of mandatory particulars

Article 13(2) Articles 1(3) and 6 and the first subparagraph of Article 54(1) and Annex IV

Font size

55. The definition of the minimum x-height is given in EU FIC Annex IV.

Field of vision requirements

Article 13(5)

56. The particulars listed in points (a) (the names of the food) (e) (net quantity) and (k) (percent ABV (Alcohol by volume)) of Article 9(1) of the EU FIC must appear in the same field of vision**.**

Distance selling requirements

Article 14

57. The requirements for those selling to consumers are that the consumer receives the same information when buying food at a distance as they do when buying in a retail environment. Therefore, all mandatory food information must be available before the purchase is concluded and at the moment of delivery and it must be available to the consumer with no additional costs. So if a FBO is making the information available through a telephone help line, this should be a ‘free-phone’ line rather than a premium

service. For business-to-business transactions made through distance sales, sufficient information must pass through the chain to allow for the purchasers legal obligations to be met.

Language requirements

Article 15

58. Food information must be given in English as this is the language that is easily understood by consumers in England. However, that does not mean that food information cannot also be provided in other languages, including non official languages, on a voluntary basis.

Mandatory Food Information

Mandatory indications

Article 9(1), 1(3), 6, 9(2), 11, 16(1), (2), (3) and (4), 19(1), 20, the fourth subparagraph of Article 21(1), Articles 23, 28(1), 29, 40 and 44, the first subparagraph of Article 54(1) and Article 54(2) of, and Annexes II, V, VI, IX and, as regards Article 9(1)(l)

59. Article 9 sets out the starting point for determining the labelling information that must be provided in some form for most prepacked foods. These details are: the name of the food, an ingredients list, information on certain foods causing allergies or intolerances that were used in the manufacture or preparation of a food, the quantity of certain ingredients, the net quantity of the food, a date mark, any special storage conditions, the name or business name and address of the food business operator under whose name the food is being marketed (or the importer in some cases), the country of origin or place of provenance of the food (if required), instructions for use, the alcoholic strength by volume, and (*from 13 December 2016*) a nutrition declaration.

60. This is a very general list and further details are given below. There are exemptions from these requirements and you should look at the EU FIC for details of any exemptions and further details on how the information should be given.

Name of the food

Article 17 and Annex VI

61. Where there is a name laid down by law this must be used. If not, a customary name may be used. If there is no customary name, or it is not used, a descriptive name must be used. The name of a food may consist of a name, a description, or both. In the case of some foods, there are compulsory product names that must be used for foods meeting certain composition criteria, e.g. the reserved descriptions for foods such as coffee, chocolate, jam and sugar. These names constitute legal names for the purposes of Article 17 of the EU FIC.

62. Customary names are names which, in time, come to be accepted by consumers in the England, or in particular areas of the UK, as the name of the food without it needing further explanation. Some examples are fish fingers and Bakewell tart. Some names of foreign origin, such as muesli and spaghetti have also become customary names in the UK generally. A name which is customary in a particular area (e.g. clootie dumpling)

might not be understood on its own if it is used as the name for the same food when it is sold outside that area. Consideration will therefore need to be given to whether or not further information describing the food needs to be provided. This also applies to food which needs to be labelled according to the physical process they have undergone in their production.

63. A fancy name, with an accompanying description, may (in time) become acceptable as a customary name (e.g. Mississippi Mud Pie), possibly without the necessity of an accompanying description. Article 17(4) of the EU FIC sets out that the name of a food shall not be replaced with a name protected as intellectual property, brand name or fancy name.

64. Further requirements on how the name of the food should be presented are set out in Annex VI. There are requirements to give the particulars of any physical process the food has undergone where the absence of such information might mislead. Where the food has been frozen and subsequently defrosted, this information needs to be given except in specific circumstances. To determine if the omission of the information might mislead, the whole of the selling environment needs to be taken into account.

65. If a substitute ingredient is used in a dish expected to be made from a specific ingredient, then the name of the substitute ingredient must be in close proximity to the name of the product e.g. parsley pesto sauce. There are further requirements concerning the font size of the information.

66. Where added proteins and/or hydrolysed proteins such as albumin, collagen or casein are used in the production of meat preparations, meat products or fishery products and are of a different species to the original food then these proteins need to be included in the name of the food together with the name of the animal species from which they are derived.

67. If any water has been added above the level of 5% of the finished product, to meat products, meat preparations, fishery products or prepared fishery products with the appearance of a cut, joint, slice, portion a carcase (in the case of meat products and meat preparations), a fillet (in the case of fishery products and prepared fishery products) or of a whole fishery product, then this must be stated in the name of the food.

68. When meat products, meat preparations and fishery products have the appearance of a whole piece of meat or fish but are a combination of different pieces of meat (or fish) combined together, then this must be indicated in the name of the food using the words ‘formed meat’ or ‘formed fish’. This should not be confused with reformed meat or fish, or ‘cut and shaped’ meat or fish, or similar which would need to be labelled according to the physical process they had undergone in their production.

List of ingredients

Articles 18, 19 and 20 and Annex VII

69. In general, all ingredients must be listed in order of weight. Any engineered nanomaterials used as an ingredient in a food must have “nano” in brackets after its name in the ingredient list.

70. Articles 18 and 19 outline the way in which an ingredients list must be given and the exemptions from the requirement to give an ingredients list. Article 20 provides that

some constituents of the food do not need to be included in the ingredients list. These requirements are further expanded in Annex VII. The annex also indicates when class names may be given e.g. yoghurt (as a fermented milk) in the ingredients list unless further ingredients (other than lactic products, food enzymes and micro-organism cultures essential to manufacture) have been added. When other ingredients are added, yoghurt can appear in the ingredients list to describe the fermented milk.

71. Likewise, cheese to which no further ingredients have been added other than lactic products, food enzymes, micro-organism cultures and (except in the case of fresh cheese and processed cheese) salt which are essential to manufacture the cheese does not need an ingredients list, and the product can simply be described as cheese.

Additive labelling in food ingredients list

Article 20 and Annexes III & Annex VII, Part C

72. Food additives (and enzymes) which are used as processing aids do not generally have to be listed as ingredients.

73. Carry over additives are additives which are present in a food because they were contained in an ingredient of that food (e.g. the preservative in a sponge finger used to make a trifle) provided that they serve no technological function in the finished food.

Additional labelling for some food additives, flavourings and other ingredients [1]

Annex III Foods containing sweeteners

74. Foods containing sweeteners have additional labelling requirements which must accompany the name of the food. A food containing a sweetener or sweeteners must state “with sweetener(s)”. A food containing both an added sugar or sugars and a sweetener should state “with sugar(s) and sweetener(s)”. Additional labelling is also required for foods containing aspartame and/or aspartame-acesulfame salt and foods containing more than 10% added polyols.

Annex III 3. Foods packaged in certain gases

75. Foods whose durability has been extended by means of authorised packaging gases should bear the particulars ‘packaged in a protective atmosphere’.

Annex III 3. Foods containing glycyrrhizinic acid or its ammonium salt

76. When confectionery or drinks have liquorice (*Glycyrrhiza glabra*) or glycyrrhizinic acid (or its ammonium salt) added then different statements are required depending on the concentration of glycyrrhizinic acid and whether liquorice is mentioned in the name of the food or the ingredients list. The required statements must appear immediately after the list of ingredients or (if there is no ingredients list) accompany the name of the food.

Annex III 4. Beverages with high caffeine content or foods with added caffeine

[1] authorised pursuant to Regulation (EC) No 1333/2008

77. There are additional labelling requirements for drinks with high caffeine content and foods with added caffeine. It should be noted that, for beverages, the caffeine level applies regardless of the source of caffeine, e.g. caffeine from guarana would be covered. However, for foods other than beverages, the statement is only required when caffeine, as such, is added. This labelling is not necessary for beverages based on coffee, tea or coffee or tea extract where the name of the food includes the term 'coffee' or 'tea'.

78. These statements are not required when caffeine is added to foods for flavouring purposes rather than for a physiological effect however caffeine must be listed in the ingredients list.

Annex VII Part D. Designation of flavourings in the list of ingredients

79. Generally the term 'flavourings' or a more specific name or description of the flavouring can be used in the ingredients list. Additional rules apply when quinine or caffeine are used as flavourings and for smoke flavourings. There are also specific rules for when the term 'natural' is used to describe a flavouring.

Allergen listing

Article 21 and Annex II

80. Allergens listed in Annex II must be declared in the ingredients list where provided, and, if it is not obvious from the name of the ingredient, there needs to be a clear reference to the name of the allergen (as given in Annex II).This reference must appear next to the name of the ingredient. So, for example, casein should be listed as "casein (**milk**)", tofu as "tofu (**soya**)" and gingelly oil as "gingelly oil (**sesame**)".

81. In addition, in a case where the food is a food for which an ingredients list is not necessary under Article 19.1(d) of the EU FIC, e.g. a cheese to which no ingredients have been added except for those mentioned in Article 19.1(d), we take the view that it will not be necessary for "milk" to follow the reference to the cheese where the cheese itself is declared in the ingredients list. This is because, although milk does not form part of the name of the food (cheese), it is a product that is well known to be made from milk and this is the reason why milk does not need to be listed as an ingredient of such a cheese under Article 19.1(d). We think that the position is the same in relation to the other products to which Article 19.1(d) applies, e.g. butters and creams to which no additional ingredients, except for those mentioned in Article 19.1(d) of the EU FIC, have been added.

82. Allergenic ingredients should be emphasised in the ingredients lists by using a contrasting font or type, for example, by using a different font, text colour, background colour, using underlined, bold or capitalised text or other suitable methods.

83. Allergen information may not be repeated elsewhere on the labelling, however sign posting to the allergen information within the ingredients list is permitted.

84. If you are using any component derived from any of the substances listed in Annex II in the preparation of your food product, this always has to be listed in the ingredients list, unless it is subject to an exemption from the allergen labelling requirements.

85. If an allergen is used in the preparation of a food and the food does not require an ingredients list then presence of the allergen should be indicated using the term

'contains...' followed by the name of the allergen. For example, a bottle of wine does not have an ingredients list and if sulphites have been used it would require a "contains sulphites" statement.

86. Further advice on the mandatory requirements for the provision of allergy information can be found in the technical guidance for EU FIC, which will be available at a later date.

87. The EU FIR requirements relate only to deliberately added ingredients and do not cover possible allergen cross contamination or 'free from' claims.

Quantitative Ingredients Declaration (QUID)

Article 22 and Annex VIII

88. There is a requirement to give an indication of the quantity of an ingredient or category of ingredients where:

- they appear in the name of the food or are usually associated by the consumer with that name;
- they are emphasised by words, pictures or graphics on the label; or
- they are essential to characterise a food and to distinguish it from other similar products.

89. This has remained unchanged from Directive No. 2000/13/EC and the guidance from the Commission on this is still relevant. **See current guidance** from the European Commission ((III/5260-rev5/98).

Net quantity

Article 23 and Annex IX

90. Enforcement of these provisions will be carried out under BIS regulations, not under the FIR 2013.

Date of minimum durability

Article 24 and Annex X

91. In general, most foods must be marked with either a 'best before' or a 'use by' date. The foods that are not required to provide a date mark are listed in Annex X 1(d).

92. The 'use by' date is for foods that are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health.

93. The DEFRA / FSA guidance on date marking guidance issued in September 2011 still applies. This can be found here http://www.defra.gov.uk/publications/files/pb132629-food-date-labelling-110915.pdf

94. Food on sale after the "use by " date is 'deemed' to be unsafe under Article 14(2) and (5) of Regulation (EC) No 178/2002. There is no obligation on enforcement officers to prove that the food is unsafe in order to prosecute an offence under the General Food Regulations 2004 (SI 2004/3279 (as amended)).

95. The date of first freezing for meat preparations and unprocessed fisheries products is required under Article 24 of the EU FIC and guidance will be available at a later date.

Storage conditions and / or conditions of use

Article 25

96. Storage conditions and conditions of use must be given, where appropriate, to ensure the proper storage and use of the food.

Name of the business

Articles 8, 9.1(h)

97. The FBO whose name appears on the labelling is the business responsible for the information on the label. This must be a FBO in the EU or, where the food is imported into the EU, the importer into the EU.

Country of origin

Article 26 and Annex XI

98. Some of the origin labelling provisions have yet to be agreed. These will be subject to a Commission report and subject to Commission implementing rules. However, some of the country of origin provisions are already provided for in the EU FIC. The origin or place of provenance of a food must be given if it would mislead consumers by its absence.

99. The provisions in the EU FIC do not affect any of the origin indications given under Regulations No. 509/2006 and No. 510/2006 on the protected geographical indications and designations of origin for agricultural products or foodstuffs or under regulations such as Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.

100. Articles 23 and 24 of Regulation (EC) No. 2913/92, the Community Customs Code sets out the rules for determining the origin of goods.

Instructions for use

Article 27

101. Instructions for use must be given in such a way as to enable appropriate use to be made of the food. If the food needs to be cooked, this needs to be apparent, especially if the food requires a specific cooking technique, such as the use of a microwave oven.

Alcohol content

Article 28 and Annex XII

102. Article 28 stipulates that the actual alcoholic strength by volume of beverages containing more than 1.2% by volume of alcohol other than those referred to in Article 28.1 must be shown in accordance with Annex XII. Alcoholic strength should be indicated by a figure to not more than one decimal place followed by “% vol”.

Nutrition Declaration

Mandatory nutrition information

Article 30(1)

103. You will need to provide a mandatory nutrition declaration (commonly referred to as "back of pack" nutrition labelling) on prepacked food from 13 December 2016 (see the section entitled "Transitional measures" below for details of the provision of this information before 13 December 2016). This comprises energy value (in kilojoules (kJ) and kilocalories (kcal)) plus the amounts (in grams (g)) of fat, saturates, carbohydrate, sugars, protein and salt.

Annex I, Paragraph 11

104. Salt is calculated by determining the total sodium in a product (naturally occurring, and that deriving from salt and other additives) and multiplying by 2.5. Where appropriate, you may highlight that salt content is exclusively due to the presence of naturally occurring sodium by means of a statement in close proximity to the nutrition declaration.

Annex V

105. Foodstuffs exempted from the mandatory nutrition declaration are listed in Annex V of the EU FIC. Exemptions relate mainly to minimally processed foods and those that contribute little nutrition to the diet. Food in packaging or containers the largest surface of which has an area of less than 25cm^2 is also exempted from mandatory nutrition labelling.

106. If you supply small quantities of food direct to the final consumer or to local retail establishments directly supplying the final consumer, then you are also exempted under Annex V from providing the mandatory nutrition declaration. The detail of the application of this exemption is currently (November 2012) being established with the Commission. This may result in change to the wording of this paragraph.

Voluntary nutrition information

107. While the provision of non-mandatory nutrition information is entirely voluntary (except when a nutrition and/or health claim is made or when vitamins or minerals are added to a foodstuff – see details below), should you choose to provide this information, the following paragraphs set out the rules governing its content and the format in which the information should be presented.

Voluntary supplementary nutrition information

Article 30(2), Part A of Annex XIII)

108. You can supplement the mandatory nutrition declaration with information on the amounts of one or more of the following:

- mono-unsaturates
- polyunsaturates
- polyols
- starch

- fibre
- any of the vitamins or minerals listed in point 1 of Part A of Annex XIII, and present in significant amounts as defined in point 2 of Part A of Annex XIII[2].

Article 49 amending Regulation (EC) No 1924/2006

109. If you make a nutrition or health "claim"[3] on prepacked food for a nutrient(s) referred to in the supplementary list above, then you must declare the nutrient(s) in question. You must also present the information on that nutrient(s) in accordance with Articles 31 to 34 of the EU FIC (see below).

110. Only the nutrients contained in the mandatory and supplementary lists may be declared in the nutrition declaration. The only exception is where a nutrition or health claim is made in respect of a substance not referred to in either list. In these cases, you must declare the amount of the substance in the same field of vision as the nutrition labelling (but not within the nutrition table). The declaration shall be calculated and expressed in accordance with Articles 31 to 33 of the EU FIC. An example of such a claim would be "High in Omega-3". The units of measurement used to express the amount of any additional substance (such as Omega-3) must be appropriate for the individual substances concerned.

Article 50 amending Regulation (EC) No 1925/2006

111. If you add a vitamin or mineral referred to in Article 30(2) to a food, you must declare, as part of the nutrition labelling, the total amount present (both naturally occurring and added) in the food.[4]

Voluntary repetition of certain mandatory particulars in the principal field of vision

Article 30(3), read with Article 34(3)

112. The voluntary repetition of certain elements of the mandatory nutrition declaration in the "principal field of vision" (commonly known as "front of pack") is allowed. This information must take the form of:

- energy value alone; or
- energy value plus amounts of fat, saturates, sugars and salt.

113. No other combination of nutrients (e.g. energy and fat only) is permitted.

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[2] The following values should be taken into consideration in deciding what constitutes a significant amount of vitamins and minerals:

- 15% of the nutrient reference values specified in point 1 of Part A of Annex XIII supplied by 100g or 100ml in the case of products other than beverages;
- 7.5% of the nutrient reference values specified in point 1 of Part A of Annex XIII supplied by 100ml in the case of beverages; or
- 15% of the nutrient reference values specified in point 1 of Part A of Annex XIII per portion if the package contains only a single portion.

[3] as defined in Regulation 1924/2006, Nutrition and Health Claims made on Foods ("NHCR")

[4] Article 50 of the Regulation, replacing paragraph 3 of Article 7 of Regulation (EC) No 1925/2006 on the Addition of Vitamins and Minerals and of Certain Other Substances to Food

Voluntary nutrition labelling for alcoholic drinks

Article 30(4)

114. Alcoholic drinks are currently exempt from mandatory nutrition labelling.

115. However, you can provide the information on a voluntary basis. This must either be the full nutrition declaration or limited to energy value only.

Voluntary nutrition labelling for non-prepacked food

Articles 44(1)(b), 36(1) and 30(5)

116. There is no requirement to provide nutrition information on non-prepacked food[5]. But if you choose to provide it on a voluntary basis, this can take the form of the full nutrition declaration. Alternatively, the information you provide may be limited to energy value alone or energy value plus amounts of fat, saturates, sugars and salt.

Calculation of energy value and amounts of nutrients

Article 31, Annex XIV

117. Energy value must be calculated using the conversion factors listed in Annex XIV.

118. Energy value and amounts of nutrients must be those of the food as sold. However, the EU FIC also allows the information given to relate to the food after preparation, provided that sufficiently detailed preparation instructions are given.

119. Declared values must be average values based on the following methodologies:

a. the manufacturer's analysis of the food;

b. a calculation from the known or actual average values of the ingredients used; or

c. a calculation from generally established and accepted data.

120. In the UK "generally established and accepted data" can be found in book form in McCance & Widdowson's The Composition of Foods[6] or online in McCance & Widdowson's The Composition of Foods integrated dataset (CoF IDS) on the National Archives website. [7]

[5] Non-prepacked food is defined as: foods offered for sale to the final consumer or to mass caterers without prepackaging, or foods packed on the sales premises at the consumer's request or prepacked for direct sale.

[6] Food Standards Agency (2002), McCance & Widdowson's The Composition of Foods, Sixth summary edition. Cambridge: Royal Society of Chemistry.

[7] http://tna.europarchive.org/20110116113217/http://www.food.gov.uk/science/dietarysurveys/dietsurveys/

Units of measurement

Article 32(1), Annexes XV and XIII

121. You should use the measurement units set out in Annex XV for energy value and amount of nutrients. Essentially, amounts of nutrients should be given in millilitres (ml) for liquids and in grams (g) for all other foods (but see also point 1 of Part A of Annex XIII for details of appropriate units of measurement for vitamins and minerals).

122. You must give energy value in both kilojoules (kJ) and kilocalories (kcal).

Expression per 100g or per 100ml

Article 32(2)

123. Energy value and the amount of nutrients have to be expressed per 100g or per 100ml. But see also the exceptions set out under the section entitled "Expression per portion or per consumption unit" below.

Reference intakes[8]

Article 32(3) to (5), Annex XIII

124. If you provide information on vitamins and/or minerals, this must additionally be expressed as a percentage of the reference intakes set out in point 1 of Part A of Annex XIII per 100g or per 100ml.

125. In addition to giving the absolute energy value and amount of (macro) nutrients per 100g or 100ml, you may also express them as a percentage of the reference intakes set out in Part B of Annex XIII per 100g or per 100ml. In this case, you must provide the following additional statement in close proximity to the information on reference intakes: "Reference intake of an average adult (8 400 kJ/2 000 kcal)".

Expression per portion or per consumption unit

Article 33(1) to (3)

126. You may also give nutrition information per portion (e.g. half a pizza) and/or per consumption unit (a single unit of food you might take from a packet, e.g. one biscuit or one chicken nugget)

127. The flow chart in the Annex summarises the various permutations for expressing nutrition information per 100g or per 100ml and per portion or per consumption unit.

Quantification and position on label of information on portion or consumption unit

Articles 33(1) and (4)

128. In the relevant cases set out in the flow chart, you must quantify the portion or the consumption unit used on the label in close proximity to the nutrition declaration, and you must state the number of portions or consumption units contained in the package.

[8] Reference intakes are commonly known in the UK as guideline daily amounts (GDAs)

Presentation of nutrition information

Article 34(1) and (2), Annex XV

129. The mandatory nutrition declaration (Article 30(1)) and the list of supplementary nutrients (Article 30(2)) need to be:

- in the same field of vision;
- presented together in a clear format;
- presented in the order of presentation provided for in Annex XV.

130. You must present the mandatory nutrition declaration in the following order: energy, fat, saturates, carbohydrate, sugars, protein and salt.

131. If you also provide information voluntarily on a nutrient(s) from the supplementary list at Article 30(2), the table below shows the required order of presentation, as appropriate, together with the units of measurement to be used:

Energy	kJ/kcal
Fat	g
of which	
- saturates	g
- mono-unsaturates	g
- polyunsaturates	g
Carbohydrate	g
of which	
- sugars	g
- polyols	g
- starch	g
Fibre	g
Protein	g
Salt	g
Vitamins and minerals	The units specified in point 1 of Part A of Annex XIII

132. You must present the nutrition declaration in tabular format with the numbers aligned, if space permits. Where space does not permit, the declaration must appear in linear format.

Negligible amounts

Article 34(5)

133. Where the energy value or the amount of nutrient(s) in a product is negligible, the information on those elements may be replaced by a statement such as “Contains

negligible amounts of…" In this case, the statement must be in close proximity to the nutrition declaration.

Additional forms of expression and presentation

Article 35(1)

134. You may present the energy value, the (macro) nutrients and vitamins and minerals referred to in Article 30(1) to (5) using a graphical scheme (i.e. using graphical forms or symbols) and/or express them using alternative forms of expression. For example, in England a 'traffic light' colour coding system and 'High/Medium/Low' (HML) text are commonly used to present front of pack nutrition information in summary form.

135. If you use such additional forms of expression and/or presentation, these must meet all the requirements listed under (a) to (g) in Article 35(1). They must, for example, be based on sound and scientifically valid consumer research and not mislead the consumer. They must also be supported by scientifically valid evidence of understanding of such forms of expression or presentation by the average consumer.

Transitional measures for nutrition labelling

The second subparagraph of Article 55, the second subparagraph of Article 54(1), Article 54(2) and (3), Articles 49 and 50

136. Nutrition labelling will become mandatory for the majority of pre-packed foods from 13 December 2016. If a nutrition declaration is provided on a voluntary basis before that date, it must comply with Articles 30 to 35 of the EU FIC from 13 December 2014.

137. Similarly, if a nutrition declaration is required in the event that a nutrition and/ or health claim has been made or vitamins and/or minerals have been added to a foodstuff, the information to be provided must consist of that specified in Article 30(1) of the Regulation (mandatory nutrition declaration) from 13 December 2014.

138. Foods can be labelled in accordance with the nutrition labelling provisions of the EU FIC before 13 December 2014. In other words, you have the choice of complying with either the provisions of the Food Labelling Regulations 1996 (as amended) (FLR) or those of the EU FIC from the date of entry into force of the Regulation (13 December 2011) to (and including) 12 December 2014. After that date, only the remaining stocks of food labelled as according to the Food Labelling Regulations 1996 may be sold.