

**< REVISION OF FOOD STANDARDS AGENCY GUIDANCE ON THE USE  
OF MARKETING TERMS >  
SUMMARY REPORT OF RESPONSES TO CONSULTATION  
FROM STAKEHOLDERS**

The “Revision of Food Standards Agency Guidance on the Use of Marketing Terms” consultation was issued on 29 October 2007 and closed on 21 January 2008. The objectives are to revise the Guidance because consumers’ expectations and use of terms have changed with time. It was considered that the advice would benefit from being more precise in some circumstances and having its status more clearly explained. References to relevant legislation needed to be updated. The Agency held a stakeholder meeting to discuss the revision in 2005 after a survey of products that looked at the uptake of the Guidance and then conducted consumer research on some marketing terms. The UK wide consultation exercise was based on views of stakeholders, consumer research findings and current industry practices and was sent to interested parties and was posted on the Agency’s website.

- 1 The FSA is grateful to those stakeholders who responded and sets out in the table below responses in order of the issues considered.
- 2 The key proposals on which the consultation sought views were:
  - (i) Make the voluntary, best practice advice part of the Guidance clearer, and distinct from the legal requirements.
  - (ii) Alter the Guidance on use of some of the existing terms to take account of results of research into consumer expectations. The research supports some of the existing advice and identifies some amendments that are needed to the advice for the terms traditional, original, authentic/real/genuine and home-made.
  - (iii) Include advice on the use of the following new terms that have come into use: farmhouse pate, handmade, quality, selected, premium, finest and best.
  - (iv) Provide revised advice on some existing terms to take account of issues that have arisen in the consumer research, or where advice has been requested from the Agency or where further information on industry practices has come to light, specifically for fresh, natural, pure, farmhouse and traditional.
  - (v) Advise against the use of some terms that can cause confusion.
- 3 The Food Standards Agency’s considered responses to stakeholders’ comments are given in the last column of the table. A summary of changes to the original proposal(s) resulting from stakeholder comments is set out in the final table.
- 4 A list of stakeholders who responded can be found at the end of the document.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

General Comments		
Respondent	Comment	Response
BRC	<p>BRC members have found this guidance very useful in the past and therefore welcome the review. We feel it is very important that the Agency strongly encourages the use of this guidance; however as per the guidance on clear labelling and country of origin it should be made clear that this is best practice advice. We, therefore, strongly believe that reference to the aim to provide enforcement authorities with advice to challenge inappropriate uses, covered under the introduction, should be removed.</p> <p>As mentioned in our comments to the draft clear labelling guidance, we feel that the use of footnotes to the legislation is excessive.</p>	<p>The status of the Guidance has been made clearer.</p> <p>Use of footnotes has been minimised.</p>
Advertising Standards Agency	<p>The ASA respects the FSA's expertise in this area and will find the updated guidance useful when judging such claims in some advertisements. Although the ASA may take the FSA's guidance into account, the ASA will not be wholly bound by the FSA definitions. This is because the ASA will need to judge the claim within the context of the entire advertisement (including pictorial or graphic representation).</p> <p>ASA adjudications set precedents that are applicable to all ads; in this way we aim to keep a level playing field for all advertisers and maintain trust amongst consumers.</p> <p>The ASA is responding to this consultation as it is important that all parties have access to established definitions that can be easily understood. However, in the experience of the ASA the definitions below have not caused much confusion in the past. This is good news considering that 75% of complaints received by the ASA are about misleadingness and food is a major sector.</p> <p>The ASA would support FSA Option 2: to revise the current FSA guidance, although we do have some specific comments on some of the suggested revisions. Each term and the ASA response to it are set out below.</p> <p>The definitions within the revised guidance are, in general, in line with the definitions provided in relevant ASA adjudications.</p> <p>The CAP Copy Advice team would, in most cases, take into account, FSA guidance along with definitions provided in relevant adjudications when advising advertiser on whether their ads comply with the Code.</p> <p><b>1. How the ASA will use the guidance in practice</b></p> <p>1.1 The ASA recognises the FSA as being in a position to establish sound guidance that can be</p>	

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	<p>used to base decisions on what the general public might expect from a product.</p> <p>1.2 Although the FSA guidance will not necessarily be formally recognised within the Advertising Codes, any ad will be considered against the Advertising Codes and the established definitions of claims within the public domain in order to gauge how the average consumer would receive an ad.</p> <p>1.3 Pictures or illustrative representations are important in ‘reading’ an ad and the ASA must consider these throughout the investigative process, so that an advertiser cannot mislead consumers through implication. This means that the ASA decisions on the use of particular terms might not always be in line with guidance for food labelling.</p> <p>1.4 The FSA’s research that terms such as ‘style’ or ‘type’ (eg. farmhouse style) are generally unhelpful qualifications and should have further clarification as to the level of authenticity or link to the original product is useful and may be taken into account during the investigation process.</p>	<p>The Agency is pleased that definitions are in general in line with ASA adjudications and notes how the ASA will use the Guidance in practice.</p>
<p>Dairy UK</p>	<p>We are concerned that the intent of the document is to give advice in line with current consumer understanding, yet in several places where the advice has changed, for example over the term “natural”, no problems were identified from the stakeholder consultation and no consumer research has been conducted. The consultation states that some changes are in the light of recent enquiries and issues which have arisen. This is particularly disturbing where issues are still in the course of adjudication, and smacks of the FSA taking over the role of adjudicator. Food manufacturers receive consumer feedback on advertising or on pack claims, and the absence of adverse feedback should be considered as evidence supporting current usage.</p> <p>It would be helpful if in addition to the disclaimer that the guidance should not be taken as an authoritative statement or interpretation of the law, the guidance explicitly states that claims may be legally justifiable even if they are not in line with the FSA’s guidance.</p> <p>We are also concerned with the quality of the Impact Assessment. The statement that because the Guidance has no impact on legislation the only incremental costs to businesses from this revision will be through reading the guidance is completely disingenuous. The basis of the assessment ought to be the costs which would fall on businesses who revise their activities in order to comply with the revised guidance, since there are various pressures which may go a long way to forcing such compliance. For a single Dairy UK member applying this revised guidance to a single brand in their portfolio the cost has been estimated as £1.76m.</p>	<p>The Agency has provided its view on best practice according to issues concerning the use of the term natural that arose after the consumer research project had finished. Consumers may not be aware of details of all the modern processes that go into making ingredients and it is not clear that consumer research would be effective in this area.</p> <p>This has been added, although it is felt that this is restating what is already said elsewhere.</p> <p>Industry needs only to apply the advice if they decide to do this to avoid misleading labelling or to avoid breaching advertising codes or as a commercial decision. Therefore it is not considered that these costs are relevant to the impact assessment.</p>
<p>Eversheds</p>	<p><b>Our approach to this consultation</b></p> <p>These comments are based upon our views of food labelling regulation and guidance generally rather</p>	

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	<p>than in relation to any specific product or range of products on the market. In relation to specific products there may be particular circumstances relating to the history or composition or method of production of that product which should be taken into account in determining whether the proposed guidance is appropriate. In other words, we think it is entirely possible that there may be particular products on the market which are currently labelled in conflict with this guidance but which are legitimately marketed. If any such products are drawn to the FSA's attention, we would support amendments being made to the proposed guidance to accommodate them.</p> <p><b>Overall response to the consultation</b></p> <p>1. We agree that it is appropriate to review the current guidance document to take account of developments in technology, marketing practice and the meaning of words.</p> <p>2. In general we welcome the adjustments proposed to the existing guidance given on words and phrases which were covered by the 2002 guidance.</p> <p>3. In general we submit that the proposed guidance in relation to new terms, that were not covered by the 2002 guidance, is vague, inappropriate and unhelpful and should not be introduced.</p> <p>4. Our most significant objection is to the criterion suggested for many of the new terms, "has undergone a high level of quality control" or "has undergone the highest level of quality control". These concepts are very vague and quite rightly most food manufacturers will assert that all their products undergo a high level of quality control because of the importance of quality control in relation to food. This is therefore not only a meaningless criterion but also one which nearly every product can truthfully satisfy. More seriously still, there is absolutely no ground to believe that consumers understand the words such as "selected", "quality", "premium", "finest" or "best" indicate that there has been a high level of quality control. They do indicate a high level of <i>quality</i>, but for any given particular quality specification, the <i>quality control</i> should be high in all cases.</p>	<p>The Agency is pleased that Eversheds welcomes these changes.</p> <p>The Guidance has been revised to give only general advice on these terms.</p> <p>The proposed amendments had arisen from the conclusions of consume research, but have been removed on the basis of comments received.</p>
<p style="text-align: center;">FDF</p>	<p><b>Status of the Guidance</b></p> <p>FDF is concerned that the status of the Guidance should be clear in respect of implementation of the Unfair Commercial Practices Directive (UCPD) since the use of the terms covered in the Guidance would appear to fall within its remit. This raises a number of issues. The UCPD takes as a benchmark the notional "average consumer", who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the ECJ. This amendment of the Guidance Notes goes far beyond what an average consumer would expect in terms of fresh, natural or pure, which would probably be based on a few criteria such as origin and minimal processing. It risks going into too much detail to be able to fulfil its objective as voluntary, best practice guidance for operators. It should also be made clear that the Guidance is not to be treated by enforcement officers as a "code of conduct" under the UCPD (not being imposed by law or administrative provision). In this context, clear differentiation between legal requirements and voluntary guidance is particularly important.</p>	<p>It is clear in the Guidance that it is best practice advice.</p>

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	<p>In an increasingly competitive EU, guidance on compliance with existing legislation is beneficial, where necessary. Enforcement activity on the basis of unduly prescriptive voluntary guidance can, however, confuse matters and unduly burden business. A more appropriate course of action would be for FSA to publish guidance based on a limited number of criteria which make sense to “average consumers”.</p> <p>The status of the Guidance is also important in terms of the manner of reporting the results of any survey of “compliance” with it, in not giving the impression that non-compliant products are necessarily illegal/misleading.</p> <p><b>Basis of proposed amendments</b></p> <p>Since "original" was the only term put to a research panel in 2005, the amendments to the existing guidance notes appear somewhat speculative. None of the proposed amendments to the Guidance are backed by actual consumer research and the criteria for "natural", in particular, go into such detail that they would not be understood by the average consumer. The amendments of the existing terms are largely based on ASA adjudications which are subjective in nature. In addition they are based on the CAP code and not intended for the purposes of on-pack labelling</p> <p><u>SUMMARY: INTERVENTIONS AND OPTIONS</u></p> <p><b>Evidence Base (for summary sheets)</b></p> <p><b>2.6:</b> See comment above on the UCPD as an example of a change in general legislation which <u>has</u> affected the use of marketing terms since 2002.</p> <p><b>5 Costs and Benefits</b></p> <p><b>Option 2 (1-v): Revise Food Standards Agency Guidance</b></p> <p>It is not legitimate to assume that there will be no cost impact arising from the revised Guidance itself. Such detailed advice may have an impact on current ingredient sourcing and product marketing and also on product development already underway. Compliance with guidance is not necessarily a purely voluntary commercial decision if a request to comply comes from customers or from enforcement authorities.</p> <p>It is unrealistic to assume that it will take only half an hour to read the revised guidance with any degree of understanding, due to its length and complexity. This should at the very least be doubled and will be considerably more than that if a company is concerned with the detail of one of the longer sections.</p>	<p>The Agency has provided its view on best practice according to issues concerning the use of terms including natural that arose after the consumer research project had finished. Consumers may not be aware of details of all the modern processes that go into making ingredients and it is not clear that consumer research would be effective in this area.</p> <p>Information on the UCPD has been added to the Guidance.</p> <p>Industry needs only to apply the advice if they decide to do this to avoid misleading labelling or to avoid breaching advertising codes or as a commercial decision. Therefore it is not considered that these costs are relevant to the impact assessment.</p> <p>Costs have been doubled in the final Impact Assessment.</p>
<p>FDF – Biscuit, cake and confectionary sector</p>	<p>We concur with the response made by the Food &amp; Drink Federation, but would also like to add comments on points of particular relevance to our sector of the industry.</p> <p>The majority of our comments are concerned with the Recommended Criteria for the use of the Term “Natural”. However, there are also comments on the term “Hand-Made” and general comments on the new terms added to the draft Guidance.</p> <p>Overall, the BCC Sector Group would emphasise that the principal application of such Guidance should be for the benefit of consumers and we would question whether consumers would understand some of the criteria included in this Guidance.</p>	<p>Consumers may not generally understand all of the details of the criteria but the aim is to produce Guidance that suggests ways of</p>

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		<p>using the terms so that their meaning is clear to consumers. It is possible to be misled by something that you do not understand.</p>
<p>Kingston upon Hull Trading Standards</p>	<ul style="list-style-type: none"> <li>• There is a distinct lack of legislative detail in this consultation document when compared with and other FSA guidance documents currently subject to consultation. In particular the consultation on the ‘<b>Country of Origin Labelling Guidance</b>’ contains justifiably detailed information on the applicable legal requirements in annexes B,C and D</li> <li>• Paragraph 7’s reference to ‘...little specific legislation on the use of the terms...’ is factually correct; however it <b>clearly and significantly</b> understates the principle that businesses must not mis-describe foods or mislead purchases as laid down by the Trade Descriptions Act 1968; Food Safety Act 1990 – sections 14 &amp; 15, and EC regulation 178/2002 – Article 16. The guidance also fails to cover the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.</li> <li>• The contents of paragraph 9 should not be described as merely ‘recommendations’ – the text describes practices which are effectively prohibited by the above legislation and/or steps which would need to be taken for a person to avail themselves of a ‘due diligence’ defence. There is no reference to the defence. This paragraph is a confusing mix of legal requirement and advice</li> <li>• Paragraph 12 states that: ‘We suggest that any use of the terms covered by this advice should be capable of being [justified by evidence]’. Such ‘advice’ must be given in the context of a ‘due diligence’</li> <li>• It is possible that the individual ‘recommended criteria’ section may be read individually – particularly if section have been photocopied for circulation - without regard to the legal requirements and advice given in the initial pages of he document. Each section header should be amended to include a legal requirement/due diligence defence caveat.</li> <li>• In addition it should be made clear that the businesses are not legally obliged to follow the recommended criteria</li> <li>• How does the FSA reconcile the issue of an unchanging or substantially unchanging recipes and formulations, contained in the recommended criteria for a number of specified terms in the document, with for example:             <ul style="list-style-type: none"> <li>• The effective prohibition of certain ingredients e.g. the colour E128</li> <li>• The replacement of saturated fats with mono- and polyunsaturated fats</li> </ul> </li> </ul> <p>FSA salt reduction targets?</p>	<p>The aim of the document is to provide best practice advice rather than detailed advice on relevant legislation.</p> <p>Amendments have been made to include reference to due diligence.</p> <p>It is not considered that this is necessary, and it would be repetitious.</p> <p>This is made clear.</p> <p>If an ingredient became prohibited then since this is best practice guidance it would be in line with the Guidance to stop using it. The criteria for the term “original” have been amended to cover ‘major ingredients’.</p>
<p>Meat and Livestock Commission</p>	<p>We support the FSA’s initiative to encourage the use of these labelling terms in ways that convey clear meaning and which avoid being misleading. In particular, we are pleased to see that the document acknowledges that it continues to be acceptable for chilled meat to use the term ‘fresh’.</p> <p>We recognise that the use of marketing terms will continue to evolve and that there will be an increasing need to address new terms being used. However, we do not feel that we are in a position to comment on these.</p>	<p>Comments are noted.</p>

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<p>Natural England</p>	<p>The market for food and other natural products is a key driver of farming and fisheries management. This in turn is a major factor affecting and influencing the state of England’s natural environment.</p> <p>Government, business, consumers, and civil society have a shared responsibility for encouraging more sustainable farming, fisheries, and food production. Informed consumer choice can help initiate and accelerate markets for food products with sustainability credentials and standards.</p> <p>All food producers, manufacturers, retailers and caterers should provide accurate, honest, and transparent information about the products sold and meals served. They need to inform shoppers and diners about the place, seasonality, and methods of food production.</p> <p>Natural England advocates labelling and marketing that can better inform consumers of the provenance and production methods of food, and leave no ambiguity about the origin and sustainability of products and their ingredients.</p> <p>With regard to the FSA’s guidance on the use of terms in food marketing, we recommend that: as well as the terms covered in the revised guidance, the FSA should also produce guidance on the use of the terms ‘local’, ‘seasonal’, and ‘farmers’ market’;the criteria for these additional terms should be in line with current evidence on consumer expectations and existing industry standards.</p> <p>We have no specific comments on the changes made in the revised guidance. We have however set out below the recommended criteria for guidance on the use of the terms ‘local’, ‘seasonal’, and ‘farmers’ market’. (PLEASE SEE ATTACHED DOCUMENT).</p>	<p>The Guidance now contains some general advice on the term seasonal that reflects the comments made. Criteria for the use of “Farmers’ Market” have not been added but advice in the section on “Farmhouse” may be used to assist with guidance on the use of this term. Agency research into use of the term local has not been able to find a generally accepted meaning of the term and no advice has been proposed, but this is an area that the Agency will keep under consideration (although it is possible that this Guidance would not be the chosen route for advice).</p>
<p>National Consumer Council</p>	<p>Labels provide a key source of information when consumers are making pre packed food purchasing decisions and consumers have the right to expect that products are accurately labelled. The NCC believes that with the amendments proposed to the guidelines consumers will be able to make better, more informed choices.</p> <p>The NCC agrees with the revisions posed in the consultation document to the use of the terms ‘Fresh’, ‘Natural’ ‘Pure’ ‘Traditional’ ‘Original’ ‘Authentic’ ‘Real’ ‘Genuine’ ‘Home - Made’ and ‘Farmhouse’ and the addition of ‘Farmhouse Pate’ ‘Hand – Made’ ‘Selected’ and top of the range terms such as ‘Finest’ to the guidance. In addition we would also like to see the guidance extended to include the terms ‘seasonal’ and ‘local’ due to consumer confusion over the use of these terms.</p>	<p>The Agency is pleased that the NCC supports the amendments.</p> <p>The proposed Guidance on ‘top of the range’ terms has been altered to take account of comments of others. Some</p>

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	<p>The NCC in its own research<sup>1</sup> found the term ‘seasonal’ can be abused, with seasonal claims found on hot-house aubergines, pineapples, strawberries (in December) and even chocolate. Clearly defining the term ‘seasonal’ will provide supermarkets greater clarity on how to label and market seasonal food accurately and reduce the incidence of consumers being misled by this term.</p> <p>The food we eat is responsible for 31 per cent of the average European household’s impact on climate change. There is an opportunity, if done right, to promote seasonal food as an effective and enjoyable way to tackle climate change. Supermarkets can have a key role in this, stocking and promoting UK seasonal food to their customers. The NCC has urged supermarkets in its report <i>‘green grocers; how supermarkets can help make greener shopping easier’</i><sup>2</sup> to do more to enable consumers to shop in an environmentally responsible way by sourcing and clearly identifying UK seasonal produce.</p> <p>We recommend that a definition of ‘local’ and terms such as ‘locally produced’ should be defined due to the perceived misuse and ambiguity towards the meaning of the term.</p> <p>In the COI report for the FSA <i>‘Local food omnibus research report’</i><sup>3</sup> six in ten consumers felt a need for regulations or guidance about food labelled as local. The research found a lack of clarity amongst consumers about what local<sup>4</sup> means with respondent’s views ranging from within a ten mile radius to a county or region. Over half of the people surveyed believed it was important to buy local food to support local food businesses and the local area.</p> <p>A highly publicised example of the term being misused in 2007 was milk marketed as local when produced 150 miles away from point of sale<sup>5</sup>.</p> <p>In order for consumers to have continued confidence in food labels the NCC believes that this guidance should be a living document and as such regularly reviewed by the FSA and enforcement authorities to ensure that labelling terms are being used appropriately by manufacturers, and secondly that new marketing terms are incorporated into the guidance at the earliest opportunity to ensure continued consumer confidence.</p>	<p>advice has been added on ‘seasonal’ but not ‘local’ – see Natural England comments above.</p> <p>Comments are noted.</p>
Neville Cradock	SEE ATTACHED DOCUMENT	The Agency has provided its view on best practice according to issues concerning the use of the term natural that arose after the

<sup>1</sup> Seasons’ promise: an enjoyable way to tackle climate change ([www.ncc.org.uk/research\\_policy/food/](http://www.ncc.org.uk/research_policy/food/))

<sup>2</sup> [www.ncc.org.uk/nccpdf/poldocs/NCC178rr\\_green\\_grocers.pdf](http://www.ncc.org.uk/nccpdf/poldocs/NCC178rr_green_grocers.pdf)

<sup>3</sup> Local food Omnibus Research Report Prepared for the Food Standards Agency by COI March 2007; [www.food.gov.uk](http://www.food.gov.uk)

<sup>4</sup> Two in five shoppers said that ‘local food’ meant food from within a ten-mile radius of where they lived, one in five said that ‘local’ meant from their county and a further one in seven believed it meant from their county or a neighbouring one. One in five felt that ‘local food’ was from their region. *Local food omnibus research report COI March 2007,*

<sup>5</sup> [www.news.bbc.co.uk/1/hi/england/6264568.stm](http://www.news.bbc.co.uk/1/hi/england/6264568.stm)

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		consumer research project had finished.
NFU	<p>The NFU is pleased to see that the guidance is being revised in line with consumer research, as consumer understanding and perceptions must obviously be central to food labelling policy. Food production and retailing markets, as well as consumer trends, demands and expectations are changing constantly and rapidly. It is therefore important that guidance on marketing terms is updated to reflect this. It is important that it facilitates and does not stifle innovation and industry response to demand, while also preventing misleading practices. The FSA should consider public-facing information and awareness-raising about these terms so consumers can have greater understanding of what is meant.</p> <p>Overall, the NFU believes the guidance is clear and usable by those developing labels at a commercially significant scale. However, there are some rather strange statements that are described below. For some microbusinesses it may seem lengthy and may benefit from more user-friendly formatting (boxes, graphics, text emphasis etc.). However, in general those needing advice on their labels would be able to locate the appropriate section and seek further information from the FSA.</p>	<p>The Agency will consider producing public facing information on the use of these terms.</p> <p>The Agency is pleased that the NFU considers the Guidance usable.</p>
Nutrition Society	<p>The Nutrition Society welcomes the revision of this guidance document and is pleased to have the opportunity to comment. The Society finds the revised guidance to be comprehensive and detailed. This is a laudable update with a clear focus on consumer protection; as such the Society fully supports the proposal for option 2, to introduce the revised guidance.</p>	<p>The Agency welcomes the support.</p>
Premier Foods	<p>Premier Foods understands the desire for revision of this guidance as clarification in the light of further consumer research into the generally accepted meaning of these terms. However we believe that with the imminent publication of a draft EU Commission Food Information Regulation which may affect this subject, it may be better to consider delaying the re-issue of this guidance until this new legislation has been adopted, or at least its scope more fully understood. Significant imminent change to Additives and Flavourings legislation (the Food Improvement Agents Package) may also quickly invalidate certain references in the guidance (particularly the Criteria for use of the term 'Natural' section).</p> <p>We do not believe this revised guidance will incur significant extra costs for our business or will affect competition in the food sector.</p>	<p>The Agency will proceed with the publication of this Guidance. It applies to the UK and will be considered again after the new Regulation is introduced.</p>
SWERCOTS	<p>Clarification of the FSA criteria for the use of these marketing terms greatly assists in the certainty of any advice given. However, the status of the FSA Criteria document as 'voluntary best practice advice' still gives rise to some concern as to legal interpretation should enforcement action be considered for the proscribed or misleading use and context of the terms covered.</p>	<p>It is up to enforcement authorities to decide whether they consider labels are misleading and take action accordingly. The advice on the terms is best practice advice.</p>
Tesco	<p>Tesco has found the previous criteria useful in the past although we did not feel it always reflected actual customer expectation. This was particularly true of the guidance around 'farmhouse' and parts of the guidance on 'fresh'.</p> <p>Whilst we support the review of the existing criteria we are not persuaded that extending the criteria to new terms has been shown to be necessary. The FSA's own research in this area did not demonstrate that these new terms were being misused in any way. It is therefore not clear what the</p>	<p>The proposed Guidance on several of the new terms has been altered in the light of this consultation.</p>

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	<p>justification is for formal FSA guidance especially as we know this sort of guidance is treated as if it were a legal requirement by some local enforcement.</p> <p>It is also true that the guidance on the new terms often directly transposes comments made in the course of the FSA’s research even when this is not supported by the true meaning of the words, for example “hand made” foods must, in addition to being made by hand, be made by an expert with fresh, unprocessed ingredients.</p> <p>We note that the guidance continues to reproduce and reference LACORS guidance. It should be noted that LACORS guidance represents only a local authority enforcement viewpoint. LACORS guidance is never circulated for industry or other stakeholder comment. We believe that FSA guidance should reflect the FSA’s position as informed by its own research and stakeholder consultation.</p>	<p>Amendments have been made for “hand made” to remove these suggestions.</p> <p>The Agency does support the LACORS guidance that is referenced.</p>
<p style="text-align: center;">VEGA</p>	<p>The FSA’s consultations on the argot of food retailers, caterers, and restauraners is commendable, but should be accompanied by vigorously with education of consumers, from school onwards, on the elements of shrewd trading and the full implication of caveat emptor. In a bargaining situation we have to allow for the questionable differences and circumstances of buyer and seller and the difficulties that arise in interpreting common commercial practices with scientific and legal precision.</p> <p>These difficulties are sharpened within the EU by nuances of language and variations in custom and background; even with English-speaking regions in international commerce interpretations and revisions differ. We advocate much increased resort to IT for availability of detailed SOPs (standard operating procedures), ingredients list, scores or other indicators on levels of certified hygiene and welfare (of all animals involved in production and output), as well as current matters of environmental interest and husbandry. This would require more of the shopper and encourage an acute attitude to the importance of commodities and their distribution. Such information could be available in store and from the home computer. Canny consumership makes for higher standards and insights, and thriftier citizenship. We have been advocating such practices for some years and have been practicing it in the context of our recipes in the Portfolio of eating plans that we publish week by week on our website, so far with a display of information in the style of FSA nutritional labelling and profiling.</p> <p>The shopper should thus be forearmed with information that would not unduly complicate the final decision of purchase on the basis of price, presentation, and purpose</p> <p>We review many descriptions for which we think the FSA could offer a glossary for the general public. Examples would be:</p> <ul style="list-style-type: none"> <li>• Ready, eg in ready meals and oven-ready birds</li> <li>• Free, eg free from GM, nuts etc, free range (applied to poultry and dairy production), meat-free, dairy-free, cruelty-free...</li> <li>• Flavorings, processing aids and appropriate labeling</li> </ul>	<p>The Agency notes these comments. Guidance has been issued recently on use of the terms “vegetarian” and “vegan”. Descriptions that are commented upon here do not generally fall within the scope of the marketing terms covered within this Guidance.</p>

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	<ul style="list-style-type: none"> <li>• GM, hybridized, and cloned products and appropriate labeling</li> <li>• Indian, Greek, Italian etc. What traditions mark such cuisines (among which there are further divisions, eg Punjabi, tandoori, Madras...); and with tea and coffee issues such as Indian, Ceylon, Sri Lankan, Chinese, Darjeeling black teas and coffees from Kenya or South America.</li> <li>• Halal, kosher (and glatt kosher) meat and other foods and drinks with such descriptions are becoming more widely on sale</li> <li>• Superfood</li> <li>• Fruit and veg is a comprehensive and much-used description. Where do nuts / seeds / grains come in it? And are root vegetables in one category (eg potatoes, carrots, beets, cassava, yams, taro...?). Is there a need for more “healthy” categories beyond fruit and veg?</li> </ul>	
Yorkshire and Humber Trading Standards	<p>It is possible that the individual ‘recommended criteria’ sections may be read individually – particularly if sections have been photocopied for circulation - without regard to the legal requirements and advice given in the initial pages of the document. Each section header should be amended to include a legal requirement/due diligence defence caveat.</p> <p>In addition it should be made clear that businesses are not legally obliged to follow the recommended criteria.</p>	<p>This change would be repetitious.</p> <p>This is made clear.</p>
Meat and Livestock Commission	<p>We commend the Agency's attempts to improve the consistency of the use of terms such as those in this document, which are capable of being used in ways that may mislead a consumer. In general, we agree with the Agency's positioning in the general case. We think, however, that it could be made more clear that the guidance may be inappropriate (whether too restrictive or insufficiently restraining) in particular cases and that therefore labellers should consider the detailed circumstances on each occasion when they are proposing to use these or similar terms, and mutatis mutandis in relation to enforcement.</p>	<p>It has been added that the use of terms must be considered on a case by case basis.</p>
Scotch Whisky Association	<p>Many of the terms considered in the existing FSA guidance, as well as those suggested for addition in future guidance, are commonly used on a number of Scotch Whisky brands. As a result, any alteration of the guidance, or indeed the introduction of legislative requirements, could have a significant impact on long-established industry labelling practices. The SWA therefore welcomes the FSA proposal that any advice given in the revised guidance notes should be capable of being justified by evidence.</p> <p>At the outset we would wish to make a few observations regarding the proposed new guidance since there would appear to be scope for it to go beyond the provisions that are already in place in EU law. Generally speaking, there are a number of existing provisions of EU law which are designed to deal with the issue of misleading labelling. Directive 2000/13 is, as you know, the EU food labelling Directive. Article 2.1. (a) (iii) stipulates that "labelling and methods used must not be such as could mislead the purchaser... by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics" Article 2.2 states that the European Council <b>i.e.</b> Member States, "shall draw up a non-exhaustive list of the claims within the meaning of paragraph 1, the use of which must at all events be prohibited or restricted.</p> <p>For nearly 30 years therefore the EU has had a provision in place to allow it to scrutinise "labelling</p>	

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	<p>and methods" with a view to placing restrictions on, or banning, terms that could "mislead the purchaser to a material degree". In that time, and despite the numerous occasions when food law was revised (you will recall that 2000/13 is the consolidation of the original Directive 79/112 and its 8 subsequent amending texts), not only has no such list ever been drawn up but we are not aware of any call from any Member State for the issue to be examined. This strongly suggests that neither the Commission nor Member States have ever had any reason to believe that descriptive terms used on the labels of any foodstuffs, i.e. not just spirit drinks, are problematic or mislead consumers and need to be restricted.</p> <p>A separate aspect to this is that the Directive requires any List of terms on which controls are deemed necessary to be drawn up by the Council. In other words, it does not appear that Member States have the discretion to introduce such a list unilaterally. The reason for this is of course to ensure that free trade is not impeded by national measures. We appreciate that the FSA is considering certain marketing terms from the point of view of updating "guidance" but you will understand our concern about the potential for this to lead to regulatory/legislative proposals unilaterally in the UK in future.</p> <p>The EU food labelling Directive is a framework law that is implemented into national legislation by Member States. The law sits alongside other laws (vertical legislation) which are specific to individual sectors. In our sector, EU Regulation 1576/89 on the definition and description of spirit drinks, is the relevant legislation; as a Regulation, it is directly applicable in Member States and overrides a Directive.</p> <p>Article 6.1 of the Regulation states "Special provisions may govern indications used in addition to the sales description, i.e.: - the use of terms, acronyms or signs". Article 6.3 states that the provisions referred to "shalt be designed in particular to prevent the creation of confusion by the names referred to in those paragraphs. In the eighteen years the specific Law relating to spirits has been in force, there has been no effort made by Member States or the Commission to use this article to set down conditions relating to the use of additional terms on spirits labels. This would appear to be further evidence that there have been no serious concerns regarding Labelling terms in our sector that requires action to be taken.</p> <p>On a related matter, you will also of course be aware that with Directive 2000113 itself having been amended on a number of occasions, and following lengthy discussions, both internally and with stakeholders, the Commission is expected to issue a proposal for a new Regulation on food information early in 2008. From the information available at this stage, the draft new law does not contain the provisions of article 2.2 but it does maintain those of article 2.1. This is an aspect we will need to reflect on when the proposal passes through its co-decision process and it is possible we may wish to seek the re-introduction of the 2.2 provision in an effort to protect the free movement of goods.</p> <p>More broadly, there is also a question in our minds as to the need for a review on UK national guidance at a time when labelling will come under the microscope in the coming 2 years while the process of adopting the new law takes place.</p>	Noted.
LACORS	It would be helpful if under the heading "General Advice" (paragraphs 8-16) a reference could be added to the need to take care when these terms are included in business names, trade marks and	Amendment made accordingly.

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	fancy names. It is possible, otherwise, for these to create a false impression for a consumer without having any direct impact on the legal labelling information required.	
SFAC	<p>A necessary and well presented update. Useful headings, with examples clearly illustrating the points being made. The amendments were support by consumer research which should ensure it is relevant and helpful to consumers.</p> <p>The revision seems appropriate and relevant however, there were some areas when additional clarification might have been of benefit for consumers: (see below).</p>	<p>Welcome support.</p> <p>See below for comments on individual issues.</p>
Which (SFAC)	<p>Support the development of this guidance as we believe there is the potential for these terms to mislead consumers if they are not used consistently and reflect consumer understanding.</p> <p>p1 Introduction Would like to see the sentence at the end of the 4<sup>th</sup> paragraph ‘However the Agency does recognise the need for product differentiation’ as in this context it undermines the importance of following the guidance.</p> <p>p 4-5 General Advice Be made clear that the guidance extends to product names and use of brand names.</p> <p>It will be important the FSA promotes and monitors the extent to which it is followed and highlight where there is good and poor practice in the industry.</p>	<p>Welcome support.</p> <p>Sentence removed.</p> <p>New paragraph 18 added to deal with this.</p> <p>Noted.</p>
FUW	<p>The Farmers’ Union of Wales welcomes the opportunity to contribute to the Food Standards Agency’s consultation on the Revision of Guidance: Criteria for the Use of the Terms Fresh, Pure, Natural etc in Food Labelling.</p> <p>The Union supports and welcomes the review of the guidance relating to the use of the marketing terms fresh, pure, natural etc on food labels. The review appears to be a sensible step forward and is well timed with the increasing consumer demand for local products and their desire for more informed choice.</p> <p>Since the guidance was first issued in 2002 the market place and practices have changed and customer interpretation of a number of marketing terms has shifted and developed. Also new words are now being used by the industry. With these changes, which the consultation also highlights, the guidance needs updating to reflect the shift in expectations. As the proposed revised guidance is based on research undertaken into consumers views and interpretation, the guidance should be ideally positioned to represent the current market place.</p> <p>The Union encourages the use of appropriate, consistent and transparent wording on labelling, not only to improve consumer satisfaction and understanding of products but also to benefit the industry in maintaining and improving its credibility. With more accurate wording on labels and the avoidance of the misuse and overuse of words, consumers will benefit from an informative and meaningful</p>	

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	<p>labelling system which is not misleading.</p> <p>The guidance clearly defines what a legal requirement is and what a voluntary undertaking is and constructively combines the two elements. The guidance also touch up on the use of pictures on labels which can be one of the most effective methods of communicating information to consumers but can also lead to misinterpretation. By highlighting these issues the guidance covers some of the most important issues relating to labelling. Overall the information and recommendations contained within the guidance appear to be sensible. The examples outlined in the guidance are useful. However concerns were raised that some of the statements within the guidance could be open to interpretation by the reader.</p> <p>The cost to the industry should be minimal as only familiarisation with the guidance will be required. A business may decide to improve its labelling in light of the revised guidance but as such this is a commercial decision undertaken voluntarily. The Union hopes the guidance will create a more even playing field within a sector of the industry as products which are similar will not differentiated by misleading labelling.</p> <p>The Union is however concerned by the results of the research that was undertaken by the Agency, which examined the extent the industry was taking account of the guidance and was bemused to find that 40% of the sample businesses were non compliant. This figure could signify a large proportion of the labelling in the market place as being in the worst case misleading and deceptive. By up dating the guidance the Agency is still not addressing this problem and it is unlikely that the improvements in the guidance will encourage increased compliance. Therefore there seems to be considerable scope for some form of enforcement to ensure that the general public are not misled.</p> <p>I trust you will take the above into full consideration when reviewing the guidance on the criteria of the use of the terms fresh, pure, natural etc in food labelling in Wales.</p>	<p>Welcome support.</p> <p>Noted.</p>
<p>County Analyst, Worcestershire Scientific Services</p>	<p>I am a practising Public Analyst for 20 food authorities, and was responsible for the coordination of the 2004 survey into the extent of adherence to the criteria. I am a member and past chairman of the LACORS food labelling focus group.</p> <p>I welcome the opportunity to comment on this revision and extension to the Criteria, which have been a useful contribution to consumer protection.</p>	<p>Noted.</p>
<p>Food Solutions</p>	<p>We welcome the research done to clarify the terms used in describing foods. In general we would agree that you have adequately reflected the common interpretations of these terms.</p> <p>We approve the amendments that you have made in the interests of clarity and understanding.</p>	<p>Noted.</p>

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	<p>However we are concerned that the document at 30+ pages is unlikely to be a common point of reference for small business whomay be making short runs of bespoke products. It is our intention to paraphrase your comprehensive guide into a shorter document. This would refer readers to your guide for details. It is our experience that many producers do not know of any definitions of these terms and have told us that they would appreciate any guidance.</p> <p>Our summary would be based on the definitions that you have used, for instance in the first sentence of clause 43 to define “natural”.</p> <p>Food Solutions not only produces simple guides to the food regulations but also sends out a magazine with a potential readership of around 30,000 small food businesses. Not all these are manufacturing as many are catering and retail. It is our aim to assist these undertakings to comply economically with the regulations and so to prosper their business.</p>	
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### General Advice / Legislation (para 1-16)

Respondent	Comment	Response
British Soft Drinks Association	4 <sup>th</sup> paragraph: we are not clear of the evidence base to support the statement that the Agency’s advice is in line with current consumer understanding in the case of Fresh, Pure, Natural and Farmhouse which have not been the subject of recent research.	Changes to the Guidance are being made on the basis of consumer research and stakeholder views.
FDF	<p><b>INTRODUCTION</b></p> <p>1<sup>st</sup> paragraph: Whilst FSA’s stated aim is to set out “voluntary best practice guidance”, most of the document still reads as if FSA is prescribing rules. The purpose of the relevant legislation summarised in Annex 1 is “not to mislead consumers” or “not mislead a purchaser to a material degree”. This is not consistent with an attempt to seek precise meanings for terms for which consumers may have no definite understanding but which cannot, nevertheless, be said to mislead.</p> <p>3<sup>rd</sup> paragraph: It is suggested that the third bullet be re-worded: “give guidance to local authorities in deciding whether or not to challenge inappropriate uses: and”. The reason for this is to indicate that it is guidance which may be used in reaching conclusions and is not a set of prescriptive rules. This is consistent with the style of the first bullet point: “assist...to decide”.</p> <p>4<sup>th</sup> paragraph: The Agency’s statement that its advice is “in line with current consumer understanding”</p>	<p>Marketing terms can mislead if they are used in certain circumstances.</p> <p>Amendments have been made to reflect the point made.</p> <p>There was not consumer research to</p>

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	<p>is not totally supported by the research relied on by the Agency - (see on paras 1-5 below).</p> <p><b>Note:</b> Add to the end of the note the sentence: “The use of a term might be legally justifiable even if it is outwith this guidance.”</p> <p><b>BACKGROUND</b></p> <p><b>1-5:</b> It is helpful that FSA commissioned up to date consumer research but we note that this did not include some key terms such as “Fresh, “Pure” and “Natural”.</p> <p><b>13:</b> We question the requirement that the meaning of a term (with or without further qualification) must of itself be “clear” where shades of understanding are inevitable. The key issue, and that raised by the example given, is that terms should not actually mislead or be likely to do so. The appropriateness of a term must be considered in its context of use.</p> <p><b>15:</b> The changes made here present a complete change of view by FSA which we are not aware is supported by evidence that consumers are misled by the terms “style” and/or “type”. The advice in the second sentence is preferable to the negative view expressed in the first.</p> <p><b>16:</b> Is “traditional style” really misleading if the nature of the “traditional” element can be explained on pack?</p>	<p>investigate every change suggested to the Guidance.</p> <p>It is felt that this would be restating what is said elsewhere.</p> <p>A stakeholder meeting held to discuss possible research did not suggest that this was needed.</p> <p>We agree that shades of understanding are inevitable but still think that meaning should be reasonably clear.</p> <p>The changes do not present a complete change of view. The first sentence is in fact less negative than it was previously.</p> <p>The advice is best practice advice and if traditional is explained then this will be of assistance to the consumer.</p>
<p>Food Additive and ingredient Association</p>	<ul style="list-style-type: none"> <li>• <b>Rationale</b></li> </ul> <p>It is not clear as to exactly why the guidelines have been reviewed. As far as we are aware from our customers perspective the present guidance adequately addresses the conditions for the application of such claims. Our understanding is that no consumer research has been undertaken to provide background to effect these changes, hence we question the need for the changes to the guidelines which have been proposed.</p>	<p>There was not consumer research to investigate every change suggested to the Guidance.</p> <p>There has been support for the changes suggested for which there was no consumer research.</p>
<p>Neville Cradock</p>	<p>The disclaimer on Page 1: “Note: Any statement relating to the legal position should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Ultimately, only the courts can decide whether, in particular circumstances, an offence has been committed” could usefully also state that the use of the terms must be assessed on a case-by-case basis, and take into account the “label as a whole” concept.</p> <p>40. Para7 states “There is little specific legislation on the use of the terms covered in this best practice Guidance. Where there are specific rules, details are provided as footnotes in the sections on the terms.” There was a significant omission from the earlier guidance that should be corrected.</p> <p>There is an EU legislative definition of gelatine as the “natural, soluble protein ... obtained by the</p>	<p>Amendment made to take on board these points.</p>

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	<p>partial hydrolysis of collagen produced from ... skins ... of animals” that not only pre-dates the original FAC 2001 Report but was overlooked by the FAC (at the time) and by the FSA (both at the time and subsequently). The same legislation defines the minimum processing that must be undertaken during the extraction of natural gelatine – in particular, mandatory use of acid (or alkali) treatment and sterilisation.</p> <p>The legal definition of gelatine as a “natural protein” and the legally-specified, minimum requirements for its manufacture should therefore have been incorporated into the FAC Report as a further example of an existing legal meaning and use of the term “natural” in relation to foods and food ingredients. Hence, it should also have been taken into consideration when the Food Standards Agency subsequently developed their Criteria.</p> <p>This definition was carried forward, unchanged, during a fundamental review and wide public consultation during 1999 – 2004, within and between all EU institutions and stakeholders. It must be concluded, therefore, that it was considered acceptable by all parties involved in the democratic process at that time.</p> <p>This omission should be corrected and the appropriate text added to the revised FSA Guidelines Section on the term “Natural”. A distinction between simple gelatine and the grades that have received further processing such as hydrolysis will, however, be needed.</p>	<p>All gelatine is produced by chemical change during its production as it is hydrolysed collagen. Therefore the Agency does not consider it to be a natural ingredient.</p>
<p style="text-align: center;">NFU</p>	<p>The background section explaining Food Advisory Committee deliberations, consumer surveys and stakeholder meetings is not strictly necessary in giving guidance for businesses. This section would be better placed in an appendix.</p>	<p>Amendment made accordingly.</p>
<p style="text-align: center;">Nutrition Society</p>	<p>The compliance to the original guidance was 60% two years after introduced. The Society questions whether the Food Standards Agency will take further measures to ensure the revised guidance will be more successfully complied to.</p> <p>The Society would suggest that the advice given in paragraph 10 be extended to cover websites and leaflets as well as labels and advertising.</p>	<p>The advice is best practice advice and does not require compliance.</p> <p>Amendment made.</p>
<p style="text-align: center;">Food &amp; Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)</p>	<p>It must be recognised that the use of these terms is purely the choice of those marketing foods; there is no compulsion to use them. These terms are used to convey messages to consumers to differentiate from other similar products on the market and to attract attention and persuade consumers to purchase. The obligation therefore is not to abuse consumers’ trust by using the terms in a misleading way. If there is any possibility that consumers would misunderstand or not understand the claim applied to a product then the term should not be used, or should be used accompanied by any necessary explanation to remove doubt or confusion.</p> <p>Where any qualification/explanation is necessary to understand the meaning of a marketing term this should accompany the term and associated imagery. It should be in a font and size that is easily legible and prominent to help consumers make their choice in full knowledge of the facts.</p> <p>Purchasing behaviour suggests that consumers are likely to be misled if the back or side of a pack carries ‘small print’ explanations or qualifications of claims that contradict or change the meaning of prominent claims and images on the front of pack.</p>	<p>Amendment made accordingly on making necessary explanations sufficiently prominent.</p>

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PepsiCo	We note the statement that the advice is in line with current consumer understanding and suggests a common approach for industry consistent with current market practices. The evidence base to support this statement is not clear to us for Fresh, Pure, Natural and Farmhouse, which do not appear to have been the subject of recent research. It is possible that the proposed Guidance goes beyond an average consumer’s expectation in terms of fresh, natural or pure – for example we believe many consumers would consider simple ingredients such as sugar, water and vegetable oil to be natural provided their key characteristics remain unchanged.	Ingredients such as refined sugar do not retain the key characteristics of sugar beet, for example. Ingredients that appear simple may have been produced by processing such that a consumer may judge that it results in a non-natural product.
Premier Foods	Clarity may be aided by reference to the sections on the terms “Traditional” and “Authentic”, eg to describe a curry as “Traditional Indian” or “Authentic Indian”.	Noted.
SWERCOTS	<p>Research has shown that the terms used to describe food are important to consumers and, therefore it follows, to those marketing food. Perceived problems specifically relevant, although not exclusive, to the South West relate to a misuse of terms such as ‘local’, ‘home made’, ‘farmhouse’ and, particularly in the catering sector, phrases such as ‘freshly made on the premises’ as well as origin based claims such as ‘westcountry’. ( The links between origin claims and marketing terms was made in the SWERCOTs response to the consultation on FSA Country of Origin Labelling Guidance in Nov 07, perhaps there could be scope to bring relevant descriptive term origin based guidance across to the ‘Criteria etc’ document ?)</p> <p>The specific revisions to the Criteria document to deal with changes in manufacturing process e.g. in relation to use of the term ‘Natural’ are helpful but could go further to protect the common understanding of such terms in the future as processes evolve. It would be useful to have some mechanism laid down in the Criteria document by which guidance or even arbitration could be given for future manufacturing/processing developments.</p> <p>Although the stated aim of the Criteria document is primarily to inform industry in the use of descriptive marketing terms which consumers will find informative, the Agency’s guidance in such matters would also clearly be persuasive as far as any court proceedings are concerned. To that end, whilst additional, explicit legislation on marketing terms may not be desirable to ensure harmonised compliance across the EU, enforcement authorities would, as a general principle, appreciate the drafting of any best-practice advice in such a way that compliance is to be viewed as mandatory rather than voluntary. Management of the competing tensions between marketing and legal compliance is a key area in which local authorities become involved. In such circumstances, the weaker the phraseology used in guidance, the less likely it will be that (strictly) non-statutory best-practice rules are observed.</p> <p><b>Point 11</b> - Although the labelling and presentation of the food as a whole should be considered for any assessment as to whether a term is misleading it is suggested that not “the package as a whole” but to “any single field of vision” would be a more meaningful assessment of the likely specific impact on potential consumers. It also avoids the possibility of having a disclaimer in another field of vision to the claim on representation</p>	<p>It has been decided to leave the Country of Origin Guidance as a separate document.</p> <p>The Agency welcomes the support and will consider possible information mechanisms for future developments.</p> <p>Compliance with the Guidance is to be viewed as voluntary and not mandatory.</p> <p>Advice has been added on prominence of explanatory statements.</p>



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Respondent	Comment	Response
BRC	<p>Paragraph 19. This paragraph should be merged with paragraph 22.</p> <p>Paragraph 26. While the fact that fruit has been washed may be indicated when the fruit is sold as such, this practice is not carried through to products such as 'fresh fruit salad' where the consumer would expect the pieces of the fruit which has not been peeled and cut (e.g. strawberries) to have been washed and trimmed.</p> <p>Paragraph 37. We agree with the Agency's advice that suggests that products that come into the store part-baked and are baked off and refreshed in store should not be using the terms freshly baked or equivalent. However, we disagree with the idea that products that come into store raw (not baked before), e.g. frozen dough, and are fully baked in-store, cannot be called 'freshly baked' or 'baked in store'. We believe this advice should be changed</p>	<p>Amendment made.</p> <p>Amendment made.</p> <p>Noted. Although baking may occur in store consumers may wish to differentiate between bread made from frozen dough and bread not made from frozen dough.</p>
Advertising Standards Agency	<p>The FSA terms for 'fresh' are in line with ASA understanding and we would not object to the standing guidance offered by the FSA on fresh food products, frozen foods, chilled foods, fresh taste and the new guidance on milk.</p> <p>The Advertising Codes do not list definitions of every possible term as the Codes would become overlong and unmanageable. The term 'fresh' as set out by the FSA would be considered under the misleadingness sections of the Codes.<sup>6</sup></p>	Comments noted.
Dairy UK	In the case of dairy products such as cream or milk, we consider that "fresh" implies that the product has a limited shelf-life, must be held under chilled conditions, and has organoleptic properties similar to a product which has received a mild heat-treatment. We do not consider that the actual heat-treatment must be minimal. This allows for processing innovations and developments. UHT would not qualify under this definition. High-temperature pasteurised milk is no longer defined in the Regulations. The previous definition defined this as a product phosphatase negative and peroxidase negative. We do not consider that this definition is relevant to the consumers' expectations which we have considered above. Consequently high temperature pasteurised milk in our view may, or may not, qualify as "fresh" depending on its properties.	The Agency considers that the consumer would not consider HTP milk to be fresh.
Eversheds	We agree that this guidance should largely remain unchanged. We support proposed new paragraph 31.	We welcome the support.
FDF	Given that the word "fresh" has several different meanings (according to context) all of which are in common usage, it would be appropriate to update the Guidance on the basis of current consumer	

<sup>6</sup> Although 'fresh' is mentioned in the CAP 'Help Note for food and soft drink product advertisements and children' to mean unprocessed and is generally restricted to fruit and vegetables, this is only in terms of the applicability of a food ad in relation to children.

The CAP Help Note states in relation to Code 47.8:

*Fresh fruit or fresh vegetables means non-prepackaged fresh fruit or fresh vegetables put up for sale to the final consumer or fresh fruit or fresh vegetables packed at the point of sale or pre-packaged fresh fruit or fresh vegetables with a view to imminent sale.*

[http://www.asa.org.uk/NR/rdonlyres/F0761B35-A7C6-4301-AB35-C660B0478094/0/food\\_ads\\_children.pdf](http://www.asa.org.uk/NR/rdonlyres/F0761B35-A7C6-4301-AB35-C660B0478094/0/food_ads_children.pdf)

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	<p>research.</p> <p><b>24:</b> Whilst accepting that “freshly packed” has a time-related meaning, it should be permitted to make statements such as “foil packed for extra freshness” or “individually sealed for freshness” indicating that quality is being conserved.</p> <p><b>31:</b> A description such as “marinated fresh fish” would not be misleading as it would indicate an uncooked product made by marinating fresh fish.</p> <p><b>35:</b> Is there a confusion here with sterilized or UHT milk, which should not carry the term fresh. Both pasteurised and “high temperature pasteurised” milk are chilled and have a limited shelf life, which qualifies them for carrying a ‘fresh’ descriptor.</p> <p><b>37:</b> We do not agree with the views set out here about the meaning of “freshly baked”. It means exactly what it says and does not necessarily imply freshly produced from scratch in the context of an in store bakery’s product.</p> <p><b>41-42:</b> “Fresh” and “Chilled” have, in our view, increasingly become perceived as synonymous by consumers. Provided the product has a short shelf life, whether at ambient temperature or refrigerated, we do not believe consumers are misled. This would also be consistent with FSA’s understanding of what “fresh pasta” means (see para 36).</p>	<p>This use may be helpful to indicate quality of packing.</p> <p>No change has been made as it is considered that the suggested phrase indicates the product is fresh. The Agency considers that the consumer would not consider HTP milk to be fresh.</p> <p>No change has been made as it is considered that the suggested phrase indicates the product is fresh and made from scratch.</p> <p>It is felt that there is a distinction between fresh and chilled. No change made.</p>
Meat and Livestock Commission	we support the fact that previously frozen meat which is sold thawed should not be allowed to use the term fresh. To do so would be grossly misleading to the consumer.	Welcome support.
Neville Cradock	<p><b>“FRESH”</b> It is noted that no problems were highlighted by consumers and no research conducted to support the proposed amendments:</p> <ul style="list-style-type: none"> <li>➤ <i>Use of the term “fresh” to describe fish that has been kept chilled on ice, but not [stored] deep frozen, is acceptable.</i> This appears to clarify the original position.</li> <li>➤ <i>Smoked or marinated/salted fish should not be referred to as fresh because it is by its nature preserved.</i> This is a good example of where a distinction between alternative grammatical constructs can, and must, be made. Clearly, the end product cannot be described as “fresh”. However, to describe its quality in the form of “marinated fresh fish” (as opposed, say, to the use of frozen or dried fish) would not be misleading. It would be a true description which indicates an uncooked product obtained by marinating fresh fish.</li> <li>➤ <i>“High temperature pasteurised” milk has a recognised meaning and should not carry the term “fresh”.</i> I would tend to disagree. Conventional, pasteurised milk and HT pasteurised milk are both stored and sold – with comparable short shelf lives – in the same manner. The use of HT pasteurisation should be distinguished from UHT or sterilised products, which certainly should not be described as “fresh”.</li> </ul>	<p>No change has been made as it is considered that the suggested phrase indicates the product is fresh.</p> <p>The Agency considers that the consumer would not consider HTP milk to be fresh.</p>

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PepsiCo	There is an additional meaning of the word 'fresh' which is not covered in the guidance document, but which is an important consumer benefit in relation to certain packaged foods, e.g. biscuits, crackers and crisps: 'with the original properties unimpaired, i.e. not stale or spoiled'. We suggest the guidance is amended to clarify that it is acceptable to claim 'freshness' when used specifically and clearly to mean 'not stale'. For example, 'foil packed to retain freshness', 'freshness guaranteed'	This use may be helpful to indicate quality of packing.
Premier Foods	There should be consistency in the use of the terms "canned" and "tinned".  Premier Foods understand the correct term to be "canned" where a hermetic seal is formed during processing that once opened cannot be resealed. "Tins" relates to a metal container with a replaceable lid, for example biscuit tins.	Amendment made.
Tesco	Para 36 & 37 – These represent LACORS views on 'fresh' pasta and bread. It is not appropriate to reproduce them in this document.	The Agency supports the LACORS views.
Meat and Livestock Commission	27-28: we concur. 38: the sub-heading is ambiguous - it is not clear whether 'frozen' applies to both of the nouns separated by an oblique stroke.	Amendment made to clarify.
LACORS	Paragraph 35. We would not necessarily agree that pasteurised milk should not use the term "fresh" when it has been subject to short high temperature processing and has a short shelf life at ambient rather than longer duration processing (sterilised milk) which has a much longer shelf life.  Paragraphs 41 and 42. It is not clear if the comment in paragraph 42 refers to the previous statement in paragraph 41. If they are connected should 42 be subsumed into 41? If paragraph 42 is meant as separate advice it is not clear as currently written what situations it refers to.	No change made.  The 2 paragraphs will be merged.
SFAC	Industry may perhaps have some issues with the bake off of fresh bread, but we think the advice will help to inform consumers.	Welcome support.
Prof Lewis Gilnert	p9 Point 32. The term 'fresh' should not be used, directly or by implication, on juices prepared by dilution of concentrates.  Concerned by the use of the term 'by implication'. It could be narrowly construed as 'logical implication'; but this would fail to cover the widespread use of associative implication. To state that apple juice was made from concentrates derived from 'fresh apples' might well suggest to the average consumer that the juice itself is fresh – by association.  Does not believe that 'frozen from fresh' makes an unwarranted suggestion, since this is a fairly technical phrase which will probably prompt extensive cognitive work (central processing in the sense of Petty and Cacioppo's "Elaboration Likelihood Model")	No amendment made. 'By implication' is intended to cover logical and associated implication.  No amendment made. Will consider point for any future research in this area.
FUW	The Union is also concerned about the definition of 'fresh' meat. This is an issue which has been raised with the Union on numerous occasions by the general public. The definition in point 27 which states that "virtually all carcase meat is chilled to near or just below 0°C" is misleading, as anything	The paragraph 32 on fresh meat has been amended.

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	below 0°C is frozen and as such would contravene point 28 as well as being classed as a frozen product. Also the Union has concerns with how meat from countries as far a field as New Zealand, for example can still be sold as fresh meat although it has travelled for many weeks before it reaches our shelves. These concerns have been raised with us by numerous members of the general public, as many people feel the description of fresh meat is linked to the locality and the length of time the product takes to reach the consumer. The Union feels the present proposed guidelines is misleading to the consumer and needs adapting to take these concerns into account.	
County Analyst, Worcestershire Scientific Services	Para 35 - "fresh" - personally I am not persuaded that milk that has been pasteurised by a short high temperature process is any less fresh than milk that has been pasteurised by the (traditional?) lower temperature, longer duration process. I would argue that the line should be drawn between milk that is pasteurised, and thus has a relatively short shelf life at ambient, and sterilised milk which will keep for months at ambient. I feel this accords broadly with consumer understanding and use.	No change made.

Natural (para 43-56)

Respondent	Comment	Response
BRC	<p>Paragraph 47. Novel processes. We understand that novel processes will not qualify as a natural in the traditional sense; however some of these processes could qualify as natural in the sense that no chemicals are being used. Therefore we believe this phrase has to be reworded.</p> <p>Similarly we would question whether for ingredients that have been pasteurised or frozen such as lemon juice, it is necessary to declare this in the ingredients list. We would argue that Regulation 11 of the Food Labelling Regulations 1996 only requires this where the consumer could be misled by the omission of such an indication. It is our belief that consumers would not be misled by the omission of this information.</p> <p>Paragraph 53. Phrases like 'naturally better' may be used to denote the healthy nature of a product. These type of claims are permitted under article 10.3 of Regulation (EC) No. 1924/2006 on nutrition and health claims.</p>	<p>No change made.</p> <p>This is best practice advice.</p> <p>The claims Regulation only specifically states that "naturally/natural" can be used as a prefix for <u>nutrition</u> claims. There is no specific similar provision for health claims.</p> <p>Article 10(3) of the Regulation controls reference to general, non-specific benefits of a nutrient or food for overall good health or well-being and in our view this would apply to statements such as "healthy" or "good for you", or similar. These general</p>

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	<p>Paragraph 55. Bullet point 1. If footnotes to legislation are going to remain in the text, this paragraph should refer to article 2.1 (iii) of Directive 2000/13/EC on labelling. It is permitted under the Annex of Regulation (EC) No. 1924/2006 to use the word 'naturally' to describe the nutrition status of a food, e.g. broccoli is naturally fat free. (This is addressed in paragraph 56, but it needs to be joined up).</p> <p>Paragraph 55. Bullet point 2. We disagree with this advice. It is frequently the case that products claim to be free from artificial colours or flavourings however may contain other artificial additives. By declaring that the product is free of a certain additive category, retailers are not implying that the product is natural, but they are providing information on the categories of ingredients that consumers are more concerned about at a certain time. E.g. artificial colours following the publication of the Southampton report on the effects of artificial colours on children behaviour.</p> <p>Paragraph 56. It is not clear whether the sentence starting 'In this context ...' is referring to the context of 'naturally' claims within this guidance or the nutrition and health claims Regulation. This wording needs to be less ambiguous.</p>	<p>references do not need to be authorised themselves but in future must be accompanied by a specific health claim from the authorised list, explaining why the food is healthy, good for you etc. Although this may mean that statements such as "goodness" or "better for you" could be controlled by the claims Regulation if they are understood to imply a benefit to health (and ultimately this will be a matter of individual interpretation), there is nothing that specifically allows them to be accompanied by statements such as "naturally/natural".</p> <p>No change made.</p> <p>This has been retained as it is still considered to be a valid point.</p> <p>Text has been clarified – it is within the context of the Regulation.</p>
Advertising Standards Agency	<p>The ASA agrees that the use of the word 'natural' in describing a product is:</p> <ul style="list-style-type: none"> <li>• Unsuitable for ingredients that are solvent extracted.</li> <li>• Unsuitable for ingredients and foods subjected to certain other processes.</li> <li>• Unsuitable for some foods when significant quantities of water are added.</li> <li>• When used with certain additives present, limited to those which are EU approved with E numbers.</li> <li>• Unsuitable for use if certain additives are in ingredients.</li> <li>• Unsuitable for use in the case of presence of nature identical flavourings.</li> <li>• Used with some particular meanings when used in accordance with legislation on health and nutrition claims.</li> </ul>	Comments noted.

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	<p>This can be seen in our adjudication for Villa Natura, (See Annex 1: Relevant Adjudications) which, although for a paint, was considered to have breached the Code by claiming the paint was made of ‘only renewable natural raw materials’, and yet included synthetic materials.</p>	
<p>British Soft Drinks Association</p>	<p><b>Item 46:</b> the name “natural mineral water” is legally defined – the relevant legislation does not set conditions for the descriptor natural, but does set requirements for a “natural mineral water”. Consequently it would be more accurate to state that “Natural mineral water” may be used in accordance with.....”.</p> <p><b>Item 47a):</b> identifies a number of processes as not natural. Notably processes such as pasteurization and freezing can be effective in preserving the original characteristics of a food or ingredient (i.e. keeping it closer to nature) as well as ensuring safety – certain processes would also classify as traditional processes.</p> <p>We note that further processes have now been identified as not natural, without consumer research to support their inclusion. Treatments such as carbon filtration and solvent extraction are used to isolate or purify foods and ingredients, and to render them suitable for consumption. They do not detract from the natural origin of the food/ingredient and in some cases, are unlikely to be considered material by consumers.</p> <p><b>Items 47 b) and c):</b> require that food ingredients or additives must be from a recognized food source in order to classify as natural. In our view this is an overly restrictive requirement – we believe that many consumers would consider (for example) an extract from a flower, plant or similar as natural, regardless of whether it is a food source.</p> <p><b>Item 47c):</b> BSDA considers the comments on use of physical processing to be overly restrictive. In light of the current consumer interest in colourings, manufacturers wish to stress the presence of colours derived from natural botanical materials, which consumers would consider natural and differentiate them from synthetic colourings such as azo dyes. Members support the use of physical processes for the isolation of “natural colouring foodstuffs”. Emphasis on the use of “natural” colourings in products consumed by children will assist the trend away from synthetic colourings in line with FSA policy.</p> <p><b>Item 48:</b> There are many composite products on the market today described as “natural”. As most composite products are obviously manmade, it is unlikely that consumers would be misled to a material degree if they were described as “natural” rather than “made from all natural ingredients”. In these cases, “natural” is likely to be taken to mean that the product is made from natural ingredients. We recommend that this paragraph is reworded to allow composite foods to be described as “natural” provided all ingredients classify as natural, and provided that the use of the term would not mislead consumers.</p> <p><b>Item 55:</b> first bullet point: we consider that “free from x” claims can provide useful and desirable consumer information, particularly where the nature of a product and its ingredients is not well understood or where consumers are choosing between categories. We believe this paragraph should be reworded to allow “free from X” claims provided the claim does not imply that other foods in the same category do contain X when they do not.</p> <p><b>Item 55:</b> second bullet point: likewise such claims relating to the absence of specific classes of additives provide useful and desirable consumer information. Consumers can be interested in only selected additive categories (e.g. artificial colours, following reports of the Southampton research on</p>	<p>Amendment made.</p> <p>It is considered that the consumer would think that these processes represented ‘interference by man’ and would therefore render the product non-natural.</p> <p>This has been retained, it is not clear that consumers would view products from non-food sources as natural.</p> <p>The Guidance has not been changed.</p> <p>The Guidance has not been changed.</p> <p>The Guidance has not been changed.</p> <p>The Guidance has not been changed.</p>

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	hyperactivity in 2007). Consequently it seems disproportionate to recommend against providing such information in situations where other classes of additive are present.	
Dairy UK	<p>We are surprised that changes to para 47 are being proposed to fit with “current consumer expectations” when the paper states that no problems were identified at the Stakeholder meeting in 2006, and no further research has been conducted. We consider that inulin, gelatin, and rennet are natural ingredients although processing is required to extract them.</p> <p>In para 50 the reference should be to the Dairy UK Code of Practice.</p> <p>We would also point out that in the dairy industry many cheeses are described as “natural” in contrast to processed cheese.</p>	It is considered that the consumer would think that certain processes represented ‘interference by man’ and would therefore render the product non-natural.
European Chemical Industry Council	<p>Some of our members produce food colours from natural sources by extraction with solvents. These solvents are removed after extraction. Some of these food colours could, in our view, therefore be called “natural” as such. They are, however, not suitable for direct use in foods. Owing to their very low solubility they require formulation aids to facilitate their dispersion and dissolution in foods, especially liquids. The dispersing agents used in these natural food colours to facilitate their use can be either natural food constituents or very often synthetic products, approved as food additives.</p> <p>The recommendations for the use of the term “natural” issued by the UK Food Standards Agency state:</p> <p>“Natural” means essentially that the product is comprised of natural ingredients, e. g. ingredients produced by nature, not the work of man or interfered with by man. It is misleading to use term to describe foods or ingredients that employ chemicals to change their composition or comprise the products of new technologies including additives and flavourings that are the products of the chemical industry or extracted by chemical processes.</p> <p>The recommendation of the Food Standards Agency makes not fully clear whether a colour requiring synthetic formulation aids before use can still be called “natural” on a food label. As we want to provide our customers with adequate guidance on the labelling of our products, we will appreciate your clarifying whether labelling of such colour formulation as “natural” would be acceptable our considered a misleading label statement.</p>	If a non natural formulation aid is used then it is considered for best practice then the colour should not be described as a natural colour.
Eversheds	We support the limited amendments proposed to this section.	We welcome the support.
FDF	PLEASE SEE ATTACHED DOCUMENT	Views were expressed that efforts made by industry to avoid using additives and artificial ingredients would not be rewarded if it was recommended that alternative industrially processed ingredients were not to be described as natural. The Guidance has not been changed as it is considered that the consumer will base their judgement

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		<p>of whether something is natural at least partly on the processes that it has undergone. It is accepted that different criteria are applied to food additives and natural flavourings to those applied to foods and food ingredients, but natural flavourings are defined by law and food additives must comply with certain legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.</p>
<p>FDF – Biscuit, cake and confectionery sector</p>	<p>Paragraph 44: We support the fact that additives and flavourings may be described as “natural” as long as they meet the criteria, just like any other foods. However, the approach here seems confusing and illogical, in that it permits extracted additives (which meet the criteria) to be described as “natural” but would prevent natural fruit and vegetable extracts from being described as such.</p> <p>Paragraph 47 a) Third Bullet Point: The example of carbon filtration and ion exchange purification, used in the third bullet point, does not appear to be appropriate for defining a process which is not natural. Domestic water filter jugs work on exactly these processes and it would be impossible to justify that the resultant water was not natural! The bracketed text here also appears to have been taken directly from an ASA adjudication, and, as such, has no place in the Guidance.</p> <p>Paragraph 47 a) Sixth Bullet Point: It is difficult to see why the bracketed text, covering the avoidance of significant quantities of water addition to the final product, has been added as it is purely subjective.</p> <p>Paragraph 56: The use of terms such as “naturally” or “natural” when prefixed to claims such as “low in salt” are simply a way of speaking eg. “naturally low in salt”. Their use in this context does not mean that the food itself is natural. This particular paragraph is therefore misleading and should be removed from the Guidance altogether.</p> <p>Overall, in terms of this section of the Guidance, we agree that the processes used to obtain ingredients and produce foods is important in the definition of natural. However, many inclusions are pure speculation and, in this respect, the Guidance goes too far in relating things to “consumer expectations”.</p>	<p>The Guidance has not been changed as it is considered that the consumer will base their judgement of whether something is natural at least partly on the processes that it has undergone. It is accepted that different criteria are applied to food additives and natural flavourings to those applied to foods and food ingredients, but natural flavourings are defined by law and food additives must comply with certain legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.</p> <p>This is intended to advise on best practice for spreadable fats.</p> <p>No change made.</p> <p>The aim of the best practice is to advise on use of terms in ways that are in line with consumer expectations.</p>
<p>Food Additives and Ingredient Association</p>	<ul style="list-style-type: none"> <li>• <b>Differentiation of additives from ingredients</b></li> </ul> <p>It is not clear to our members, why additives have been differentiated from ingredients in the criteria</p>	<p>It is accepted that different criteria are applied to food additives and natural flavourings to those applied to foods and</p>

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	<p>for being judged “natural”. In theory ingredients which are produced using similar methods and which are used at similar levels should be defined for labelling purposes in the same way.</p> <ul style="list-style-type: none"> <li>• <b>Use of enzymes in “natural” products</b></li> </ul> <p>We feel that enzymes could be used as long as they are not of GM origin as it could be argued that these are biological catalysts and hence inherently natural.</p> <ul style="list-style-type: none"> <li>• <b>Water extraction of “ natural” products</b></li> </ul> <p>We feel that water extraction should be permitted, liquid tea being a good example, but the guidelines are not specific on this point. Many products traditionally perceived as “natural”, and tea is a good example, could be impacted on.</p> <ul style="list-style-type: none"> <li>• <b>Solvent extraction</b></li> </ul> <p>The guidelines indicate that solvent extraction is allowed for the production of flavouring preparations. Thus a black pepper extract could be declared as a natural flavouring on an ingredients list but if it was declared as black pepper in such a list then the product could not be claimed as natural, although it is inherently the same material.</p> <p>As a general final comment we feel that the guidelines are perhaps over-stringent on the definition of “natural” and need softening to accommodate products traditionally perceived to be natural by consumers.</p>	<p>food ingredients, but natural flavourings are defined by law and food additives must comply with certain legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.</p> <p>Enzymes can be derived from natural sources but processes used to make them may render them non-natural.</p> <p>Use of the term would need to be judged on a case by case basis.</p>
Kingston upon Hull Trading Standards	Para 44 – This paragraph contains a mix of legal requirement and advice. The text covering legislation which specifically controls the use of the term ‘natural’, as outlined in paragraphs 46, 47(d & e) and 56, should precede any advice or recommendation on the use of the term ‘natural’.	Paragraph 44 has been deleted.
Neville Cradock	SEE ATTACHED DOCUMENT	The Guidance has not been changed as it is considered that the consumer will base their judgement of whether something is natural at least partly on the processes that it has undergone. It is accepted that different criteria are applied to food additives and natural flavourings to those

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		applied to foods and food ingredients, but natural flavourings are defined by law and food additives must comply with certain legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.
Nutrition Society	The Society is of the opinion that paragraph 44 covers two lengthy points and therefore should be split into two paragraphs to assist industry in following the guidance	Paragraph 44 has been deleted.
Food & Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)	<p>To assist businesses to better understand this section it is requested that further examples of foods and ingredients are given to highlight that they are processed and therefore cannot be described as natural either as foods themselves or as natural ingredients.</p> <p>For example, chocolate, glucose syrup, sugar, golden syrup (partially inverted sugar syrup), citric and ascorbic acid, etc. But the exemptions explained in Paragraph 44 are accepted. This would also relate to paragraph 48.</p> <p><b>Claims such as “natural goodness”, “naturally better”, or “nature’s way” are largely meaningless and should not be used</b></p> <p>The key point here is not that these terms are meaningless; more that they are in fact ambiguous – their meaning, like beauty, is in the eye of the beholder. In fact this is exactly how these words are used: to convey an impression of being natural when in fact the products are not so.</p> <p>The words would not be used to market products if it was thought that they are meaningless.</p> <p>Suggested re-wording:</p> <p>“... are largely confusing and ambiguous. They should not be used and would be wholly misleading if applied to products not meeting the ‘natural’ criteria.”</p>	<p>It would be lengthy to include further examples.</p> <p>The Agency agrees with these points.</p> <p>The Guidance has been amended..</p>
PepsiCo	PLEASE SEE ATTACHED DOCUMENT	The Guidance has not been changed as it is considered that the consumer will base their judgement of whether something is natural at least partly on the processes that it has undergone. It is accepted that different criteria are applied to food additives and natural flavourings to those applied to foods and food ingredients, but natural flavourings are defined by law and food additives must comply with certain

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		legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.
Premier Foods	<p>Since the existing Guidance was issued in 2002, there has been a significant change in the climate with regard to consumer demand for removal of additives from products wherever possible, especially the so-called artificial additives. This has resulted in growing pressure on the food industry to satisfy this demand and to move towards cleaner labels, i.e. more and more products with fewer or even no additives. This already existing trend has been encouraged by various factors, including publication of the FSA research on certain colours and hyperactivity in children and direct requests from the Agency that industry should cease using the implicated colours.</p> <p>Although industry has already been responding to consumer demand by removing additives wherever technically possible, the existing guidance places major restrictions on the extension of this trend and could even be said to mitigate against it through the inconsistencies between the standards to be met by ingredients as opposed to additives and flavourings. This is highlighted by this new paragraph, which itself casts doubt on the basis of the standards applied to ingredients, i.e. the phrase “not likely to be in line with consumers’ expectations” suggests uncertainty.</p> <p><b>Paragraph 46</b> - The wording needs updating as the relevant legislation is now in force.</p> <p><b>Paragraph 47</b> - When additives are removed from products it is usually necessary to replace their technical functions by utilising the properties of individual ingredients or maybe groups of ingredients in order to maintain product quality and integrity. Those ingredients may require a degree of modification to achieve the final result and it is unhelpful to exclude the use of quite benign processes, e.g. freezing, concentration, filtration, etc., just because no specific legislation exists. It is noteworthy that in the Miscellaneous Additives Regulations, freezing and deep freezing, for example, are treatments which do not detract from the status of “unprocessed foodstuffs”, a term which could be argued to be synonymous with “natural” in many respects.</p> <p><b>Paragraph 47d, Note 11</b> - Premier Foods understand that the flavouring category “Identical to Nature” (or “Nature Identical”) will disappear in the forthcoming European legislation change (the “Food Improvement Agents Package”). It seems unnecessary &amp; superfluous to issue advice not to use this term so soon before an actual change to the legislation will remove it anyway.</p> <p><b>Paragraph 55</b> - It is always important for the consumer to be informed of significant product changes that are demanded, e.g. removal of certain types of additives, but the guidance restricts such information when the technical features are replaced without the use of additives. The third bullet precludes this, not just for “natural additives” but for ingredients also.</p>	<p>The Guidance has not been changed as it is considered that the consumer will base their judgement of whether something is natural at least partly on the processes that it has undergone. It is accepted that different criteria are applied to food additives and natural flavourings to those applied to foods and food ingredients, but natural flavourings are defined by law and food additives must comply with certain legal criteria, and consumers will be able to see when flavourings and additives are used from indications on the label.</p> <p>Amendment made accordingly.</p> <p>See comment above in this section.</p> <p>Amendments made.</p> <p>No change made.</p>
Sugar Bureau	PLEASE SEE ATTACHED DOCUMENT	The Guidance has not been changed as it is considered that the consumer will base

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		their judgement of whether something is natural at least partly on the processes that it has undergone.
SWERCOTS	<p>Point 43, 47, 48, 51, 52, 55 Several contributing Local Authorities have had issues arise over the use of the term "Natural" and "natural ingredients", so fully support strong wording used in the Criteria to make clear what is or is not considered natural. Problems arising prior to the revised criteria include:</p> <p>Using term/phrase "natural ingredients" or similar product description when some ingredients are natural and some are not. (covered partly in 48, 55) This needs to be clearly proscribed.</p> <p>Processed ingredients-The additional list of non natural processes in the revised criteria within point 47 are very useful. However, within point 47 it would assist if not only processes but examples of the ingredients/foods likely to be so produced are given in relation to inappropriate use of the term natural.</p> <p>We have had several examples raised of such ingredients that we understand are highly processed but have been used with overall natural claims/terminology on food products e.g. Citric acid which is now only available in a highly processed form but is being used by number of traders where they still say product is a natural one. LACORS back up on advice given to local authority concerned. So could be a good example to use of where term "natural" is not appropriate.</p> <p>Glucose Syrup which is now usually manufactured in a highly industrialised process and produced in a highly refined form from Corn Starch by an enzymic process.</p> <p>Soya Lecithin is generally extracted from Soya beans/oil by mechanical means or by solvent extraction</p> <p>Preservative-Sulphur Dioxide (added to the food in the form of sodium or potassium sulphite or metabisulphite). It is our opinion that none of these compounds may be described as "natural" or appear as ingredients where the general term natural is used.</p> <p>To support this requested specific clarification of point 47 see point 43 where "Natural" means essentially that the product is comprised of natural ingredients, e.g. ingredients produced by nature, not the work of man or interfered with by man. It is misleading to use the term to describe foods or ingredients that employ chemicals to change their composition or comprise the products of new technologies, including additives and flavourings that are the product of the chemical industry or extracted by chemical processes". This, therefore, (i.e. point 43) appears to not allow any highly processed or industrially manufactured ingredient.</p> <p>Given that the revised Criteria for points 47 and 48 is specifically cross referenced within point 51 and (52 by implication) we foresee that certain processed ingredients or additives that are now no longer allowed within an overall natural product description will invalidate established brand names using the term 'Natural' or its derivatives. Should not specific guidance be given on this issue to support the clear message within points 51 and 52? I.e. will certain existing brand names which include the term</p>	<p>Welcome the support.</p> <p>To give examples would be lengthy.</p> <p>This is best practice advice and it is for enforcement authorities to decide on whether or not to take any action.</p>

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	<p>'Natural' or 'Naturally' be allowed to continue without reformulating the ingredients used?</p> <p><u>General point raised re Natural:</u>                  Nb Whilst agreeing with the proposed use of the term 'natural' attention is drawn to the case Amos v Britvic 1984 149 JP 14, which reached a contrary opinion. This matter may need further examination.</p>	Noted.
VEGA	The word natural is still applied to animal-derived dairy products. Our website illustrates the Chillingham herd of natural bovine ruminants for whom the milk supply which is not forced from animal freaks bread through artificial insemination, is reserved (as in suckler-reared beef production) for the cow's natural suckling in a natural bonding of 6 to 8 months, rather than by an abrupt and distressing weaning after a day or 2 to release the udder for appreciation of human milksops, even past their second childhood. The process and the consequences for the veal calves are used by Shakespeare as an example of treachery and certainly not of any awe of nature by the human species	No change made to the Guidance.
Yorkshire and Humber Trading Standards	<p>Paragraph 44 contains a mix of legal requirement and advice. The text covering legislation which specifically controls the use of the term 'natural', as outlined in paragraphs 46, 47(d &amp; e) and 56, should precede any advice or recommendation on the use of the term 'natural'.</p> <p>Further, we would question the 'naturalness' of E numbers and feel it is too simple to say that if it is not synthetically derived it is natural. If the statement in paragraph 44 is to remain the guidance should list the additives and flavourings considered to be natural. For example, can a strawberry flavour obtained by fermentation of substrate be considered 'natural'?</p>	<p>Amendments made to aid clarity. The previous version of the Guidance also allowed certain additives and flavourings to be described as natural.</p> <p>Amendment made to suggest that non traditional fermentation processes do not accord with natural.</p>
Meat and Livestock Commission	<p>44: the inclusion of 'it is advised that' is different from the general case in this guidance and we do not understand the inferred distinction since we suggest that the whole of this guidance essentially provides advice except insofar as regulatory statements are quoted.</p> <p>47a: we are not convinced that naturalness can only be attributed to foods of a traditional nature, although for other reasons we concur with the exclusion of foods derived from novel processes.</p> <p>49: we suggest this is too restrictive and that where the taste, flavour or colour as appropriate is not significantly influenced by the presence of non-natural ingredients that have no effect on the relevant quality other than a dilution effect, then such statements may be justified.</p>	<p>Amendments made to aid clarity.</p> <p>No change made.</p> <p>No change made. The criteria relates to the presence.</p>
LACORS	<p>Paragraph 44. This paragraph states that an additive that has been produced by solvent extraction can still be described as "natural" but other ingredients produced by the same process cannot (paragraph 47(a) refers). Whilst this might be technically correct the distinction is likely to be lost on the average consumer regardless of how well informed they are. It is important not to underline the welcome clarification set out in paragraph 47(a) and so one option may simply to delete paragraph 44.</p> <p>Paragraph 47. We strongly support the bracketed statement in the third bullet of paragraph 47(a) as this clears up some of the areas of debate over processes used in producing "natural" ingredients. Citric acid, for example, has been keenly promoted as a "natural" additive but consideration of the production process involving bacterial fermentation, ion exchange and acid / alkali clean up surely</p>	<p>Paragraph 44 has been deleted.</p> <p>Welcome support.</p> <p>The advice on additional water has been</p>

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	<p>mitigates against use of this term. With regard to the sixth bullet point surely for single ingredient foods no additional water should be allowed?</p> <p>Paragraph 52. Please see previous comments under heading General Comment.</p> <p>Paragraph 55. LACORS strongly agrees with the second bullet point which addresses a common marketing practice but it also raises the issue as to how compliance with this advice can be achieved.</p>	<p>removed..</p> <p>Noted.</p> <p>Noted.</p>
<p>Scottish Beekeepers' Association</p>	<p>Beekeepers have been told previously by the FSA that honey containing GM material could not be called natural. If this is the case when GMO's are grown we will by implication no longer have a natural product, there is also doubt whether or not the honey could be classed as pure.</p> <p>Can you clarify if the continued use of terms pure and natural on honey will be permissible and if permitted, can this be stated in the new guidance documents?</p> <p>If it will not be possible to label honey in this way what terms will be permissible if the honey is to be considered by implication as both impure and unnatural?</p>	<p>The proposed text on "pure" has been amended to take account of legislation on GM labelling requirements. If GM material is present such that labelling is required or at a level that is not significantly below this threshold then it is advised that for best practice the terms "pure" and "natural" would not be used. If a hive were to be deliberately placed near to a GM crop the Agency believes that GM labelling would be required irrespective of how much GM material was present because the presence of GM in the honey could not be said to be adventitious. It would be up to the manufacturer to decide what other terms they wish to use, in accordance with the law.</p>
<p>SFAC</p>	<p>Para 44. Helpful to insert or refer to the clarification in relation to nature identical and identical to nature given as footnote (11) on page 12.</p>	<p>Paragraph 44 has been deleted.</p>
<p>Comite European des Fabricants d'Inuline</p>	<p>See Annex</p>	<p>Ion exchange chromatography and carbon filtration are processes that the Agency considers will render an ingredient as non – natural.</p>
<p>GNT UK</p>	<p>See Annex</p>	<p>The Agency agrees that a colour which is chemically modified cannot be described as a natural colour.</p>
<p>County Analyst, Worcestershire Scientific Services</p>	<p>Para 44 - "natural" - "It is advised that certain permitted additives (those with E numbers) ... may be described as natural..." I am not entirely sure what additives might be covered by this wording, which as it stands might tend to undermine the important new message in para 47(a), 3rd bullet. As I see it,</p>	<p>Paragraph 44 has been deleted.</p>

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	<p>if an additive has been purified to the extent necessary to meet the specification associated with the relevant E number, then it will have been subject to some of the processes referred to in para 47(a), 3rd bullet. Later on, it seems to me that para 47(c) covers the same ground rather more clearly and I feel para 44 could be deleted without loss. The issue of solvent extraction is raised, and with it the implication that consumers accept solvent extraction as a natural process, but only for certain additives and flavouring? I am not sure that this is a tenable position.</p> <p>Para 47 - I welcome the addition of the bracketed text in para 47(a), 3rd bullet, as this clears up some areas of debate over processes used in producing "natural" ingredients. Citric acid for instance has been keenly promoted as a "natural" additive, but consideration of the production process involving bacterial fermentation, ion exchange, acid and alkali clean up mitigates against the use of the term. Under the 6th bullet - I am as keen as anyone to control the addition of excess water, but I am not sure that this is an appropriate arena in which to place it. Regarding the examples quoted, cheese and butter have compositional criteria that limit water addition, and dilution of yogurt is not, at present, an issue.</p> <p>Para 52 touches on a major problem. I am aware of a company called "nature's finest" which manufactures a range of processed foods, and perhaps this para could be worded more generally to cover words other than "natural".</p> <p>Para 55 bullet 2 is a very important point, but one that is widely ignored in practice, which raises the question what should be done to achieve compliance.</p>	<p>Welcome support.</p> <p>Advice about addition of excess water removed.</p> <p>This suggestion has been taken on board.</p> <p>Noted.</p>
<p>Eat Natural</p>	<p>We are very disappointed in the direction pursued by the Food Standards agency in redefining the term natural. When we established Eat Natural the definition was commonly accepted to be one representing products that had ingredients from physical processes which may include some processing. This we feel is a truer reflection of natural in a food context.</p> <p>We believe that the current guidelines serve only to confuse the consumer and devalue a range of products that are indeed of benefit.</p> <p>This guidance will affect many pioneering and valuable products reducing the Industry's ability to differentiate products full of colourings and preservatives which can only detract from the FSA purpose of ensuring that the customers' best interest is always represented.</p> <p>From a company perspective we are in a particularly difficult position of having traded for 11 years without any concerns being raised by Trading Standards on the issue of the term natural; but now we have an established brand name we are being targeted as working outside the boundaries of acceptability. Not a single consumer has written to us with a concern over our use of the term natural in 11 years and 200 million bars.</p>	<p>The current Guidance was issued by the FSA in 2002. The advice is best practice advice. Revisions have been made to clarify the criteria and to specify additional processes that are considered to render foods and ingredients as outside the meaning of "natural".</p>

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	<p>We are further disappointed that as a manufacturer with a significant trading history in this arena our Home Authority – Essex Trading Standards were not even aware that the guidelines had been revised.</p> <p>We would ask the FSA to reconsider their proposals and examine the guidelines which are likely only to mislead the consumer and limit choice.</p>	
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Pure (para 57-61)

Respondent	Comment	Response
Advertising Standards Agency	<p>For the ASA, the meaning of ‘pure’ is similar to the FSA’s, as can be seen with our adjudication against an ad for Kerrygold butter that claimed “Nothing added, nothing taken away. Just 100% Pure Spreadable Butter”, when in fact it was 2% salt.</p> <p>The new guidance for warnings of possible cross contamination with allergens is not applicable to the ASA.</p>	Welcome support.
Eversheds	We support the limited amendments proposed for this section.	Welcome support.
FDF	<p><b>59:</b> The additional words relating to allergen advice are useful.</p> <p><b>59 b) 2<sup>nd</sup> bullet:</b> This reference to strawberry jam should be cross-referenced to the section on “natural” to which it is also relevant.</p>	<p>Welcome support.</p> <p>No change made.</p>
Neville Cradock	<p>“PURE” It is noted that no problems were highlighted by consumers and no research conducted to support the proposed amendments:</p> <p>I believe the introduction of the provision for allergen contamination, although well-intentioned, flies in the face of logic. Why stop at allergens, when harvesting and food processing generally may result in cross-contamination.</p> <p>If the Guidance is to follow the route of permitting a level of contamination, it needs to accommodate and explain fully the rules about agricultural purity, whether traditional seed and crop purity criteria or adventitious GM presence.</p> <p>If it is to be <i>acceptable to describe such foods as “made with pure ingredients” [or “100% pure”]</i>, is it by analogy acceptable to refer to a product that is made entirely with “natural” ingredients as “100% natural ingredients”? I accept that the description “100% natural” would not be valid.</p>	<p>This is a food safety issue.</p> <p>Proposed amendment has been removed.</p>
NFU	The NFU is concerned that the guidance advises ‘pure’ to be used when there is no adventitious contamination (page 16). Certainly for GM material, the legislation is clear that below the 0.9% threshold no labelling is required for adventitious presence. The guidance suggests that by labelling as ‘pure’, the product can be guaranteed as 100% free from contamination. This is not practically	The text has been amended to take account of GM legislation.

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	possible in many cases, such as for GM presence in certain products. For this guidance, we believe GM threshold should not be used as an example as there is specific legislation applying to it.	
SWERCOTS	By definition “adventitious contamination” cannot be excluded it is suggested that the wording should be “that is free from all but adventitious contamination”.	The text has been amended to take account of tolerances and current legislation on GM labelling.
Meat and Livestock Commission	59: we suggest that an indication of possible allergenic cross-contamination is to be commended rather than just acceptable and that therefore this text should be made more positive. 59a: the second point is not clearly consistent with the introductory statement to 59, in that pure would thereby be acceptable for adventitious contamination with a non-similar material but unacceptable for such contamination with a similar food. the principles indicated in relation to pectin have a broader application than jams and marmalades	Amendment made to make more positive.  No change made.
Scotch Whisky Association	Another term of particular interest for the Scotch Whisky industry is "pure". in this context, you may be aware from colleagues in DEFRA and other departments that we are currently discussing new legislation for Scotch Whisky which will, among other things, prohibit the description "pure malt". The reason for this is that we believe consumers would see pure malt as a category of Scotch Whisky, which it is not. In other words, consumers would not understand how this fitted into the actual categories that will be introduced in the new UK legislation: for malt whiskies these are "blended malt" (hitherto sometimes called vatted malt) and "single malt". On the assumption that our proposals proceed to legislation, we would be keen to see a footnote in any future FSA guidance indicating that the term "pure malt" is specifically prohibited for use on Scotch Whisky,	Noted.
Which (SFAC)	p16 Use of the term ‘pure’ Would be helpful to clarify what is intended by the wording added to paragraph 59 as it seems confusing.	This added wording has been removed as it was confusing.

### Traditional (para 62-65)

Respondent	Comment	Response
BRC	Paragraph 63. Council Regulation (EEC) No. 2082/92 was repealed in 2006 by Regulation (EC) No 509/2006.	Amendment made.
Advertising Standards Agency	Although ‘traditional’ is often used within advertising, there have been no adjudications on the use of the term and we have no explicit reference on how the term may be used. However, the substantiation that that the ASA would demand seems likely to fall in line with the FSA guidance.  In line with Regulation (EC) No 509/2006 of 20 March 2006 on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed, we support, in theory, the change in guidance from 50 years/2 generations to 25 years/1 generation; however, we reserve the right to consider all claims on a case-by-case basis. For example, if a traditional Victorian Christmas pudding contained fruits that had been used by the advertisers for the last 25 years but had not been around in the Victorian age, we may	Comments noted.

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	consider the term to be misleading.	
Dairy UK	Traditional may be used to describe farmhouse cheddar. This may cover one or more aspects of the production, such as the cheddaring process, or the maturation process. We would appreciate more detailed guidance on what is considered to be within consumer expectations.	No change made. We would welcome industry input on the development of further advice.
Eversheds	We support the limited amendments proposed for this section.	Welcome support.
FDF	<b>63</b> (and footnote): The reference to one generation or 25 years as though FSA regards these, somewhat arbitrarily, as synonymous could be clarified by quoting the relevant words from Article 2.1. (b) of Regulation 509/2006, which is as follows:  (b) 'traditional' means proven usage on the Community market for a time period showing transmission between generations; this time period should be the one generally ascribed to one human generation, at least 25 years;	No change made.
Kingston upon Hull Trading Standards	<ul style="list-style-type: none"> <li>• The recommended criteria for 'Traditional' conflicts with that for 'Home-made' in terms of the 'age' of the recipe. What criteria would be applied to a 'traditional, home-made' product?</li> <li>• Whether a product is 'traditional' or not is a question of fact and really should be assessed on a case-by-case basis.</li> <li>• 'Home-made' is an indication of a physical process not of an unchanging recipe.</li> </ul>	Amendment made to "Home made".  This is best practice Guidance.
Neville Cradock	<b>"TRADITIONAL"</b> I believe the new provision is very helpful.	Welcome support.
Food & Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)	<p>Consumer understanding of the word Traditional would not relate simply to a method/recipe 25 years old. By so doing it would allow all the industrial scale food processing techniques to become traditional if they are not already so.</p> <p>For example, would consumers consider the following to be traditional?</p> <p>"Traditional Mechanically Recovered Meat".</p> <p>"Traditional Re-formed ham" tumbled and cured with added water retaining agents such as poly-phosphates.</p> <p>"Traditional Lemonade" made with lemon flavourings and a small amount of lemon, also containing clouding agents and colour.</p> <p>"Traditional Bakewell Tart" made with coloured fruit flavour filling and almond essence-flavoured sponge.</p> <p>"Traditionally-reared battery chicken meat/eggs"</p> <p>It is a fact that mass-produced food has been available for many, many years and technology has become increasingly sophisticated. However, (as touched upon by the Synovate (Food Standards Agency commissioned) research) consumers associate traditional with relatively simple products that have not undergone heavy processing and that contain only additives suitable to render it safe for mass production, not additives such as colours, humectants, stabilisers etc, or synthetic ingredients such as hydrogenated fat, or modified starch.</p>	No change to proposed Guidance. The Agency proposes to make the change to 25 years to be in line with specific legislation in this area.

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	<p>Only about 20% of consumers would definitely accept a 25 year threshold, based on the Synovate research. It was noted that there was some divergence of opinion amongst those asked. It is perhaps not surprising if they have not been asked to crystallise their opinion on the matter before – consumers would probably make their purchasing decision based on impressions of the product from its labelling and presentation, and their ‘gut’ feelings of consistency with what they associate with traditional. It is important if possible to understand the grounds for the definition given in the ‘Traditional Speciality Guaranteed’ regulations. Is there a clear rationale based on consumer research to support 25 years? Is it a description that will only be applied in relatively limited circumstances? The term appears to be restricted to speciality foods not mass produced. Without doubt, the nature of foods is that some one-time novel products or practices become traditional over an extended time period. However, for food produced using long-standing industrial mass production techniques and synthetic and technical ingredients there should be a presumption against calling it traditional without independent consumer research showing that this is widely acceptable. In the absence of an overwhelming majority of consumers having a common understanding of the meaning of the word then confusion and assumptions must be avoided through clear and unambiguous labelling. The use of the word ‘Traditional’ should not be subject to a single, unsophisticated – even naïve – criterion of the passage of 25 years.</p> <p>Use of the term should be restricted to foods that have an extended history of production and consumption, typically at least 50 years and that does not contain any synthetic ingredients, or any additives other than those necessary to maintain the hygiene of the product (preservatives), and is not the product of intensive, complex manufacturing processes that could not be produced on a small scale in a domestic kitchen or small, low technology production facility, such as for cheese or butter.</p>	
Premier Foods	Premier Foods welcomes the advice that a ‘significant period’ should be defined as 25 years (one generation) in line with EC Regulation 509/2006.	Welcome support.
VEGA	The concept of tradition gives pause for thought, even within Europe. Consumption of horse meat is traditional in many countries, and other equine products are used in food processing. Even now that niche markets are developing for exotic meats in the UK and reservations prompted by Watership Down have lost some of their effect it would be a foolhardy butcher who boastfully flogged a dead horse as part of Britain’s glorious heritage and tradition. It may have become a tradition (but probably waning) for Johnny Foreigner, but not for nice people in the British shires nor in Jewish traditional communities.	Comments noted.
Yorkshire and Humber Trading Standards	<p>YAHTSG feels the existing definition of 50 years / 2 generations is more appropriate for a ‘traditional’ product. 25 years / 1 generation will allow many more foods to be considered traditional, lessening the meaning of the term. In addition please see comments below regarding the conflicting guidance for the terms ‘traditional’ and ‘home-made’.</p> <p>The recommended criteria for ‘traditional’ conflicts with that for ‘home-made’ in terms of the ‘age’ of the recipe. What criteria would be applied to a ‘traditional, home-made’ product?</p>	<p>No change to proposed Guidance. The Agency proposes to make the change to 25 years to be in line with specific legislation in this area.</p> <p>Change made to proposed Guidance on</p>

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	Whether a product is 'traditional' or not is a question of fact and really should be assessed on a case-by-case basis. 'Home-made' is an indication of a physical process not of an unchanging recipe.	"home made".
Meat and Livestock Commission	63 and 77: we commend the addition of the italicised text but would suggest that it could be clarified so as to exclude preparation in any commercial kitchen (eg in pubs, where we would thus distinguish the pub kitchen from the landlord's private kitchen).	No change made.
Scotch Whisky Association	Scotch Whisky has been defined in law since 1933. We presume, therefore, that none of our members will be at risk if they describe their products as traditional?	
LACORS	Paragraphs 62-65. LACORS appreciates that the use of "1 generation / 25 years" sets a helpful benchmark and has some basis in EC law but would question whether this would be viewed as acceptable by all consumers and older consumers in particular.	Noted. The change to 25 years has been retained as it has some basis in EC law. In consumer research (Synovate project commissioned by the FSA, 2005) then 28% of respondents would expect a product to have been available for over 50 years but 40% were not able to say how long they would expect it to have been in existence
SFAC	No strong opinion on the change of the term traditional from 50 years to 25 years. Members feel it makes sense to bring it in line when the term was specified in regulations.	Noted.
County Analyst, Worcestershire Scientific Services	Paras 62 to 65 - "Traditional" - I am not sure that 25 years is in accordance with consumer thinking on this term. I believe that expectations are more in terms of food or production processes that predate the conscious application of food science and technology. When buying a "traditional" food, consumers are seeking something that has not been "messed about with", something that retains simple, artisan approaches to cooking or production. Similarly, it would not be sound to describe food first produced in 1982 as "traditional", because the word means something a lot earlier in history than that. Some of my younger staff have suggested pre world war 2 as a cut off.	No change made.
Anon.	25 years seems a short time for a tradition to develop.	Noted. The change to 25 years has been retained as it has some basis in EC law.

Original (para 66-69)

Respondent	Comment	Response
BRC	Paragraph 66. Many original recipes and products have had to be reformulated to reduce the quantity of salt, as part of the Agency's campaign on salt reformulation. It should be clarified in this document that reducing the salt quantities, although it may slightly change the taste, does not constitute a change for the purpose of this advice.	

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	<p>Paragraph 68. We believe that the phrase 'It should not contain replacement ingredients' should be replaced by 'it should not contain replacement characteristic ingredients'. We strongly feel that replacement of minor ingredients, such as additives, does not constitute a change that would trigger the product no longer being 'original'.</p> <p>Paragraph 69. The use of the term 'original recipe' should be covered under this section.</p>	Amended to say should not have change to major ingredients.
Advertising Standards Agency	The recommended criteria for 'original', that it is used to indicate that a product was the first of its type to be placed on the market, falls in line exactly with the ASA adjudication for Alpen Swiss Muesli. The ASA felt that the claim 'The original Swiss muesli' was not misleading as Alpen was the first muesli that was sold outside of health food shops in Britain. (See Annex 1).	Comments noted.
British Soft Drinks Association	<b>Items 68 &amp; 69:</b> BSDA notes that in order to be termed "original" FSA considers that a product must not have changed "to a material degree". In the case, for example where the preservative in a drink is changed from benzoic to sorbic acid for technological reasons in line with FSA policy and the ICBA Guidelines, the character of the product overall is "essentially unchanged" and BSDA would consider to be still "original" from a consumer perspective.	Amended to say should not have change to major ingredients
Eversheds	We support the amendments proposed to this section.	Welcome support.
FDF	68: The new second sentence should be deleted as it contradicts the concept of "not changed to a material degree" in para 69. The term "replacement ingredient" is very broad. Industry must have flexibility to source its ingredients according to quality, availability and cost and a "replacement" might merely be of another origin or variety which would not be discernible in the final product. Similarly the replacement of one additive with another from the same functional category could leave the product "essentially unchanged".	Amended to say should not have change to major ingredients
Kingston upon Hull Trading Standards	<ul style="list-style-type: none"> <li>• For ease paragraph 66 has been divided and paraphrased with bullet points</li> </ul> <p>Paragraph 66 of the guidance states:</p> <ul style="list-style-type: none"> <li>○ '..."original" <b>does not</b> imply, necessarily, that a product <b>has remained unchanged for a substantial period of time.</b></li> <li>○ <i>It may be applied to newer products on the market.</i></li> <li>○ ..., where the original form or flavour has <b><u>remained essentially unchanged</u></b> [Hull TS emphasis] through the passage of time...'</li> </ul> <ul style="list-style-type: none"> <li>• The advice in paragraph 66 is contradictory - note the text in the first and third bullet points.</li> <li>• Paragraphs 68 &amp; 69 contradict paragraph 66 – first bullet point</li> </ul>	Amended to say should not have change to major ingredients and that need not have been on the market in the original form for a long period.
Neville Cradock	<b>"ORIGINAL"</b> <i>It should not contain replacement ingredients.</i> This sentence risks contradiction with the criterion that the product "has remained essentially unchanged over time" and with the concept that the product has "not changed to a material degree". Clarification of the extent to which changes are permitted is needed; alternatively, the new insertion should be deleted.	Amended to say should not have change to major ingredients and that need not have been on the market in the original form for a long period.
Premier Foods	Premier Foods have a particular concern about the addition of the statement "It should not contain replacement ingredients" to Paragraph 68. It is unclear if this means complete replacement of one or more of the ingredients, or any changes at all to the ingredients in the recipe, including minor	Amended to say should not have change to major ingredients and that need not have been on the market in the original form for a

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	<p>additions. Without further clarification, this seems to be overly restrictive and to be in conflict with the following statement in Paragraph 66:- “Unlike “Traditional”, the term “original” <b>does not</b> imply, necessarily, that a product <b>has remained unchanged for a substantial period of time</b>”. In reality it would be difficult to make any change to a food without making some kind of change to the ingredients.</p> <p>Within our product range we manufacture the well known product Hovis ‘Original’ Bread. It has been known as ‘Hovis Original’ for many years.</p> <p>This meets the criteria of "a formulation the origin of which can be traced (over 125 years in this case covered by a patent) and that has remained essentially unchanged". The very first recipe consisted of Wheat Flour, Water, Wheatgerm, Yeast, &amp; Salt.</p> <p>Over the years the recipe has undergone gradual &amp; slight modification, this has involved the addition of low levels of additional minor ingredients, not the replacement of the original major ingredients. The recipe now consists of: Wheat Flour, Water, Wheatgerm (11%), Yeast, Salt, Wheat Protein, Vinegar, Vegetable Fat, Soya Flour, Barley Fibre, Emulsifier: E472(e), Flour Treatment Agent: E300.</p> <p>The reason for this is that eating and shopping habits have altered markedly in the 125 years since the first Hovis Loaf was baked. People do not shop daily, the majority of bread is a made with a lighter softer eat, with a longer shelf life, and the loaves are not made in village bakeries. Nowadays it is sliced bagged and distributed throughout the country.</p> <p>The Hovis Original recipe has been adapted over the years to make a wheatgerm loaf more suited to today's consumer requirements - its essential characteristic of a substantial wheatgerm content remains. The essential 'form and flavour' of the current Hovis Original is true to its heritage – it is still made from a yeast fermented dough which is baked. Furthermore the wheatgerm is stabilised using a process which would be recognised by Richard 'Stoney' Smith who created the original Hovis loaf 125 years ago.</p> <p>Premier Foods believe that whereas the wording of paragraphs 66-69 in the current Guidance support the usage of the term “original” for this product, the proposed revision puts this in some doubt.</p>	<p>long period.</p>
<p>Yorkshire and Humber Trading Standards</p>	<p>For ease paragraph 66 has been divided and paraphrased with bullet points Paragraph 66 of the guidance states:</p> <ul style="list-style-type: none"> <li>• ‘...“original” does not imply, necessarily, that a product has remained unchanged for a substantial period of time</li> </ul>	<p>Amended to say should not have change to major ingredients and that need not have been on the market in the original form for a long period.</p>

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	<ul style="list-style-type: none"> <li>• It may be applied to newer products on the market</li> <li>• ..., where the original form or flavour has remained essentially unchanged through the passage of time...'</li> </ul> <p>The advice in paragraph 66 is contradictory - note the text in the first and third bullet points.</p> <p>Paragraphs 68 &amp; 69 contradict paragraph 66 – first bullet point</p> <p>Para 68 refers to recipes “unchanged over time” and “should not contain replacement ingredients”. However this needs to be reconciled with issues such as:</p> <ul style="list-style-type: none"> <li>• The effective prohibition of certain ingredients e.g. the colour E128</li> <li>• The replacement of saturated fats with mono- and polyunsaturated fats</li> <li>• FSA salt reduction targets</li> </ul>	
Scotch Whisky Association	<p>The term "original" seems to be given a fairly narrow meaning in the FSA guidance. Is this justified by consumer evidence? For example, one of our member companies has recently relaunched its range of Scotch Whiskies, describing their standard 10 year old version as "original", giving other differentiating descriptions to other versions. Does this therefore require that there has been no change to the formulation of their "original" version, which can be traced back over time to their first whisky? There is no evidence that consumers of Scotch Whisky attribute a meaning such as that put forward by the FSA to the term "original." on a Scotch Whisky.</p>	

### Authentic, Real, Genuine (para 70-75)

Respondent	Comment	Response
BRC	<p>Paragraph 73. The term real appears to have four separate criteria associated with it in this one paragraph, of which stating natural and no-artificial are actually the same thing. The paragraph is difficult to read and should be better explained. We feel that it really embodies the following points:</p> <ul style="list-style-type: none"> <li>- made from natural/whole ingredients</li> <li>- does not contain additives</li> <li>- where a traditional recipe exists, e.g. mayonnaise, 'real mayonnaise' should be to that recipe, but this does not preclude the introduction of new 'real' foods/recipes.</li> </ul>	Paragraph 73 has been deleted.
Advertising Standards Agency	<p>The criteria for 'real' falls in line exactly with the ASA adjudication for Danone Yoghurt, where the flavour was derived from real fruit, not artificial flavourings or flavour enhancers. (See Annex 1)</p> <p>The claims 'authentic' and 'genuine' were both considered within an investigation for Cobra beer. The ASA felt that the beer could not be considered authentic (it had not been brewed in Bangalore) but</p>	Comments noted.

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	concluded that ‘genuine’ was allowed as it was as close to the original as could be expected. (See Annex 1) This adjudication is consistent with the updated Food Labelling Criteria.	
British Soft Drinks Association	<b>Item 72:</b> Whilst acknowledging that the term “made with real fruit juice” could be considered repetitive and unnecessary, its use for emphasis has been widely used to the point where it has become virtually a “customary term”. Its use for emphasis is not misleading to the consumer.	Comments noted.
Eversheds	<p>We oppose proposed paragraph 73. This proposed paragraph results in the following controls over the word “real”:-</p> <p>A food product cannot be called real unless:-</p> <p>(a) it is made from an original recipe; and</p> <p>(b) it does not contain recovered meat; and</p> <p>(c) it does not contain artificial ingredients; and</p> <p>(d) it is the “authentic product” - whatever that means.</p> <p>The first sentence of proposed paragraph 73 seems to suggest that there are two alternative legitimate uses for the word “real”: on the one hand products containing only natural ingredients and on the other hand an authentic product. However, the remaining two sentences indicate that a real product can never contain artificial ingredients. If that is so, then it appears that all four separate criteria set out above must be satisfied. We doubt if that is the intention. On the other hand, if it is intended that there might be more than one meaning to “real” then again paragraph 73 is inaccurate.</p> <p>Our view is that the difficulty here stems from the suggestion that “real” implies that a product contains only natural ingredients. What the word “real” conveys is in fact the same as “authentic” namely that the product or ingredients are the genuine real thing as opposed to some kind of copy. On some occasions, that genuine real thing may in fact include artificial ingredients because that is how that genuine real thing has always been made.</p> <p>In summary, in our view there is no justification for imposing on “real” additional criteria that must be satisfied over and above those that are relevant to “authentic” and “genuine”.</p>	Paragraph 73 has been deleted’.
FDF	73: We disagree that a "real" food product should necessarily only contain “natural” ingredients, given the processing constraints on the latter and the fact that, for example, this would exclude frozen, concentrated or pasteurised ingredients the processing of which might have no discernible impact on the final product.	Paragraph 73 has been deleted.
Kingston upon Hull Trading Standards	<ul style="list-style-type: none"> <li>• ‘Authenticity’ is not derived solely from the geographical origin or the recipe of food; it is a complex mixture of both factors which often influenced by cultural and historic factors</li> <li>• The use of the terms ‘authentic’ and ‘genuine’ may, depending upon the veracity of the claim, be close to being covered by matters addressed under the <b>EU Protected Food Name Scheme (PFN)</b> or may, in varying degrees, be used as a substitute for the nebulous term ‘style’.</li> <li>• Use of the term ‘real’ is superfluous in the majority of the contexts in which it is used.</li> <li>• Again there is a lack of reference to the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.</li> </ul>	Comments noted.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Neville Cradock	<p><b>“AUTHENTIC”, “REAL” AND “GENUINE”</b> A <i>“real” food product should only contain natural ingredients or be the authentic product. A “real” product should be made from an original recipe. A “real” food product should not contain mechanically recovered meat or artificial ingredients.</i></p> <p>I cannot see the connection between the criteria that a "real" food should only contain “natural” ingredients. It seems to me that many long-established, quality products would be disqualified, given the constraints on “natural” within these Guidelines.</p> <p>On a related aspect, it has always seemed to me that the use of “real” to describe certain foods and ingredients, such as fruits, chocolate, cheese, meat etc is wholly unnecessary, tautologous and misleading. Where legal standards for these foods exist, it would already be an offence for the named ingredient / food NOT to be the real thing. In short, I believe the use of “real” in these circumstances contravenes labelling legislation and the TDA 1968 by attempting to attribute a superiority that does not, and cannot exist. This point could usefully be made in the revised Guidance – perhaps with reference to UCPD as well.</p>	Paragraph 73 has been deleted.
Regional and Local Food Team – Food and Farming Group (Defra)	We have no comments to offer as such but have a concern over the example used in paragraph 70 (page 21) regarding use of the term 'authentic'. This section uses 'Cornish Pasties' as an example, you may be aware that we are in receipt of an application to protect 'Cornish Pasties' as a product of protected geographical indication (PGI) under the EU Protected Food Names Scheme, which we are currently assessing. If this application is successful, then use of the term 'Cornish Pasties' will be restricted to producers who comply with the registered specification. Bearing this in mind, we suggest that it would be more appropriate to use an alternative example such as 'Yorkshire Pudding' .	Amendment made.
Yorkshire and Humber Trading Standards	<p>'Authenticity' is not derived solely from the geographical origin or the recipe of food; it is a complex mixture of both factors which often influenced by cultural and historic factors.</p> <p>The use of the terms 'authentic' and 'genuine' may, depending upon the veracity of the claim, be close to being covered by matters addressed under the EU Protected Food Name Scheme (PFN) or may, in varying degrees, be used as a substitute for the nebulous term 'style'.</p> <p>Use of the term 'real' is superfluous in the majority of the contexts in which it is used.</p> <p>There is a lack of reference to the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.</p>	Comments noted.
LACORS	<p>Paragraphs 70-74. LACORS agrees that the term “authentic” has a stronger impact on consumers than the term “traditional”. With regard to the Cornish Pasty example LACORS would make the point that consumers would expect both the ingredients and the provenance of the product to be authentic.</p> <p>LACORS is unsure the comments relating to the terms “real” and “genuine” within these paragraphs contribute to the guidance. We would question if a food should be described as “real” if it contains natural ingredients when surely the term “natural” would be more appropriate.</p> <p>By way of an example we would cite the use of the term “real” in the description “contains real fruit juice” for a soft drink containing 10% fruit juice but with the majority of the fruit flavour being derived from concentrates or artificial flavouring.</p>	<p>The example has been altered to 'Lancashire Hot Pot'.</p> <p>Paragraph 73 has been deleted.</p> <p>Amendment made accordingly.</p>

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Which (SFAC)	<p>p21 'Authentic', 'real', 'genuine'                  Question whether the term authentic has a stronger meaning than 'traditional' or just different in meaning. Something can be authentic even if it is recently created.</p>	Paragraph amended accordingly.
Bob Stevens, County Analyst, Worcestershire Scientific Services	<p>Para 70 - Authentic - I have not yet come across food samples where this term struck me as being misused, and it is difficult to define criteria in advance of such misuse. The example cited, of an "authentic" Cornish pastie is an interesting one. I would expect such a pastie not only to have been made in Cornwall, but to have the characteristics traditionally associated with Cornish pasties.</p> <p>"Real" is being used quite a lot, often in trivial applications e.g. "contains real fruit juice" when maybe 10% is present and the bulk of the fruit flavour of the product is added as a concentrate or artificial flavouring. This is not helpful to purchasers.</p>	<p>Noted.</p> <p>Noted. Advice added accordingly.</p>
CAMRA	<p>The recommendations are, we believe, an improvement on the 2002 guidelines.</p> <p>Our chief concern is the use of the word "real" when describing "real ale". Naturally as the Campaign for Real Ale we would wish that the term be retained to describe cask-conditioned and bottle-conditioned ales.</p> <p>The proposed new paragraphs 73 certainly makes clearer where the term real can be used and we strongly support its inclusion in the criteria.</p> <p>Paragraph 73 states that a "real" food should only contain natural ingredients and be the authentic product. We would concur with this definition. Real ale is produced in the original, authentic, way using methods that have stayed the same for centuries. Only natural ingredients such malted barley, hops, water and yeast are used. The product is not filtered or pasteurised and continues to undergo a secondary fermentation in the container from which it is serve.</p> <p>The term "real" is important because it enables consumers to distinguish this unpasteurised and unfiltered product from pasteurised and filtered "dead" keg beers. Without the term "real" ale customers would be less able to distinguish what was a natural cask conditioned product and a dead keg beer.</p> <p>The ingredients used such as malted barley and hops are natural. The malted barley is produced by soaking barley in water and allowing it to sprout for a few days to start the conversion of starches to sugars with the barley corn.</p> <p>UK hops are grown in Kent, Herefordshire and Worcesterhire and some other countries of the UK. They are picked and then dried in oast houses. A brewer may use the whole hop, or pelleted hops in the brewing process. Some brewers may use hops imported from abroad. Hop gardens in Kent and yards in Worcestershire and Herefordshire are a traditional feature of the countryside.</p>	Paragraph 73 has been deleted.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	<p>We feel it is important to retain the use of the term real ale to distinguish unfiltered and unpasteurised beers that are undergoing a slow secondary fermentation in the cask (cask conditioned or real ale) from those beers that have been filtered and possibly pasteurised (brewery conditioned or keg beer).</p> <p>Real ale is a distinct product type and its characteristics do, we believe, justify it being called real ale.</p> <p>We therefore hope that brewers and retailers of cask-conditioned and bottle-conditioned beers will be able to continue to call their products real ale. And that we as the Campaign for Real Ale can carry on using our existing title.</p>	
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## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Home made (para 76-80)		
Respondent	Comment	Response
BRC	Paragraph 80. By the term 'home-made' consumers will expect a product that looks like something they could make at home and that contains the ingredients they can find in their kitchen cupboard. We believe that home-made does not necessarily mean that the product has to be produced following a 'traditional' recipe.	Amendment made to remove 'made to same recipe'.
Advertising Standards Agency	<p>The ASA does not have any previous history of ruling on the claims 'home-made', 'farmhouse' or 'farmhouse pate' but we agree with the criteria set out by the FSA and would ask for evidence to substantiate any claims along the lines of FSA guidance.</p> <p>This includes the new FSA guidance for using 'farmhouse' to describe specific loaves of bread as traditionally used by the baking industry.</p>	Comments noted.
Eversheds	<p>We think that the proposed additional words in paragraph 77, about qualifying the word "home-made", are dangerous since there is no indication as to what might be a suitable qualification of "home-made". For example, would "made in a home-made style" be sufficient to allow a product to be made on a very large scale in a factory but using the same ingredients as one might use at home? Would it be legitimate to use a phrasing such as "home-made". *This product is made in our domestic kitchen-sized factory".</p> <p>Our view is that permission to make a qualification of this kind to "home-made" would in effect be permission to dilute the meaning of the term "home-made".</p> <p>We oppose additional proposed paragraph 80. In our view, the fact that someone producing a product in a domestic kitchen changes the recipe or the ingredients should not prevent them describing it as "home-made". Of course, very often the product will be made in the traditional way, but we need to avoid freightening the term "home-made" with all sorts of other connotations such as "traditional" or "authentic".</p>	<p>Words in italics in paragraph 77 have been removed.</p> <p>Amendment made to remove 'made to same recipe'.</p>
Kingston upon Hull Trading Standards	<ul style="list-style-type: none"> <li>• The recommended criteria for '<b>Traditional</b>' conflicts with that for '<b>Home-made</b>' in terms of the 'age' of the recipe. What criteria would be applied to a 'traditional, home-made' product?</li> <li>• Whether a product is '<b>traditional</b>' or not is a question of fact and really should be assessed on a case-by-case basis.</li> <li>• '<b>Home-made</b>' is an indication of a physical process <b>not</b> of an unchanging recipe.</li> </ul> <p>• Are the bullet points in paragraph 76 to be taken as separate matters? It should be made clear, for the avoidance of doubt, that last bullet point - 'crudely or simply made' cannot be taken in isolation as defining 'home-made'. A product can be crudely or simply made without complying with the additional criteria in paragraphs 77, 78 and 79</p>	Amendment made to remove 'made to same recipe'.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	As previously stated 'home-made' is an indication of a physical process not of an unchanging recipe.	
Neville Cradock	<p><b>“HOME-MADE”</b> The use of the term, if unqualified, should accordingly be restricted to the broad criteria above, <i>but if qualified suitably it may be made in a larger production facility that imitates the way the product is made in the home rather than in a factory. Products bearing the term “home-made” should be made to the same recipe as they have always been.</i></p> <p>I fail to see how a reference to HOME-made can be extended to encompass anything else. The proposed extension would appear therefore to be a blatant contradiction with the basic purpose of the Guidance of ensuring that such terms are used in a meaningful way.</p> <p>Similarly, there is no logical connection between a product being “home-made” and the length of time or the constancy of the recipe.</p>	<p>Amendment made to remove 'made to same recipe'.</p> <p>Words in italics in paragraph 77 have been removed.</p>
NFU	Under 'home-made', para 80 is not clear and does not fit with the rest of the document ( <i>'home made should be made to the same recipe as they have always been.'</i> ). It is difficult to see the justification for this. The italics suggest this is what the consumer survey said but it does not reflect the reality of product and recipe changes, which in no way relate to the home-made nature of the food.	Amendment made to remove 'made to same recipe'.
Yorkshire and Humber Trading Standards	<p>The recommended criteria for 'traditional' conflicts with that for 'home-made' in terms of the 'age' of the recipe. What criteria would be applied to a 'traditional, home-made' product? Whether a product is 'traditional' or not is a question of fact and really should be assessed on a case-by-case basis. 'Home-made' is an indication of a physical process not of an unchanging recipe.</p> <p>Further clarification is needed with the bullet points in paragraph 76. It should be made clear, for the avoidance of doubt, that the last bullet point - 'crudely or simply made' - cannot be taken in isolation as defining 'home-made'. A product can be crudely or simply made without complying with the additional criteria in paragraphs 77, 78 and 79. As previously stated 'home-made' is an indication of a physical process not of an unchanging recipe.</p>	Amendment made to remove 'made to same recipe'.
Meat and Livestock Commission	63 and 77: we commend the addition of the italicised text but would suggest that it could be clarified so as to exclude preparation in any commercial kitchen (eg in pubs, where we would thus distinguish the pub kitchen from the landlord's private kitchen).	Words in italics in paragraph 77 have been removed..
Which (SFAC)	<p>p23 Use of the term 'Home-made'. Disagree with the wording in italics in paragraph 77 <i>'but if qualified suitably it should be made in a larger production facility that imitates the way that the product is made in the home rather than in a factory'</i>. We think this would be a misleading use of term.</p> <p>Would like paragraph 79 clarified so it is clear what is meant by 'partly-prepared ingredients'. These should be limited to the 'partly-prepared ingredients that are available for domestic use.</p> <p>Question the new wording added in paragraph 80. 'Products bearing the term home-made' should be made to the same recipe as they always have been'. This seems to reflect the meaning of 'traditional' rather than 'home-made'.</p>	<p>Words in italics in paragraph 77 have been removed.</p> <p>Amended accordingly.</p> <p>Paragraph 80 has been removed.</p>

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

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Farmhouse (para 81-87)
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Respondent	Comment	Response
BRC	Paragraph 84. We believe that the average consumer would not expect, for example, a retail own brand farmhouse pork pie to have been produced in a farm. Therefore we feel that additional clarification that the product has not been produced in a farm but to the same quality and style as if it had been produced in a farm is not necessary.	No change made.
Advertising Standards Agency	The ASA does not have any previous history of ruling on the claims 'home-made', 'farmhouse' or 'farmhouse pate' but we agree with the criteria set out by the FSA and would ask for evidence to substantiate any claims along the lines of FSA guidance.  This includes the new FSA guidance for using 'farmhouse' to describe specific loaves of bread as traditionally used by the baking industry.	Comments noted.
Dairy UK	We are not clear as to what exactly this advice is saying. Under para 82. "Farmhouse" can only be defined as a house on a farm, and more specifically as the main dwelling of the farmer himself. In para 84, however, the requirement is for the foodstuff to be produced on the farm. If a production facility for cheddar is located on a farm (though not in the farmhouse) is the guidance stating that "Farmhouse" is an appropriate description?	The criteria for the use of "farmhouse" is for the product to be made on a farm, although not necessarily in a farmhouse.
Eversheds	We agree with the proposed amendments.	Welcome support
FDF	<b>83:</b> FDF is advised that the references to "single and longitudinal" do not represent what has been industry practice for many years. The paragraph should be re-worded:  "The baking industry has long used the term to describe a style of bread with a split and a rounded crust, and sometimes flour dressed. This use of the term is acceptable"	Amendment made.
Kingston upon Hull Trading Standards	Emphasis must be placed on the Name of the Food provisions of the Food Labelling Regulations 1996 to address the almost meaningless nature of the phrase.	Noted.
NFU	Under 'farmhouse', para 89 specifies a product being linked to a 'local farm'. We can see no reason why 'local' has been included here particularly. If farmhouse describes a style, recipe or place of manufacture, whether it is 'local' or not is immaterial. In cheese, for example, farmhouse is a recognised term describing a particular recipe and method. Such cheeses are often processed on a large scale.	Paragraph 89 removed.
Nutrition Society	In paragraph 84, guidance is given with regard to how to appropriately label foods produced to the same quality and style as 'farmhouse' foods but not produced in a 'farmhouse'. The Society feels similar guidance should be given in paragraph 77 to foods produced using the methodology of 'home-made' produce but made outside a domestic setting.	No change made.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Food & Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)	Again, the term is not meaningless, it is ambiguous with no clear meaning agreed by all, consequently it is likely to mislead as to the origin or provenance or processing of the product and therefore should not be used. Similar advice in paragraph 87 would apply to the term “rustic”, which could be understood to mean simple and unsophisticated processing methods were used but may be referring to the appearance	No change made.
Tesco	Para 84 – The use of ‘farmhouse’ on products such as soup, vegetables and cheese is well established in the UK and in the case of West Country farmhouse cheddar is protected by the EU. Consumers understand that, for example, a farmhouse vegetable soup will be a chunky, rustic soup made with vegetables typical of British farming. Restricting its usage to products produced on farm premises is unnecessary.	No change made.
Yorkshire and Humber Trading Standards	Emphasis must be placed on the Name of the Food provisions of the Food Labelling Regulations 1996 to address the almost meaningless nature of the phrase. The wording of paragraph 89 is confusing; is this paragraph an alternative to or an additional requirement for the use of the term ‘Farmhouse Pate’? Again, the Name of the Food must comply with the 1996 regulations.	No change made.
Meat and Livestock Commission	80: we do not accept this point, since it is a typical feature of home-made foods that they vary significantly depending on individual domestic preferences and resources and with time and that therefore there is unlikely to be a single 'same recipe' that has always been used. 82: 'farmhouse' in our context can also be defined as being an adjective applicable to food that is similar to that which would be produced in such premises, and the use of 'can only' in this point is considered to be misleading and unduly restrictive. 86: we believe this is again too restrictive and that the use of 'farmhouse' in a list of ingredients or descriptively in the name of a food is generally proper insofar as that indication would be appropriate where the ingredient is being sold alone as such	No change made.
LACORS	Paragraph 86. LACORS would suggest the guidance should be expanded to extend the same restrictions in relation to the term “farmhouse” to the term “farmers market”.  Paragraph 88 and 89. It is suggested that the words “strong expectations of “ be deleted as a trade of against acceptance of the word “farmhouse” in relation to mass produced product/	Guidance has not been amended on this point.  Amendment made accordingly.
SFAC	Para 84. The second sentence of this paragraph could benefit from some additional clarification. It appears to contradict para 82 by allowing the term to be applied to food on the basis of undefined quality and style (see para 15 p5) terms	Paragraph has been amended to remove the word “style”.
Which (SFAC)	p24 Use of the term ‘Farmhouse’ Suggest the term ‘strong expectation’ (paragraph 88) is made clearer. We question the reference in paragraph 89, that there should be clarification to link a product to a local farm via ingredients/recipe used. We do not think the term ‘farmhouse’ would necessarily be assumed to be a local farmhouse.	Amendments made.
Bob Stevens, County Analyst, Worcestershire Scientific Services	Farmhouse - I have seen a product sold in Tesco as "Farmhouse and mushroom pate" which I hope was not literally correct but may reflect more upon the clarity of thought of the labeller.	Noted.

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FARMA	<p>The National Farmers' Retail &amp; Markets Association (FARMA) is a co-operative of farmers, producers and retail organisers that operate on a local scale. It represents 850 locations throughout the UK that enable producers to sell direct to the public – the main formats being farm shops, farmers' markets, Pick-Your-Own, home delivery.</p> <p>FARMA has supported the development of farmers' markets through communication of values that identify the nature of a farmers' market which is defined as:-</p> <p style="padding-left: 40px;"><i>"a market in which farmers, growers or producers from a defined local area are present in person to sell their own produce, direct to the public. All products sold should have been grown, reared, caught, brewed, pickled, baked, smoked or processed by the stallholder"</i></p> <p>The first farmers' market which operated to this definition was started at Bath in 1997. This definition was adopted as a national standard in 1998 at a meeting organised by the National Association of Farmers' Markets (a parent of FARMA).</p> <p>In order to maintain the <u>trust</u> of consumers and genuine producers, FARMA introduced a Certification programme for farmers' markets 2002. This voluntary scheme assesses the process through which farmers' markets organisers select their stallholders and, at a local level, maintain the definition of a farmers' market for shoppers. Markets are physically inspected by an independent Certification body every other year.</p> <p>Certification is kept relevant by consultation through a Certification Working Group of market organisers and stallholders who meet every six months to review common issues.</p> <p>FARMA has made it a condition of membership that farmers' markets should commit to entering the Certification process within 12 months of joining the Association. During this time members are supported to the stage at which they feel confident to initiate the Certification process.</p> <p>Currently over 200 farmers' markets throughout GB are Certified by FARMA and are licensed to display a Certification mark.</p> <p>In 2008 FARMA and DEFRA are co-funding the development of a further stage in this trust strategy, being the <i>verification of producers</i>. This aims to test two key components of an individual producer's attendance at a farmers' market: provenance and appropriate scale of production.</p> <p>FARMA conducts consumer tracking research annually through YouGov. The research shows a steady increase in the number of people shopping at farmers' markets. In 2007 34% of people claimed to have shopped at a farmers' market in the past 12 months. DEFRA research in 2007 showed that 12% of people shopped monthly from either a farmers' market or farm shop.</p> <p>The term <i>farmers' market</i> has been very successfully introduced into the vocabulary of shoppers in the UK over the past ten years, to such a degree that it could suffer damage from imitation and cause confusion.</p> <p>FARMA recommends that: a) the term "farmers' market" should not be applied to a particular product or range in isolation. It is a term used to summarise a number of different criteria that relate to where produce was produced; who it was produced by; where it is sold, and by whom</p> <ul style="list-style-type: none"> <li>b) produce sold at a genuine 'farmers' market' should be locally grown and processed</li> <li>c) produce should be grown and/or made by the farmer / processor themselves</li> <li>d) produce should be sold directly to the consumer by the principal producer or a nominated person who has been significantly involved in production, and</li> <li>e) produce should be labelled with details of production and locality and criteria for qualification to be sold in a genuine "farmers' market"</li> <li>f) the term "producers' market" should be regarded as the equivalent of farmers' market</li> <li>g) the standards set by FARMA for Certification of farmers' markets and Verification of producers/stallholders should be adopted as benefiting consumers as they identify and label consistent, transparent good practices.</li> </ul>	<p>The Agency is sympathetic to the views expressed. The Agency will not alter the Guidance at present as a result but will look at taking these suggestions forward in other ways.</p>
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Farmhouse Pate (para 88-89)

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Respondent	Comment	Response
BRC	Paragraph 88. We welcome the new provisions clarifying that farmhouse pate refers to coarse and rustic pate, but feel that this explanation could be extended to other products, for example vegetable soups. Consumers would expect a farmhouse vegetable soup to be rustic, with chunky pieces of vegetables.	No change made.
Advertising Standards Agency	The ASA does not have any previous history of ruling on the claims 'home-made', 'farmhouse' or 'farmhouse pate' but we agree with the criteria set out by the FSA and would ask for evidence to substantiate any claims along the lines of FSA guidance.  This includes the new FSA guidance for using 'farmhouse' to describe specific loaves of bread as traditionally used by the baking industry.	Comments noted.
Eversheds	We find these two proposed paragraphs very puzzling. They appear to suggest that even if a link is made in accordance with paragraph 89 to a local farm, the term "farmhouse pate" cannot be used unless the pate happens to be a coarse one. Can that really be the intention? It seems to us that paragraphs 88 and 89 indicate that in fact consumers have two understandings of "farmhouse pate". Some understand it simply to be a description of the texture of the pate and others understand it to indicate a link with a particular farm. If that is correct then it is crucial the advice explains the need to communicate clearly to the consumer which of those two meanings should be understood by the use of additional words.  Alternatively, we would suggest that it would be better to abandon the meaning of "farmhouse pate" as indicating a factory-produced pate of coarse texture - the guidance could indicate that although the phrase has been used in the past to indicate such a product, this should cease because of the confusion with products that have a link with a particular farm.	Paragraph 89 removed
Kingston upon Hull Trading Standards	The wording of paragraph 89 is confusing; is this paragraph an alternative to or an additional requirement for the use of the term 'Farmhouse Pate'? Again, the Name of the Food must comply with the 1996 regulations	
Neville Cradock	<b>"FARMHOUSE PATE"</b> <i>"Farmhouse Pate" may be used to indicate a certain type of pate with strong expectations of a coarse texture. Although the product may not be made in a farmhouse, there should be clarification on the label to link the product to a local farm via the ingredients or recipe used.</i>  Reference to the expectation of a coarse texture is a fair reflection of practice over many years. However, the suggestion that a given product should be traceable in some way to a local farm etc is, frankly, fatuous. The description has become a generic and must be treated accordingly. It would be impossible to enforce on imported products	Paragraph 89 removed
Tesco	Para 89 – This paragraph is completely unnecessary. A farmhouse pate is a coarse pate. A requirement that the pate must contain local ingredients is not relevant and is not supported by the normal meaning of the words.	Paragraph 89 removed
Yorkshire and Humber Trading Standards	Emphasis must be placed on the Name of the Food provisions of the Food Labelling Regulations 1996 to address the almost meaningless nature of the phrase.	Paragraph 89 removed

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	The wording of paragraph 89 is confusing; is this paragraph an alternative to or an additional requirement for the use of the term 'Farmhouse Pate'? Again, the Name of the Food must comply with the 1996 regulations.	
Meat and Livestock Commission	88-89: we recommend reconsideration of this advice since 88 is too vague and 89 is too demanding	Paragraph 88 amended and 89 removed.
Bob Stevens, County Analyst, Worcestershire Scientific Services	<p>Para 88 - "Farmhouse pate may be used to indicate a certain type of pate with strong expectations of a coarse texture" - I feel this needs further thought. Expectations are difficult to enforce, particularly when they are held by a pate. If the words "strong expectations of" were removed, I would find enforcement more straightforward.</p> <p>With regard to para 89, I suspect this may be a lost cause, because the vast majority of such pates have no link to a farm, and consumers have accepted it as meaning no more than the coarse texture. I can think of no exemptions in respect of this term other than "loaf" and "pate".</p>	<p>Words removed.</p> <p>Paragraph 89 removed.</p>

### Hand-made (para 90-91)

Respondent	Comment	Response
BRC	<p>Paragraph 90. This paragraph should be extended to recognise that there are examples of products which may have a 'hand-made' part of the process, for example, hand-cooked crisps which are made on an industrial scale, machines peeled, chopped and bagged, but are hand stirred and sorted. Artisan cheese can be turned (cheddared) by hand, but the milk is separated by machine. Products can be 'hand-finished' such as iced cakes. This should be reflected in this guidance, as well as the difference, if any, between the term 'hand-made' and 'artisan'. It is also important to reflect that products can be handmade, even if their ingredients are not, e.g. sandwiches.</p> <p>Paragraph 91. This article implies that consumer associate hand-made with natural. Many hand-made products contain highly processed ingredient. E.g. artificial vanilla flavour used in a hand-made cake or margarine in domestic kitchens.</p>	<p>Amendments made to advise that more specific terms than hand made could be used helpfully.</p> <p>Paragraph 91 has been deleted.</p>

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Advertising Standards Agency	<p>The ASA agrees with paragraph 90 of the FSA guidance on the use of the term 'hand made', that it should not be mass produced and completely made by hand (not just one element of the process).</p> <p>The ASA does not agree entirely with paragraph 91. The ASA considers the process to be instrumental in defining what makes something 'hand-made' and not the ingredients. If a sponge cake was 'hand made', we would have to consider whether we would insist that the jam used in between the layers should also be hand made. Or in another case, we might permit an advertiser to make such a claim about a Chinese stir-fry if they added monosodium glutamate (MSG), but might not if the advertiser had added a shop bought sauce that did not contain MSG.</p> <p>The ASA would like to suggest that more flexibility is allowed within the term hand made and to focus on the process, rather than the ingredients.</p>	<p>Welcome support.</p> <p>Paragraph deleted.</p>
Eversheds	<p>We think there is no justification for the requirement that the people involved in producing a handmade product should have “a high level of expertise”. The product might be a very simple one indeed to make which could be learned quite quickly, but that would not stop it being a handmade product.</p> <p>Paragraph 91 is clearly in need of revision since the first part of this sentence suggests that no processed ingredients at all may be used whereas the final words suggest that they can be used provided they are not “highly processed”. Is there any evidential support for the assertion that the public understand the words “handmade” to mean not only that it has been made by hand but that it does not contain highly processed ingredients? We doubt it.</p>	<p>Paragraph amended accordingly.</p> <p>Paragraph deleted.</p>
FDF	<p><b>90:</b> FDF cannot see any inherent contradiction between a product being hand made and it being made in large numbers. If the first of these terms can be substantiated, it is hard to see how the claim would mislead. We suggest putting the second sentence first and following it with: “It would not, however, be against public expectation for it to be produced within an industrial setting.”</p> <p><b>91:</b> The statement that “handmade” products should contain only fresh and unprocessed ingredients is unrealistic and incorrect. Handmade cakes and biscuits, for example, contain a variety of constituents and might be garnished with decorations which are self-evidently not “fresh” or “unprocessed”. This does not make them any less “handmade” than any other food.</p>	<p>Paragraph amended accordingly.</p> <p>Paragraph deleted.</p>
FDF – Biscuit, cake and confectionery sector	<p>Paragraph 91: The statement that “handmade” products should contain only fresh and unprocessed ingredients is unrealistic and simply untrue. Handmade cakes and biscuits contain sugar, which in itself is highly processed and would not be defined as “fresh”. This fact does not make them any less “handmade” than any other food.</p>	<p>Paragraph deleted.</p>
Neville Cradock	<p><b>“HAND-MADE”</b> <i>A food product bearing the term “handmade” should not be produced in large numbers (mass produced) but it would not be against public expectation for it to be produced within an industrial setting. A product endorsed as being “hand-made” should be completely made by hand rather than just one element of the process being carried out in that way, and there should be a high level of expert involvement in its production. In addition “handmade” products should contain only fresh and unprocessed ingredients and should not contain highly processed ingredients.</i></p>	

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	<p>There can be no justification for the proposed restriction on numbers. Hand-made is hand-made whether it is one product by one person per hour or 100 products by 100 persons in the same manner and time.</p> <p>Similarly, the reference to “a high level of expert involvement” is irrelevant, as is the suggestion that only fresh and unprocessed ingredients should be used.</p> <p>The Guidance is mixing the criteria for different parameters in a way that is unnecessary and unhelpful. In this section, the Guidance certainly does not reflect even the basic use of these terms and, I venture to suggest, would be rejected by any Court if used in support of any challenge against the use of the term.</p>	<p>Paragraph amended.</p> <p>Amendments made.</p>
NFU	Under ‘hand made’, para 91 says that handmade products should only contain fresh and unprocessed ingredients. This could disallow a large number of ingredients that are reasonably included in hand made products e.g. sugar, yeast.	Paragraph deleted.
Food & Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)	The term ‘Hand-crafted’ is also being used. It is suggested that this may be understood by consumers to be the same as ‘hand made’ or they may understand that it is describing only a part of a manufacturing process, but is something more than ‘hand-finished’. For example a machine-produced dough piece that has further ingredients added, is re-kneaded and shaped by hand before baking. If it has not been entirely crafted by hand then it is recommended that the term is not used without clarification of the element of the product that has been “handcrafted” to prevent confusion.	Paragraph amended.
Tesco	<p>Para 90 – The criteria that ‘hand made’ requires “expert involvement” is not supported by the normal meaning of the words. Hand made sandwiches are a very common sight but you don’t need to be an expert to make a sandwich.</p> <p>Para 91 – This also adds criteria (must be fresh, unprocessed ingredients) not supported by the normal meaning of ‘hand made’. A hand made ham sandwich is still hand made even though the ham ingredient is not (and cannot be) fresh and hand made chocolates are still hand made even though chocolate is a processed ingredient.</p>	<p>Paragraph amended.</p> <p>Paragraph deleted.</p>
Yorkshire and Humber Trading Standards	This section of the guidance should be extended to cover terms such as ‘hand finished’ or ‘hand baked’. For example a cake made in a factory but dusted at the end could be described as hand finished. This gives the consumer the wrong impression about the product as a whole.	Amended.
Meat and Livestock Commission	<p>90: we suggest replacing 'completely' with 'significantly'.</p> <p>91: we disagree because making by hand may properly involve the use of processed ingredients</p>	<p>Amended.</p> <p>Paragraph deleted.</p>
LACORS	Paragraphs 90 and 91. LACORS would support the recommended criteria in general terms but would suggest that the scope could be extended to include other variants such as “hand assembled” and “hand decorated/finished”.	Amended accordingly.
Bob Stevens, County Analyst, Worcestershire Scientific Services	Para 90 - "handmade", when it is used, seems generally to be applied when products are made on a small scale. Both bread and crisps are routinely described as such, when I suspect that there is still a high degree of mechanisation. I am not sure that it is a term with great consumer appeal. Equally, I am not aware of any substantial consumer disadvantage having arisen.	Noted.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

Anon.	I would agree with the more precise definition of “handmade”. We invite our customers to visit our kitchen to see for themselves that our preserves are handmade – from fresh fruit and vegetables.	There was no specific advice in the existing Guidance on the use of the term “handmade”. We welcome the support for the proposed definition.
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Selected (para 92-93)

Respondent	Comment	Response
BRC	<p>Paragraph 93. This paragraph introduces a concept that is referred to again in several following paragraphs; high level of quality control. Industry aims to have a high level of quality control throughout the whole production process and although they may have specific controls to select certain ingredients, these may not be higher than the controls in other areas. Furthermore the concept of high quality control is very subjective.</p> <p>‘Select’ or ‘selected’ is frequently used to describe products that have come from producers with whom the retail has a long established relationship as opposed to buying on the open market. Therefore the term means relationships, traceability, prescriptive animal welfare/crop production/pesticide use, etc</p>	<p>Paragraph deleted.</p> <p>Noted.</p>
Advertising Standards Agency	The ASA agrees that the element of the product that has been ‘selected’ should be clarified and that anything ‘selected’ should have undergone a high level of quality control. This can be seen in our adjudication against Quality Meat Scotland. (See Annex 1)	Support welcomed.
Dairy UK	In the cheese industry the term “selected” may be used to describe some of the cheese specially selected by the cheese grader for a particular brand or customer – is this acceptable?	This use may be appropriate if it is made explicit.
Eversheds	<p>We have no problems with paragraph 92 but paragraph 93 is in our view wholly inappropriate because:-</p> <ul style="list-style-type: none"> <li>• We do not believe that the word “selected” carries any implication that the product has undergone a level of quality control any higher than the normal high standard for all food products.</li> <li>• The phrase “a high level of quality control” is in effect meaningless. All food manufacturers will assert that all their products have undergone a high level of quality control, in most cases quite truthfully.</li> </ul>	Paragraph 93 deleted.
Kingston upon Hull Trading Standards	<p>‘Selected’ is an ambiguous term; it does not necessarily mean chosen for high quality. Products can be ‘selected’ for use within a budget or economy range of foods, products can be selected for their ‘mediocrity’ rather than their high quality.</p> <p>Please see the next section for our comments your use of the phrase ‘should have undergone a high level of quality control’ and similar phrases.</p>	Paragraph 93 deleted.
Food & Agriculture Best Practice Group of TSEM	‘Selected’ quality implies that the selection is for high quality at the best/excellent end of the scale. In practice the advice as worded could be applied to thorough and very carefully controlled selection of	Paragraph 93 deleted.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

(Trading Standards in the East Midlands)	lower quality ingredients. For example the high degree of quality control could be applied to the selection of meat 'selected' from a carcass after all the best, prime cuts have been removed, and leaving the remaining unusable parts.	
Premier Foods	A high level of quality control" is an ambiguous statement, and not very useful for a Guidance document that is seeking to clarify terms	Paragraph 93 deleted.
SWERCOTS	It is thought that this generally implies some form of grading of the food in question by reference to a particular feature it possesses. It does not imply that the manufacturer has a high level of quality control.	Paragraph 93 deleted.
Yorkshire and Humber Trading Standards	'Selected' is an ambiguous term; it does not necessarily mean chosen for high quality. Products can be 'selected' for use within a budget or economy range of foods, products can be selected for their 'mediocrity' rather than their high quality.	Paragraphs 92 and 93 deleted.
Meat and Livestock Commission	92-93: we concur, insofar as clarification is reasonably practicable and, in particular, the clarification need not appear on the label provided the selection parameters have been well-publicised by other means.	Paragraphs 92 and 93 deleted.
LACORS	Paragraphs 92 and 93. LACORS would support the requirement to qualify the use of the word "selected" but would question whether reference to a "high level of quality control" satisfies this requirement. It is possible to exercise a high level of quality control but still produce a product which would not match consumer expectation in this regard.	Paragraphs 92 and 93 deleted.
Bob Stevens, County Analyst, Worcestershire Scientific Services	<p>Para 92 - "Selected" has caused the occasional smile as it should not be assumed that the criteria applied at selection were the same as a consumer might use. For instance, meat products "formed from selected cuts.....".</p> <p>I am not convinced that para 93 "A "selected" product should have undergone a high level of quality control" takes this further forward, and as it stands the para is not helpful to enforcement. It is possible to establish a high level of quality control, and still produce an unsatisfactory or even legally non complaint product. The issue is what criteria are set for the QC?</p>	Paragraphs 92 and 93 on selected deleted.

### Top of the Range Terms (Quality, Premium, Finest, Best) (para 94-102)

Respondent	Comment	Response
BRC	<p>Paragraphs 94 to 96. We believe these paragraphs introducing criteria for top of the range terms such as 'premium', 'finest', 'quality' and 'best' do not add anything to the definitions for these terms found in a dictionary. We therefore would suggest that they are not included in the guidance. Furthermore these terms are currently used as trade marks by some retailers, who will have much stricter criteria for the use of these terms than the one covered in this draft guidance.</p> <p>Paragraph 96. It is surprising to see from the outcome of the research that consumers believe that 'finest' and 'best' do not imply the same thing. These terms are used interchangeably and the criteria</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	<p>should be the same. Please refer to comment on high quality controls under paragraph 93.</p> <p>Paragraphs 97 and 98. It should be clarified that 'quality' can be used on products other than fresh ingredients. For example, there are certain blends of teas and coffees which are not fresh products but are specifically chosen for superior quality which can include organoleptic assessments. This will also apply to frozen foods</p>	
Advertising Standards Agency	<p>Top of the range terms, such as premium, finest, quality and best are considered to be a sign of their top-parity, but not necessarily their superiority.</p> <p>The ASA agrees that 'premium' products should undergo high-level quality control.</p> <p>The ASA also agrees that claims based on 'finest' should have a high-level quality control. This is backed up by our Scottish Quality Salmon adjudication (See Annex 1).</p> <p>However, for the term 'quality', it is unlikely that the ASA Council would insist that a product contains only fresh ingredients. As long as a product can substantiate that they are not of a lesser quality compared to other products in the same sector, then a 'quality' claim is likely to be accepted.</p> <p>'Best' can be used in a number of different ways. It can be considered an advertiser's subjective opinion, for example: 'The best keeps getting better'; and '... sell only the best in business.'</p> <p>If qualified then CAP Copy Advice and the ASA regards the claim as an objective one, and therefore capable of substantiation, for example: 'best-selling'.</p> <p>With regard to food specifically, the ASA would support guidance that asks for clarification on whether the 'best' refers to the ingredients, the recipe, the brand or a range from a specific manufacturer.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
British Soft Drinks Association	<p>These terms, and other similar terms currently in use e.g.'Superior' should only be used where they can be justified by comparison to other products, ingredients or production methods. These terms should be acceptable where appropriate and where they can be substantiated .</p> <p>The industry as a whole aspires to the "highest levels of quality control". Use of these terms should be related to a high level of overall quality.</p> <p><u>Quality</u></p> <p><b>Item 98:</b> In certain instances fresh ingredients might be a factor in determining quality by consumers; however for other food categories presence or absence of fresh ingredients may not be relevant to product quality.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
Eversheds	<p>None of this guidance should, in our submission, be adopted.</p> <p>We totally accept that there is a serious risk of consumers being misled by the inappropriate misuse of these words. However, in our view, it is quite impossible to control this adequately in the way</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	<p>suggested. It may in fact be impossible to control the use of such words adequately at all. In our view, the only potentially effective control would be to recommend that the producer should be able to demonstrate that the product is better in some way than the “normal” product. A condition of such a claim would be that the labelling would indicate in what respect it was better - for example a higher proportion of the key ingredients. This requirement would be closest to what consumers understand - see the research evidence recorded in your paragraph 96 - and so also this would remain fairly vague guidance, it would at least be accurate and relevant.</p> <p>Alternatively the advice proposed in relation to “premium” should be adopted for all these terms, ie that it is a difficult term to understand and should not be used without a clear explanation to consumers.</p> <p>The suggestion in paragraph 97 that a particularly high level of quality control should be a determinant of whether a product has “<b>quality</b>” is quite inappropriate - the level of quality control, ie composition, freshness, etc against the prescribed standard should be the same for all food products. The suggestion that a quality product should contain a high level of the main ingredient will not work for those products which are “quality” because, for example, they are made from the freshest fruit or from the best ancillary ingredients rather than simply have a boosted level of the principal ingredient.</p> <p>Paragraph 98 is inappropriate since it is far from clear whether this is an additional criterion or simply a bit of information. It is therefore confusing and should not be offered as guidance.</p> <p>In relation to the quality control and the use of the word “<b>premium</b>” our previous comments apply.</p> <p>In relation to “<b>finest</b>” the only criterion suggested is that the product should have a high level of quality control. For the reasons explained above this is a wholly inappropriate criterion and indeed would enable nearly all food products to claim “finest”. If guidance is, as proposed, to be given on “best” which suggests that the label should explain whether “best” refers to the ingredient, the recipe or a brand or image, then the same guidance would be appropriate for “finest” - and indeed arguably for “premium” and “quality”. Having said that, our view is that this proposed guidance on “best” should not be given.</p> <p>So far as the word “<b>best</b>” is concerned, in our view it is so vague that the guidance to the effect that the label should provide clarification on whether the term relates to the ingredients, the recipe, the brand or the range does not assist - we believe that the word “best” should be regarded as merely a marketing puff.</p>	
FDF	<p><u>General</u></p> <p>Trying to define ‘premium’, finest’, ‘quality’ etc., is virtually impossible. Nevertheless the terms are in current use and the section should be reduced to a few general guidance points.</p> <p>Typically, the terms in the previous version of the guidance had objective meanings that were particularly relevant to food products, whereas most of the new terms are used widely across many, if</p>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>

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	<p>not all, marketing sectors. It should be noted that, in relation to advertising, terms like ‘best’, ‘finest’, ‘premium’ are accepted as subjective assertions of the marketer’s opinion unless placed in a more objective context. It would be confusing for consumers and industry alike for such terms to have different meanings in labelling and advertising.</p> <p>FDF questions the unexplained use of the terms “highest quality controls” and “high/highest level of quality control” (with reference to ‘quality’, ‘premium’ and ‘finest’). Control systems should be fit for purpose. Determination of the quality that they are set to ensure is a separate matter. The current terminology is, therefore, inappropriate.</p> <p><u>“Quality”</u> (97-98)</p> <p><b>97:</b> Given the comments in para 96, it seems a questionable task to seek to differentiate between ‘quality’, ‘premium’ and ‘finest’. FDF sees no reason why ‘quality’ should be linked to the level of the main ingredient. This paragraph should be deleted.</p> <p><b>98:</b> This appears to be a comment rather than guidance. Whatever the findings of this particular piece of research, we do not agree that in general quality is necessarily linked with freshness as such. Such an association does not take account of using “quality” on an obviously processed food which cannot comprise only fresh ingredients at time of purchase e.g. “a quality ice cream”. The term “quality” has many dimensions such as better tasting; more expensive; more nutritious; independently certified etc. More generally, FSA should not be promoting the view that “quality” products can be produced only from fresh ingredients as opposed, for example, to frozen ones.</p> <p><u>“Best”</u> <b>102:</b> FDF supports this proposal to clarify the use of this term.</p>	
<p>FDF – Biscuit, cake and confectionery sector</p>	<p>Paragraphs 94 to 102: Trying to define ‘premium’, ‘finest’, ‘quality’ etc., is virtually impossible and trying to apply the descriptor ‘high or highest level of’ in each case is too subjective as to be meaningful. This section of the Guidance has little added value and it would be sensible to condense it into a few key points.</p>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>
<p>Kingston upon Hull Trading Standards</p>	<ul style="list-style-type: none"> <li>• Again there is a lack of reference to the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.</li> <li>• If these terms are used, the user must clarify whether the term relates to: <ul style="list-style-type: none"> <li>○ The market sector in which they compete with other businesses product</li> <li>○ A manufacturer’s/seller’s entire product portfolio</li> <li>○ A manufacturer’s/seller’s specific brand or range</li> </ul> </li> <li>• In paragraph 97 you suggest that a ‘quality’ product should ‘...contain a high level of the main ingredient’. ‘Quality’ cannot be gauged in purely quantitative terms; it can be dependant on the nature of the ingredient. For example one product may contain a 10%, 3year old blended whisky and another 5% a of 10 year old malt whisky – which is of the higher ‘quality’</li> </ul>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>

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Neville Craddock	<p><b>‘TOP OF THE RANGE’ TERMS: – “PREMIUM”, “FINEST”, “QUALITY” AND “BEST”</b></p> <p>The guidelines are attempting an almost impossible task!</p> <p>These terms are in widespread use and, as such, the user should be able to justify his claims – as already the case under the relevant law.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
NFU	The guidance refers to ‘high level of quality control’, particularly for ‘top of the range’ claims. The NFU would question whether quality control is in fact the factor that is intended here. High levels of quality control will be used to produce standard, economy lines as much as they are for premium lines. It is the ingredients and the processing method that would lead to a product being ‘top of the range’.	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
Food & Agriculture Best Practice Group of TSEM (Trading Standards in the East Midlands)	<p>These terms have come into use to promote mass produced foods as being somewhat better than the basic and ordinary ranges.</p> <p>The terms best, finest, premium or similar are superlatives saying that the product cannot be bettered. It is impossible for such terms to be valid. Can they compare, for example, to food produced by the country’s top restaurants or the profession’s top grade craft manufacturers? Who decides that they are of this highest excellence? Are they simply actually trying to say that a premium price is being charged for an additional level of care and effort, and/or quality of ingredients used?</p> <p>The use of such marketing descriptions as “Taste the Difference”, or “Taste Adventures” or similar, where <u>consumers</u> are recognised as the judges of the quality of the product, should be strongly recommended as a better approach. They should only be used when clearly qualified by an explanation of what the marketing business means by the term.</p> <p>Whilst words and the English language change, and change meaning, over time it is the case now that the meaning of many words are being stretched, and arguably distorted, so quickly it is difficult for consumers to be sure what they are being told.</p> <p>As before where there is doubt or ambiguity this should be resolved in the favour of the consumer either by the omission of the marketing term or by a clear explanation, within the agreed guidance. However, in this Section little meaningful guidance has been given. Low grade products can be made to the highest of quality control standards. That does not make them qualify for the use of marketing terms which suggest excellence in food manufacture or provenance.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
Premier Foods	<p>It is unclear what the difference is between “highest quality ingredients” (in relation to “Premium”, “Finest” and “Quality”), and “high quality ingredients” (in relation to “Best”).</p> <p>Similarly the difference between “highest level of quality control” and “high level of quality control” is unclear. For “Finest” paragraph 96 suggests “highest quality ingredient” but paragraph 101 only a “high level of quality control”.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
Provision Trade Federation	The only comment we have is in relation to the proposed criteria for ‘Top of the Range’ terms, such as ‘Premium’, ‘Finest’, ‘Quality’, ‘Best’ and ‘Selected’, and the attempt to differentiate between them, despite the fact that there is considerable overlap. For example, the proposed criterion for ‘Selected’ is that it ‘should have undergone a high level of quality control’. Similarly, section 97 on ‘Quality’, section 100 on ‘Premium’ and section 101 on ‘Finest’ state that the product ‘should have had a high level of quality control’.	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.

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	<p>If it is not possible to define clear differences it may be preferable either to remove them from the guidance or describe them all as 'Top of the Range' terms with a single definition.</p>	
Tesco	<p>The new guidance on 'top of the range terms' does not reflect the way these terms are used in practice and seeks to define these terms by reference to "quality control" only. It draws a distinction between products produced to 'high' levels of quality control and those produced to the 'highest' levels of quality control. Not only is this distinction subjective it is also not reflective of actual practice.</p> <p>Extending the criteria to cover 'finest' will affect a large number of Tesco products as we have a Finest brand. We believe our customers understand the Finest brand proposition very clearly and this is demonstrated by the continued success of the brand. The criteria for 'finest' within the revised guidance are so generic that it is probably true of all food products. This is neither helpful to Tesco in relation to their brand nor to any other food company considering use of this term in a different marketing context.</p> <p>Para 98 – This suggests that frozen food and cured meats cannot be "quality" because they are not fresh. This is not true and is not supported by the normal meaning of the word.</p>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>
Yorkshire and Humber Trading Standards	<p>Again there is a lack of reference to the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.</p> <p>If these terms are used, the user must clarify whether the term relates to:</p> <ul style="list-style-type: none"> <li>• The market sector in which they compete with other businesses product</li> <li>• A manufacturer's/seller's entire product portfolio</li> <li>• A manufacturer's/seller's specific brand or range</li> </ul> <p>Paragraph 97 suggests that a 'quality' product should '...contain a high level of the main ingredient'. 'Quality' cannot be gauged in purely quantitative terms; it can be dependant on the nature of the ingredient. For example one product may contain a 10%, 3year old blended whisky and another 5% a of 10 year old malt whisky – which is of the higher 'quality'.</p> <p>YAHTSG recently challenged a manufacturer of cooked meat described as 'premium'. The product compared badly to alternative equivalent ranges on the market. This was a large manufacturer and we would expect their quality control systems to be advanced. This did not prevent this business placing an inappropriately described product on the market.</p>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>
Meat and Livestock Commission	<p>97 and 100: 'highest' is somewhat meaningless in this context since the necessary strength of controls depends on the particular circumstances; instead we commend a basis in the definition of food quality applicable under the EC rural development legislation, essentially that the quality shall be in significant excess of the regulatory norms with control mechanisms in place to ensure this.</p> <p>97: the quantity of the main ingredient may have a poor relationship to the quality of a product.</p> <p>98: as an exception to the generally realistic basis of this guidance at least in part on consumer appreciation of the meaning of terms, we believe that the inference here that quality is applicable only to fresh food products is absurd.</p> <p>101: we do not see a justifiable and objective basis for the distinction between 'high' and 'highest'</p>	<p>Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.</p>

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	<p>when this is compared with 97 and 100. 102: other criteria could be 'best'.</p>	
Scotch Whisky Association	<p>The FSA refers to research amongst consumers relating to the meaning of certain terms. Has this research been carried out in all sectors? If not, there is a dangerous assumption that consumers attribute the same meaning when using these terms on different products. For example, terms such as "premium", "finest", "rare" and "reserve" have been used for many years on Scotch Whiskies, but we are aware of no evidence which indicates that consumers attach a specific meaning to these terms other than that they claim the high quality of the goods. For example, one of our members produces a 12 year old whisky which it describes as "premium". However, an 18 year old version of the same product has now also been produced. Does this mean that the 12 year old version is no longer entitled to use the term "premium" as it has done for 30 years?</p> <p>We understand from our discussions with the FSA that the intention behind proposing guidance for terms such as "best" and "finest" is to encourage manufacturers and producers to show that products labelled with such terms have been prepared to a higher standard than ordinary products in the same range. The example we were given was that sausages should not simply be labelled "finest", with 50p added to the price tag while in practice they are exactly the same sausages as those sold at a lower price as "ordinary" sausages.</p> <p>When using this example in relation to, for example, sausages, it is easy to understand the logic. However, when it comes to Scotch Whisky, this is not necessarily the case. Even ordinary Scotch Whisky is a premium product having been matured for, at the very least, 3 years in oak casks. As stated above, we would be interested in hearing whether the consumer research undertaken by the FSA relates to all sectors and this example shows that not all sectors can be considered in the same way.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
LACORS	Paragraphs 94 to 102. LACORS welcomes the intention to clarify the use of these terms but questions the effectiveness of a caveat solely involving price. LACORS view is that all these terms are capable of being misunderstood by consumers and their use should be discouraged.	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20.
SFAC	<p><b>Selected', 'Premium', 'Finest', 'Quality', 'Best' etc.</b></p> <p>The consultation highlights this as an area that is not clear to consumers. Although the suggested meanings for the terms do go some way towards achieving clarification, the proposal does not provide transparency in meaning.</p> <p><b>Top of Range</b></p> <p>All the descriptors of the 'Top of Range' products were qualitative and did not offer or claim any quantitative benefits to consumers – for example in terms of the eating experience. Currently there is no benchmark giving consumers any assurance that making the choice of a 'Top of the Range' products gives any measured and tangible 'quality' or quality control' benefit for the additional product cost. Neither the present descriptors, nor those proposed in the consultation inform consumer choice in a helpful manner.</p>	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	<p>The implication of the term 'highest quality control' is that the other products in the range are not produced to same control. All the products produced in the same factory should have been subject to the same HACCP etc standards. The term quality control is not widely used in industry - the term quality assurance is used commercially.</p> <p>There is a need for retailers to be required to specify and define on front of pack those characteristics of the product which differentiate/brand it as 'Premium, Finest etc', and to which the 'highest level of quality control' has been applied, so that consumers can make informed choices on the basis of the properties of the food.</p>	
Which (SFAC)	Use of 'top of the range' terms – 'premium', 'finest', 'quality' and 'best'. Paragraph 98 should be revised, so it is guidance rather than information about FSA research. We presume customers may link 'quality' with products that contain only fresh ingredients; they would still find the term acceptable if used on products that had undergone some form of processing. It would be useful to clarify this point.	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20
Bob Stevens, County Analyst, Worcestershire Scientific Services	I have reservations about the terms "premium, finest, quality and best being included. There comes a point when diminishing marginal return sets in and I think it is here.	Paragraphs 94-102 deleted and replaced by more general advice in new paragraph 20

### Annexes

Respondent	Comment	Response

### Other terms

Respondent	Comment	Response
Natural England	Seasonal, Local and Farmers' Market – SEE ATTACHED DOCUMENT	General advice has been added on seasonal. Advice on local has not been added as Agency research has not been able to find an agreed meaning for the term. For Farmers Market advice, we would refer to the advice on Farmhouse.
Nutrition Society	Finally, the Society suggests the Agency consider adding criteria for use of the term 'farmers market', given the increasing popularity of farmers' markets in the UK and what	General advice has been added on seasonal.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

	is implied by stating the use of ingredients from such markets (fresh, local, seasonal).	
Surrey Council Trading Standards	it would be wonderful if there could be some consideration given to the term 'Wild', as more and more restaurant owners are using the term 'wild mushrooms' or 'field mushrooms'...which in my opinion also implies wild'. Restaurants are more often than not just using cultivated button mushrooms, which I always request that menus are amended to reflect this. One caterer I recently spoke to, argued the point by saying the term ' wild boar' is commonly used but this is not going to be wild. In my mind, 'wild' means 'harvested from nature, where it has being growing naturally without any intervention by man'.	Noted. Will be considered for the future.
Sustain	<p>Whilst we recognise the FSA’s need to review marketing terms used in food labelling, we are very concerned to note that the review of these particular terms (such as fresh, pure, natural, etc.) has been going on for the past 42 years – see pages 4 and 5 of the attached ‘Ethical Hijack’ report for a potted history of this process.</p> <p>We consider that there are far more pressing food marketing and food labelling issues emerging, for which FSA should set standards. In our view, the terms “local”, “seasonal” and “farmers’ market” are particularly important because they help consumers to identify food that is grown and sold in a more sustainable way, especially to reduce greenhouse gas emissions and the food system’s contribution to climate change.</p> <p>Without action by the FSA to protect such terms, consumers’ ability to choose sustainable food, and their trust in sustainability marketing terms, will be eroded or even lost completely. Sustain and its members have found many examples of their misuse in the mainstream marketplace, illustrated extensively in the attached report, entitled ‘Ethical Hijack: Why the terms “local”, “seasonal” and “farmers’ market” should be defended from abuse by the food industry”.</p> <p>We conclude that the FSA should swiftly adopt definitions of “local”, “seasonal” and “farmers’ market” that are already widely applied and accepted, and therefore proven to be practicable, and to issue guidance to enforcement officers at the earliest opportunity. We request the opportunity to meet with FSA representatives to discuss how this might be achieved, at your earliest convenience.</p>	General advice has been added on seasonal. Advice on local has not been added as Agency research has not been able to find an agreed meaning for the term. For Farmers Market advice, we would refer to the advice on Farmhouse.

**SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS**

**SUMMARY OF CHANGES MADE:**

**SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS**

<b>Comment</b>	<b>Response</b>
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## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

<p>Detailed comments were made by several respondents on the draft.</p> <p>There were also comments on the general advice in the Guidance.</p> <p>Several points that were made related to legislation on food labelling.</p> <p><b>Change from 50 years/2 generations to 25 years/1 generation when referring to the term “traditional”.</b></p> <ul style="list-style-type: none"><li>• This change was welcomed by industry but was met with concern by some enforcement authorities who felt that 25 years was too short a time, and also did not delineate at a point before a great deal of technological change had taken place in food ingredients.</li></ul> <p><b>Views from small business, industry and enforcement authorities, with regards to costs of familiarisation with the revised Guidance in particular</b></p> <ul style="list-style-type: none"><li>• There were responses from both industry and enforcement that considered that a longer time than 30 minutes would be needed to read the Guidance.</li></ul>	<p>Amendments resulted in actions to separate what is best practice advice and what are legislative requirements.</p> <p>This has been revised to stress the need for the clear meaning of terms, to suggest some examples where use is not appropriate and also to cover the use of terms within the names of products. In the case of use of terms such as ‘premium’ then it is suggested that these should be used to indicate a high level of overall quality. Clarification has also been added to the Guidance on where marketing terms make up part of a legally protected name in the EU Scheme.</p> <p>These will be noted and passed to colleagues who will take forward for the UK work on the proposed new European Regulation on food information.</p> <ul style="list-style-type: none"><li>• The Agency proposes to make the change to 25 years to be in line with specific legislation in this area.</li><li>• As there have been proposed changes to the Guidance on the use of ‘natural’ that make the criteria more specific it is concluded that the time should be extended to 60 minutes which is reflected in the figures in this final impact assessment.</li></ul>
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## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

### **Views from all stakeholders on the costs and benefits of the proposed revisions**

- There was general support for the Guidance in the responses.
- Some industry respondents indicated that to follow the Guidance as proposed would incur costs that have not been set out in the Impact Assessment.
- Points made on the individual terms are covered below. There were many responses that did not find the proposed advice on the new top of the range terms helpful.
- Some respondents suggested that the advice should be extended to other terms such as local and farmers' market.
- Enforcement authorities considered there should be more in the Guidance on use of the terms in the name of a product.
- It was expressed by an Enforcement Authority that explanations needed for marketing terms should be sufficiently prominent.
- An addition has been made to the general advice on making necessary explanations for terms sufficiently prominent.

### **Views from small business, industry and enforcement authorities on whether the status of the guidance is clear, and also on whether the suggested best practice is clearly set out in the text**

- There was a definite split in the responses with on the one hand enforcement authorities suggesting that meeting the criteria in the Guidance should be viewed as 'what is expected' or 'mandatory rather than voluntary' and on the other hand concern from industry that the Guidance should not become mandatory.

- It is recognised that some products on the market would need to make changes to follow the Guidance as proposed, but as it is best practice Guidance it would not be compulsory to do so, and a company would only need to make changes if it wished to or if considered that they were needed to avoid prosecution for misleading labelling or to avoid flouting advertising standards codes.
- It has been decided that the specific advice proposed on the top of the range terms and the term "selected" was not helpful, even though it had been directly based on what had emerged from a detailed consumer research project. The proposed Guidance now contains some general advice on the use of these terms, stating that they should be used when the overall quality of the product is high in the case of the top of the range terms, and on avoiding use of the term "selected".
- Criteria for the use of "Farmers' Market" have not been added but advice in the section on "Farmhouse" may be used to assist with guidance on the use of this term. Agency research into use of the term local has not been able to find a generally accepted meaning of the term and no advice has been proposed, but this is an area that the Agency will keep under consideration (although it is possible that this Guidance would not be the chosen route for advice).
- The Agency proposes that the Guidance remains best practice advice with an explanation of legal requirements to avoid false or misleading labelling, and references to specific legislation which is relevant for certain terms.

**SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS**

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## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

### **Views from any small business that may be affected by the proposed revisions**

- A trade association representing small businesses recommended that the information in the Guidance should be made more public facing so that consumers understand the meaning of terms better, and also felt that small businesses would rely on others to help them to learn about the Guidance.

### **Views from stakeholders on how the options may affect competition in the food sector**

- Views were expressed that some of the advice may militate against industry providing consumers with certain types of information, such as general claims of “naturalness”.
- Views were expressed that efforts made by industry to avoid using additives and artificial ingredients would not be rewarded if it was recommended that alternative industrially processed ingredients were not to be described as “natural”.

### **Views from enforcement authorities regarding how helpful they find this Guidance and in particular on the value of any cost savings that they anticipate from the ongoing use of the revised Guidance.**

- The Guidance was welcomed by enforcement authorities, who felt that additional clarifications that had been added to terms such as “natural” were helpful. Some felt that the Guidance should have more than a best practice status (see above).

- The Agency will produce a factsheet on its website on the Guidance to provide a shorter set of advice based on this Guidance which will be more helpful for small businesses.

- It is not considered that this voluntary guidance is likely to either directly or indirectly limit the number or range of suppliers to this sector nor will it reduce the incentives for competitive action. The recommendations will apply equally to sectors of the market.

- It is proposed that the Guidance will continue to have a best practice status.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

### Individual terms

#### “Fresh”

- Amendments have been made to take account of modern industry practices.

#### “Natural”

- As proposed in the draft Guidance that was consulted upon, criteria have been clarified and additional processes have been specified that are considered to render foods and ingredients as outside the meaning “natural”.

#### “Pure”

- It has been made clear that when the term “pure” is used, it would be acceptable and advantageous to warn of possible cross contamination with allergens, in which case this type of warning would be entirely voluntary.
- It has been decided not to make the amendment to suggest that compound foods may be described as “100% pure” as this does not convey that the food is a compound food.
  - Amendments have been made to take account of legislation on GM labelling.

#### “Traditional”

- The period to qualify with the use of the criteria has been shortened from 50 to 25 years to be in line with legislation that has been introduced. Criteria have been amended according to the findings from consumer research.

#### “Original”

- Criteria have been amended according to the findings from consumer research.
- Following points made by industry, the new criteria have been relaxed to ‘It should not contain replacements for *major* ingredients.’

#### “Authentic”, “Real” and “Genuine”

- Advice has been added on the basis of experience of how the term “real” can be used in a way that is clear.

#### “Selected”

- Advice has been added to indicate that the use of this term should be avoided as it can be confusing to consumers.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

### “Home made”

- Further criteria were suggested for use of the term according to findings from consumer research, but they have been removed as a result of the consultation and the advice on this term has not been changed.

### “Farmhouse”

- The criteria have been clarified as to the type of loaf that uses the term.

### “Farmhouse Pate”

- Criteria have been added for this new term according to the findings from consumer research.

### “Hand-made”

- Criteria have been added for this new term according to the findings from consumer research.

## SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION – GUIDANCE ON THE USE OF MARKETING TERMS

### ACTIONS TO BE IMPLEMENTED:

- Taking into account the comments from the full public consultation, it is concluded that the draft revised Guidance is should be amended according to responses to the consultation and the Agency comments as set out above in paragraph 3 and on the website and also that the costs set out in the Impact Assessment are doubled from those proposed for consultation to take account of the 1 hour of time that it may take to familiarise with the new Guidance, rather than 30 minutes as estimated at the consultation stage.
- These amendments do not alter the overall net benefits, or the impact assessments set out in the consultation stage Impact Assessment significantly.
- It is recommended that this revised version of the Guidance is issued by the Agency.

## List of Respondents:

1. BRC
2. Advertising Standards Agency
3. Dairy UK
4. Eversheds
5. FDF
6. FDF – Biscuit, cake and confectionery sector
7. Kingston upon Hull Trading Standards
8. Meat and Livestock Commission
9. Natural England
10. National Consumer Council
11. Neville Cradock
12. NFU
13. Nutrition Society
14. Premier Foods
15. SWERCOTS
16. Tesco
17. VEGA
18. Yorkshire and Humberside Trading Standards
19. Scotch Whisky Association
20. British Soft Drinks Association
21. Food Additive and Ingredient Association
22. Food and Agriculture Group of TSEM
23. Pepsico
24. European Chemical Industry Council
25. Sugar Bureau
26. Regional and Local Team – Food and Farming Group – Defra
27. Surrey Council Trading Standards
28. Sustain
29. GNT UK
30. Comite European des Fabricants d’Inuline
31. County Analyst, Worcestershire Scientific Services
32. Which (SFAC)
33. Food Solutions
34. Prof Lewis Gilnert
35. FUW
36. Hybu Cig Cymru - Meat Promotion Wales (HCC)  
(see Annex as these are same as those from MLC)
37. FARMA
38. LACORS
39. CAMRA
40. Eat Natural
41. Anon.

## RESPONSE FROM FDF

**"NATURAL"** (43-56)

FDF agrees that the processes used to obtain ingredients and produce foods is important in the definition of "natural". We note, however, that many inclusions are purely speculative, in terms of "consumer expectations" and go beyond the legitimate role of guidance.

**43:** There appears to be some contradiction between this paragraph and paragraph 47c). Whilst 47c) concerns "permitted food additives" it does allow solvent extraction as "appropriate physical processing". Accordingly, paragraph 43 should allow that the use of extraction and purification techniques in the production of food ingredients, which although physical require a chemical used as a solvent, would not disqualify the use of a "natural" claim where this:

- leads to no change in the composition of the substance and
- results in no detectable residues

Certain processes may be permissible on a case by case basis where the composition of the product is not changed and where it can be demonstrated that the average consumer would not be misled given the nature and usage of the given food/food ingredient.

**44:** Industry agrees that additives and flavourings may comply with relevant "natural" criteria as much as any other food ingredient and supports that purification methods such as solvent extraction should be explicitly accepted for those products. We question whether the distinction in terms of recognising certain processing techniques are permissible for flavourings and food additives on the one hand but not for any other category of food on the other would stand up to legal scrutiny under either UK or EU law<sup>7</sup> as it appears arbitrary and disproportionate. The approach also seems confusing and illogical, in that it permits extracted additives (which meet the criteria) to be described as "natural" but would prevent natural fruit and vegetable extracts from being described as such.

The inclusion in processes not considered natural by FSA of solvent extraction, carbon filtration, concentration and acid or alkali treatments would exclude: most vegetable oils, (which are typically hexane extracted and filtered through activated carbon); marination of meat or fish (an acid treatment); natural colouring foodstuffs (usually concentrated whole extracts of plant material); apple juice concentrated and used to give sweetness; and traditional tortilla making (which employs calcium hydroxide to soften the maize kernels before they are rinsed and made into dough). Most of these foods would, however, be considered natural by the consumer.

Note that comment here about ingredients which have been produced using physical processes is inconsistent with the advice in 47 a). It would, for example, exclude the drying of milk.

Since the existing Guidance was issued in 2002, there has been a significant change in the climate with regard to consumer demand for removal of additives from products wherever possible, especially the so-called artificial additives. This has resulted in growing pressure on the food industry to satisfy this demand and to move towards more and more products with fewer or even no additives. The Guidance places major restrictions on the extension of this trend and could even be said to militate against it through the inconsistencies between the standards to be met by ingredients as opposed to additives and flavourings. This is highlighted by the new paragraph 44, which itself casts doubt on the basis of the standards applied to ingredients, i.e. the phrase "not likely to be in line with consumers' expectations" suggests uncertainty.

**45:** Please add "and rennet" after "using only the necessary, associated fermentation cultures" as use of rennet in processing is also regarded as giving rise to a "natural" product.

**47 a) 3<sup>rd</sup> bullet:** Freezing is a naturally occurring process used by man for hundreds of years to preserve food. It therefore seems unreasonable that it should be excluded as a 'natural process' and that by implication frozen foods should not be described as "natural". In the instance of frozen

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<sup>7</sup> Acknowledging that in itself the Guidance does not purport to carry legal effect – but equally noting that in reality such a document most likely will be viewed as a determining reference document both by Courts as well as by enforcement bodies – especially where open to consultation with relevant stakeholders.

vegetables it preserves more of the naturally occurring vitamins and minerals than other methods of preserving food. Freezing is clearly a more natural preservation method than those examples cited as natural processes, such as smoking and drying. It takes place naturally in very cold climates and is reversible. We believe that the reference to freezing in this context should be removed as an appropriate distinction is drawn between frozen and non frozen food through the use of the term “fresh”.

The example of carbon filtration and ion exchange purification, used in the third bullet point, does not appear to be appropriate for defining a process which is not natural. Domestic water filter jugs work on exactly these processes and it would be impossible to justify that the resulting water was not natural! The bracketed text here also appears to have been taken directly from an ASA adjudication, and we question its place in this labeling guidance.

We ask that pasteurisation is removed from these exclusions, supported by the views of a member's TSO and their Public Analyst that pasteurisation probably accords with consumer expectations of “natural.”

We do not agree that enzymatic treatment is not in line with current consumer expectations of “natural” since it is used in making traditional cheese.

As another example, apple juice may undergo enzymatic treatment to break down colloidal pectins, starches etc. prior to clarification. We do not believe that this would disqualify the resulting juice from being described as “natural” in the consumer's understanding.

There is little difference between enzymatic treatment and fermentation, which is also an enzymatic reaction, and is permitted in the guidelines!

It should be clarified what is meant by “microbial synthesis”. If it is synonymous with fermentation, the above comment applies.

These are just a few examples and we recommend deleting the proposed, new text and retaining the principle that “the process to which a “natural” product has been subjected can be described....”

**Paragraph 47a) 6th bullet:** The bracketed text, covering the avoidance of significant quantities of water addition to the final product, appears to be purely subjective and should be deleted.

**48:** We assume that the added reference to 'all additives in ingredients that are used to make the final product must also satisfy the criteria' does not include processing aids and carryover. This paragraph should also cross refer back to 44 regarding additives.

**54:** The “natural” guidance cannot necessarily be applied to terms such as real etc without qualification.. This would, for example, disqualify the information “made with real soft cheese” if the cheese contains stabilisers which it is legally permitted to contain.

**55 “negative claims”:** The second and third bullet points together are potentially confusing. On the one hand it rules out saying for example “free from artificial colours” if the product contains other non natural additives. Yet later it is stated that “these criteria do not affect negative claims such as “free from X” where X is a particular additive and where the statement may provide consumers with accurate and beneficial information' This is unhelpful, especially where there is public attention on a category of additives where it could be regarded as “beneficial” to alert consumers to their absence from a product, and FSA might even be encouraging industry to do so!.

When additives are removed from products it is usually necessary to replace their technical functions by utilising the properties of individual ingredients or maybe groups of ingredients in order to maintain product quality and integrity. Those ingredients may require a degree of modification to achieve the final result and it is unhelpful to exclude the use of quite benign processes, e.g. freezing, concentration, filtration, etc., just because no specific legislation exists. It is noteworthy that in the Miscellaneous Additives Regulations, freezing and deep freezing, for example, are treatments which do not detract from the status of “unprocessed foodstuffs”, a term which could be argued to be synonymous with “natural” in many respects

It is important for the consumer to be informed of significant product changes that are demanded, e.g. removal of certain types of additives, but the guidance restricts such information when the technical

features are replaced even without the use of additives. Paragraph 55, third bullet precludes this, not just for “natural additives” but for ingredients also.

**56:** The intended scope of this new paragraph has apparently been unclear to some of our members. When saying “nothing has been removed or nothing has been added to the food etc” we presume that this is strictly in the context of meeting the “natural” condition described in the nutrition claims Annex of Regulation 1924/2006 and does not have wider implications for the processing of the food in question. The draft FSA Guidance to Compliance with this Regulation does not comment on this provision and should carry wording consistent with the present Guidance.

## NATURAL ENGLAND – ADDITIONAL TERMS

### 1. Use of the term ‘seasonal’

- 1.1. The description “seasonal” and similar terms can be helpful to people to differentiate the time of year a food is available, and enable us to connect to the natural cycles of the year where we live.
- 1.2. As the National Consumer Council describes “*The flow of seasons through the year is perhaps the most elemental connection people have to nature around them. Light and dark, dry and wet, hot and cold... the sky, the landscape, the wildlife... all these change as seasons come and go.*”<sup>8</sup>
- 1.3. The use of the term/s can also enable consumers to make choices which may lessen the impact of climate change, as seasonally produced food has less associated greenhouse gas emissions when compared to out of season equivalents. This is because out of season produce generally requires production in (fossil fuel) heated glasshouses, lengthy storage and refrigeration, and/or long distance transport<sup>9</sup>.
- 1.4. There is now good evidence that the term ‘seasonal’ is being misused, and that consumers are being misled. Examples include ‘seasonal’ claims on hot-house aubergines, pineapples, strawberries (in December), and even chocolate<sup>10 11</sup>.
- 1.5. The misuse of the term confuses consumers, and does not enable them to make choices which may reduce food production’s impact on the environment. Without official guidance, the marketing of out of season or imported food as ‘seasonal’ could also create a competitive disadvantage for UK producers.
- 1.6. We recommend the FSA publishes guidance on the term and that criteria should apply to the term “seasonal” and combinations of the term and associated descriptions, including “new season”, “season’s produce”, “in season” and “this season”.
- 1.7. We recommend the terms should only be used for UK produce and only to market produce<sup>12</sup>:
  - during the traditional growing and harvesting periods of the food<sup>13</sup>;
  - limited periods after harvesting when produce has been stored in non-refrigerated conditions<sup>14</sup>;

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<sup>8</sup> Dibb S et al, *Season’s Promise: an enjoyable way to tackle climate change*, National Consumer Council, 2006

<sup>9</sup> Garnett T, *Fruit and vegetables and UK greenhouse gas emissions: exploring the relationship*, Food and Climate Research Network, University of Surrey, 2006

<sup>10</sup> Dibb S, *Greening Supermarkets: how supermarkets can help make greener shopping easier*, National Consumer Council, 2006.

<sup>11</sup> Yates L, *Green grocers: how supermarkets can help make greener shopping easier*, National Consumer Council, 2007

<sup>12</sup> Seasonality information can be found at, for example <http://southeastenglandfoodanddrink.co.uk/display.aspx?id=46>

<sup>13</sup> Climatic variations can mean that seasonal food is available earlier or later than usual, so this should be taken into account from year to year.

- limited periods when non-heated types of protection are used (e.g. glasshouses, polytunnels, fleece, etc)<sup>15</sup>.

1.8. We recommend the term/s should not be used for produce grown in heated greenhouses, stored in refrigerated facilities, or for heavily processed and manufactured products.

## 2. Use of the term 'local'

- 2.1. The description "local" and similar terms such as "locally produced" can help consumers differentiate food produced in a particular area close to the where it is sold. This can help reconnect consumers to the places where food is grown, and can enhance the appreciation and enjoyment of the countryside<sup>16</sup>.
- 2.2. Research into food transport shows that shorter food chains, in general, have less CO<sub>2</sub> emissions from transport than centralised and international food chains, and further reductions can be made by improving the efficiency of the distribution system and changing the mode of transport<sup>17 18 19</sup>. Other research has found that local vegetables, when in season, have a lower climate change impact over their life cycles compared to imported equivalents<sup>20</sup>.
- 2.3. There is now strong evidence to show the term is being misused, and that consumers are being misled<sup>21 22</sup>. This is both in terms of the large distance which the food has come from and in the use of far away ingredients used in processed products claiming to be 'local'.
- 2.4. The FSA's own research found that a majority of consumers want official guidance and verification on the use of the term<sup>23</sup>. Trading standards officers have requested guidance on the use of the term<sup>24</sup> as it is used more widely.
- 2.5. Without official guidance on the use of the term, the continuing misuse will penalise those businesses that are using the term honestly and accurately.
- 2.6. We therefore recommend that the FSA develops official guidance for use of the term/s in marketing.
- 2.7. We recommend the criteria should apply to the term "local" and combinations of the term and associated descriptions, including "local food", "locally grown", "locally produced". We recommend the criteria should also be applicable for food sold under brand names, such as "Local Harvest", "Local Choice", and "Locally Produced".
- 2.8. We recommend the term/s should not be used if the food is processed, transported, or packed outside of the defined area (see below), to ensure consumer expectations are met<sup>25</sup>.
- 2.9. In this context, we recommend the term "(locally) produced", when used for primary produce, should mean the entire process from primary production to transport to the retail outlet. That is, the product is grown/reared, harvested/slaughtered, lightly processed (e.g. washing, pasteurisation), packed/packaged, and transported/distributed within the defined area.

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<sup>14</sup> For example, carrots and potatoes can be stored for long periods after harvesting without requiring refrigeration

<sup>15</sup> Protection of horticultural crops, such as polytunnels and fleece, can extend the growing season of produce and be of benefit to growers.

<sup>16</sup> *Evaluation of the YHA local sourcing project*, YHA, 2004.

<sup>17</sup> Institute of Transport Studies for ADAS, *Food and Drink in Yorkshire and the Humber: Regional Supply Chains Mapping Study, for Yorkshire Forward*, 2005

<sup>18</sup> *Wise Moves*, Transport 2000

<sup>19</sup> *Food Miles as an Indicator*, Defra, 2005

<sup>20</sup> University of Wales, *Comparative Merits of Domestic and Imported Vegetables*, RELU, 2007

<sup>21</sup> Advertising Standards Authority, complaint against Tesco's use of term upheld

<sup>22</sup> 'Local' milk sold 150 miles away <http://news.bbc.co.uk/1/hi/england/6264568.stm>

<sup>23</sup> COI Communications, *Local Food Ominibus Research*, for the Food Standards Agency, January 2007

<sup>24</sup> Devon County Council Trading Standards Service enquiry to Natural England, 15 March 2007

<sup>25</sup> Food Standards Agency, *Local Food: qualitative research*, FSA, 2001

2.10. For the defined area appropriate for use of the term/s, we recommend the following:

For most areas, villages, and towns, for *primary* produce, either:

- produced at a distance of no greater than 30 miles from the point of sale, or;
- produced in the county or Joint Character Area (JCA)<sup>26</sup> (e.g. Cheshire, the Cotswolds, Dartmoor) at the point of sale, or within 5 miles of the county or JCA border.

For large towns and smaller cities (population >200,000), either:

- produced at a distance of no greater than 50 miles from the point of sale, or;
- produced in the county/ies or JCA/s within 20 miles of the town/city boundary.

For major cities and metropolitan areas, for primary produce, either:

- produced at a distance of no greater than 70 miles from the point of sale, or;
- produced in a county or JCA within 50 miles of the metropolitan boundary (e.g. for London this would be from a county within 50 miles of the Greater London Authority boundary).

2.11. For manufactured and heavily processed products, we recommend the entire manufacturing process of the final product should take place within the defined area, as above.

2.12. For manufactured and heavily processed products, where the food and/or ingredients have undergone a substantive change, we recommend that either:

- at least 50% by weight of the ingredients fulfil the criteria for 'local' primary produce (as above);
- or that the characterizing ingredient/s (e.g. strawberries in strawberry jam) fulfil the criteria for 'local' primary produce (as above).

2.13. We also recommend areas for Regional Food<sup>27</sup> and associated terms should mean:

- a county and its neighbouring counties, or;
- regions (e.g. "South West", "Scottish Highlands and Islands") as defined for statutory purposes, for example, the areas covered by the Regional Development Agencies or Government Offices, or areas covered by a Regional Food Group, or;
- areas smaller than those above.

2.14. We also recommend "National" and associated terms should mean the areas of either:

- the nations of the United Kingdom (England, Scotland, Wales, and Northern Ireland) or;
- The United Kingdom.

### 3. Use of the term 'farmers' market'

3.1. Since the first farmers' market was set up in Bath in 1999 there has been much effort to promote and support genuine "farmers' market" in the UK – work funded by local authorities, publicly funded regional development agencies, communities, local food enthusiasts, charitable funds and local farmers themselves.

3.2. Farmers' markets have become important markets for some producers managing high nature value sites and high landscape value areas, who are often unable to meet the high consistency standards demanded by multiple retailers, or to supply their produce all year round.

3.3. There is a definition of a genuine "farmers' markets" that embodies certain environmental, social and ethical principles and values, widely understood by the general public and practitioners, and adhered to by over 500 genuine farmers' markets in the UK.

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<sup>26</sup> See <http://www.countryside.gov.uk/LAR/Landscape/CC/jca.asp>

<sup>27</sup> Note that the Department of Environment, Food and Rural Affairs has already defined 'regional food' as "quality food (defined as exceeding the legal minimum requirements in some aspect of production) with a specific geographical provenance which could be marketed and sold anywhere."

- 3.4. We recommend the term “farmers’ market” should be used to describe “a market in which farmers, growers or producers from a defined local area are present in person to sell their own produce, direct to the public. All products sold should have been grown, reared, caught, brewed, pickled, baked, smoked or processed by the stallholder”<sup>28</sup>.
- 3.5. We recommend that:
- the term “farmers’ market” should not be applied to a particular product or range in isolation. It is a term used to summarise a number of different criteria that relate to where produce was produced; who it was produced by; where it is sold, and by whom;
  - produce sold at a genuine ‘farmers’ market’ should be locally grown and processed (locally being a geographical limitation, see recommended criteria for ‘local’ above);
  - produce should be grown and/or made by the farmer / processor themselves;
  - produce should be sold directly to the consumer by the principal producer or a nominated person who has been significantly involved in production, and;
  - produce should be labelled with details of production and locality and criteria for qualification to be sold in a genuine “farmers’ market”.

## **NEVILLE CRADOCK – BACKGROUND AND GENERAL COMMENTS**

### ***Personal background and experience***

I was privileged to chair the small sub-group of the former Food Advisory Committee which produced the *FAC Review of the Use of the Terms Fresh, Pure, Natural etc. in Food Labelling 2001* on which the FSA Guidelines were originally based.

For the past 5½ years, I have run my own independent consultancy on UK and EU food law and related consumer issues, advising and working on projects for national and international food businesses, including SMEs, and for national and international government authorities and agencies in Europe, Asia and North America.

For 16 years prior to this, I was responsible for regulatory affairs and legal compliance for a major international food company, whose products (at the time) spanned almost every food and beverage sector. The remainder of my 40-year career was spent working in the areas of fermentation, protein technology, food ingredients and meat products.

I believe, therefore, I may bring a wide experience to the current consultation and welcome the opportunity to comment on the proposed revisions to the Guidelines.

### ***General Background Comments***

1. The Guidelines seek to address a necessarily-subjective, underlying issue that is common to the use and control of many of these “marketing” terms:

- they are descriptive terms that are not defined, nor specifically restricted, in food law;
- they are fundamental words within the English language, and in relatively wide, everyday popular use (in practice, therefore, used by consumers far more than they are used by industry);
- some of these terms may have widely different, and perfectly legitimate, meanings according to the context of their use; they may have a precise meaning in a certain situation but this meaning can vary between specific instances;
- the legitimacy of their use in any given circumstance therefore depends entirely on that individual circumstance;
- in addition, the legitimate use of (sometimes, quite basic) English language and grammar can further ensure their correct and accurate use within a particular context, e.g. by the use of phrases that qualify and better define the context; again, therefore, it is perfectly legitimate for

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<sup>28</sup> National Farmers’ Retail & Markets Association (FARMA) [www.farma.org.uk](http://www.farma.org.uk)

certain words to have different meanings depending on the actual way in which they are used in any given circumstances and even on the food on which they are used;

- however, research carried out by FSA indicates consumer dissatisfaction and distrust of these terms in relation to food, where they are perceived not to be generally understood by “ordinary” consumers; it is a moot point whether this shows improper use of the terms, generically, across food industry sectors or reflects a progressive reduction in the ability of the population at large to understand, fully, relatively simple English.

2. For reasons similar to these, the FAC in 2001 believed it would be difficult to separate, by means of legislation, the legitimate use of such marketing terms, whether as adjectives and adverbs, properly used on food labels, from other uses that may be potentially misleading. I believe exactly the same situation applies today, not only in respect of formal legislation but also to the development of increasingly prescriptive Guidelines for the use of such terms.

3. It is also worth recalling that the Food Standards Committee (FSC) – for many years held in the highest esteem not only in the UK but internationally – reached the same conclusions. In their Reports in both 1966 and 1980, the FSC felt it could not recommend statutory provisions because of the variety of different ways in which the words can legitimately be used and preferred, instead, to recommend the development of appropriate Codes of Practice.

4. All these previous Reports explained, in some detail, the background to their conclusions. As currently drafted, the revised Guidelines – like their predecessor versions - suffer from the omission of the general discussions about the legitimate use / meaning of the terms that appears in the FSC/FAC Reports. I strongly recommend that the revised Guidelines should incorporate the relevant discussions as an aid to all parties – industry, enforcement and consumers.

5. It should also be emphasised that, whilst the FSA Guidelines consider these terms in their English language context, and will serve primarily to restrict their use by UK operators, there is widespread use of similar terms at a European level, in many cases based on different interpretations of their meaning. In view of the large proportion of food products either imported from the EU or, particularly, produced by companies that have a strong pan-European operation, there is a very strong case for consideration of similar “quality” terms at the EU level. Indeed, the FAC (2001) also recognised the argument for this in order to provide a level playing field for consumers, manufacturers and retailers across Europe.

6. Furthermore, the Guidance risks potential Single Market trading difficulties due to its status, in practice, as “pseudo law” even if it may not quite fit the concept of “soft law”. Businesses using products or ingredients considered and labelled as “natural” in one Member State may well not risk using them in the UK because of the scrutiny this term will receive and the risk of legal or ASA challenge (see paragraph 12, below).

7. However, I note that the proposal for a new EU Regulation on the Provision of Food Information does not address this issue, which leads me to the following conclusions:

- the apparent concerns in the UK are, for some reason, perceived to be greater than elsewhere, possibly arising from
  - higher levels of abuse by industry, or
  - higher levels of interest by consumers and /or interest groups, or
  - lower levels of understanding of food and agriculture producing systems here in the UK, or
  - lower levels of understanding of the national language and grammar;
- the Guidelines will have to be applied equally against imported products if they are not to become a disproportionate burden against national producers; the alternative will be FSA Guidelines that effectively “gold plate” supposedly harmonised EU legal requirements to the detriment of UK producers;
- FSA will have to recognise, and justify, the cost to those businesses that operate international marketing strategies for individual product ranges but who may well find it impossible to use common recipes, ingredients or even processes in future because of the disparate interpretations placed on these terms in different markets. In extreme cases, it is possible that new products developed for EU markets will not be available to the UK consumer.

8. In order to avoid “gold-plating” the EU legal requirements, the status of the Guidelines must be made abundantly clear:

- they must state clearly that the terms covered can have a range of legitimate meanings, particularly when qualified and used in descriptive phrases or more lengthy text.
- they must emphasise that it is not possible to cover all legitimate uses of the terms in relatively concise Guidelines in a way that addresses all ingredients used in all products – and their respective production methods – and the various ways in which the products will be packaged and marketed;
- therefore all uses and likely interpretations of the terms must be assessed fully by the business on a case-by-case basis;

9. Nobody can argue that information or material that is likely, materially, to mislead or confuse consumers should be prohibited. In addition, labelling legislation must, as far as possible, cater for the interests of significant sectoral interests but must not, conversely, prevent the dissemination of useful information simply because a minority of individual consumers are not able, for whatever reason, to put it into the correct context.

10. It is also impossible to consider the use of the terms covered by these Guidelines without also considering the content of illustrations accompanying products and their advertising, and the implications that such illustrations may convey.

11. The Guidance should make clear that the concept of “the labelling and presentation of the food, taken as a whole” must be applied when assessing whether a particular product label is likely to be considered misleading, as has been held by many Courts.

12. The guidance needs to explicitly recognise, and if appropriate explain for consumers, that certain uses of the terms may be legally justifiable, even if they are superficially in contradiction with the Guidelines.

13. In the absence of a fuller exposé of the wide scope for the legitimate use of the terms in question, I believe the guidance is unlikely to meet the Agency’s aims of providing advice to:

- assist manufacturers, producers, retailers and caterers decide when these descriptions may be used and when they should not;
- enable enforcement authorities to challenge inappropriate uses; and
- benefit consumers, by encouraging the adoption of consistent, transparent labelling practices.

My concerns are supported by the perceived need to introduce the several revisions since the original Guidance was issued. I do not accept that the use / abuse of the technical terms, the (lack of) understanding by consumers or the production / use of various ingredients has changed at the pace that the changes to Guidance would imply.

14. The absence of action at the EU level leads me to perceive the revision to these Guidelines at the present time as thinly-veiled “back-door” legislation.

15. The reference, in particular, to the Guidelines providing advice to “enable enforcement authorities to challenge inappropriate uses” has to be viewed with concern. There are now, in reality, three levels of “enforcement” of food law in the UK by

- authorised officers of the relevant Local Authorities
- the Advertising Standards Authority
- “trial by media”.

a) Whilst a TSO / EHO is likely to use the Guidance in an advisory sense in most cases when dealing with their local businesses, there will be occasions when it will be used in support of stronger action.

b) The ASA appears to rely heavily on guidelines and has in the past stated that it considers it to be within its remit to find against businesses where it considers them to have infringed their sectoral “best practice” even though they may still be acting within the law for that sector. Thus we can fully expect the ASA to treat the FSA Guidance as if it were mandatory.

c) I need add nothing to my comments about trial by media, except to highlight that many journalists do not draw a distinction between what the law may allow and what their “campaign of the moment” is seeking to achieve. This is a reality that industry faces constantly.

16. FSA must therefore ensure that the advisory status of the Guidance is clearly and unambiguously stated and, furthermore must be prepared to defend that advisory status when other organs attempt to portray it otherwise.

17. The provisions of the law in respect of “misleading” the consumer merit greater attention and prominence in order to assist businesses to decide whether their proposed use of any of the terms is likely to contravene either the law or these Guidelines. The key elements should appear in the body of the text in an early section, rather than as an Annex.

The current layout, whereby the Annex follows Contact details for all regions, serves to compound the relegation of the law within this document to an “also ran”.

18. FSA states that an objective of the Guidance is to assist industry to decide whether the use of the terms is appropriate in their particular circumstances. The Guidelines should therefore not only offer advice on the FSA interpretation of their scope and meaning but should also explain clearly for businesses their legal position should they choose to use them, in order that an individual business may “make an informed choice” as to whether to use them, or not, and to have a clear indication of the risks and consequences of so doing.

19. The present Annex is a somewhat simplistic summary of the current legal provisions, and is not likely to be helpful to the vast majority of businesses that do not have ready access to in-house legal expertise. FSA should explain more fully and very clearly to businesses (and for the benefit of enforcement and consumers) why, how and the consequences that derive from the fact that, ultimately, the appropriateness or otherwise of the use of these terms falls under the various legal instruments. In particular, FSA should explain the concept of “misleading to a material degree” (see below).

20. It would be helpful (for specialists) to be able to identify the legal instruments as the general provisions of the Food Safety Act 1990 (as amended to accommodate Regulation 178/2002), the Trade Descriptions Act 1968 (at least, until the provisions of the Unfair Commercial Practices Directive 2005/29 are implemented in the UK) and, most specifically, the Food Labelling Regulations 1996, implementing Directive 2000/13 (until superseded by the proposed Regulation). Although the General Food Regulations 2004 implement Article 16 of Regulation 178/2002, they do not change the definition of the term presentation or the offence under Directive 2000/13 of misleading a consumer “to a material degree”.

21. Article 16 of Regulation 178/2002 states that “without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food ... , the information which is made available about them through whatever medium, shall not mislead consumers.” I would contend that the more specific provisions for labelling are to be found in Directive 2000/13, Article 2 of which states that “... labelling ... must not ... be such as could mislead the purchaser **to a material degree**, particularly as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, method of manufacture or production.

22. The need for an explanation is reinforced by the likely retention of the concept of misleading **to a material degree** in Article 6 of the draft Regulation on the Provision of Food Information.

23. Although the current controls fall, in part, under The Trade Descriptions Act 1968, the Unfair Commercial Practices Directive 2005/29 (UCPD) is likely to impact in areas where specific food labelling and advertising rules are missing. The draft Guidance omits to mention this Directive or its UK implementing legislation. A number of concepts from this Directive should therefore be taken into account by the FSA:

24. UCPD will apply where there are no specific provisions regulating unfair commercial practices in sector specific legislation but, where such specific provisions do exist, they will take precedence over UCPD. Where sector specific legislation regulates only some aspects of commercial practices, for example the content of information requirements, UCPD will come into play for other elements, for example, if the information required in the sector specific legislation is presented in a misleading way. Since food sector legislation requires information not to be misleading (to a material degree) but does not define the marketing terms in question, it is probable that the use of these marketing terms will therefore fall under UCPD.

25. It is probable that, under UCPD, it is possible that enforcement officers will regard the guidance as a 'code of conduct' (i.e. practice not directly imposed by law, regulation or administrative provision); this could result in it becoming a measure of "professional diligence" as defined in UCPD to determine whether an offence has been committed.

26. The precise role and future impact of the FSA Guidelines under this legislation should be examined further. Although the UK has yet to implement the UCPD, clear segregation between voluntary guidelines and legal requirements will be essential.

27. A commercial practice is misleading if it **either**:

- contains false information and is therefore untruthful, **or**
- in any way, including overall presentation, deceives or is likely to deceive *the average consumer*, even if the information is correct; **and** (*my emphasis*)
- causes or is likely to cause him to take a transactional decision that he would have otherwise not taken.

The criteria are objective so it is not necessary to prove that a consumer was actually misled. The possibility of deception alone can be considered misleading, if the other elements are present as well. There is no need to prove a financial loss. Consumer protection authorities and Courts will define, on a case-to-case basis, what information is material information that the "average consumer" needs, taking into account the context.

28. UCPD defines that a commercial practice will be "unfair" – and prohibited – if it meets the following two, cumulative criteria:

- The practice is contrary to the requirement of professional diligence. Professional diligence is "the special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practices and/or general principle of good faith in the trader's field of activity."
- The practice materially distorts or is likely to materially distort the average consumer's economic behaviour. The criterion "to materially distort the economic behaviour of consumers" means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have otherwise taken.

29. The concept of an "average consumer" figures strongly in the UCPD, namely the ECJ interpretation as "one who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors". Clearly, if the FSA Guidance is to withstand possible challenge from non-UK business, the ECJ's objective test of the "average consumer's" understanding must be applied.

30. I am also concerned that the extension of the scope of the FSA Guidance will result in further difficulties if/when the proposed Regulation on Food Information is promulgated. As presently drafted, Article 28 introduces the concept of national soft law schemes, such as guidance aimed at ensuring the application of the essential elements of food information law. These schemes will be required to include mechanisms to sanction food business operators who abuse the scheme and allow clear, easy and affordable means of redress for consumers.

31. The FSA Guidance will clearly be argued by some as falling into this category and, therefore, any advice given will have to be absolutely clear, unambiguous and effectively beyond legal challenge.

Anything less, and it is likely to cause more problems than it solves. Tying in with my parallel concerns with UCPD, “best practices” under the new draft Regulation are considered to include schemes or any other activities endorsed by competent authorities that are considered to be a model for others to follow.

### ***Detailed Comments on the FSA Revised Guidance***

32. The proposed changes and additions appear to derive from several sources. I would challenge the strength of the evidence that is quoted. I would also highlight the requirements for such evidence to be well-supported in the future under the forthcoming legislation.

33. The 2004 survey reported that, of 220 samples examined, 40% were considered by the participating public analysts not to follow the Guidance. However, there is no evidence to show how the opinions were reached or the extent to which the accused businesses were able to justify their positions.

34. Unless the public analysts / enforcement actually investigated every alleged contravention in detail with each manufacturer, the findings are therefore likely to represent an overstatement of the problem. It will be recalled that a similar situation arose in about 1992, when a survey of the use of the term “natural” was carried out (I believe under the auspices of LACOTS). This survey found that 92% (!) of the use of the term was considered unacceptable – but, according to colleagues at the time, no follow-up investigations were made. Certainly, a number of my company’s products were fingered by that survey – any follow up by the analysts would have shown their initial allegations to have been wrong.

35. Unless a fuller, detailed follow-up with the manufacturers was made in 2004, it is highly probable that the public analysts’ opinions could have been challenged on some, if not many, of the opinions given. The fact that no prosecutions followed would suggest that either the analysts did not consider the matter of sufficient merit to follow their initial findings with a formal sampling by TSO/EHOs or, if this was done, then it has to be concluded that either the TSO/EHO and/or the relevant council committee must have considered that any prosecution would serve no useful purpose; or, of course, that the initial opinions were flawed.

36. Further evidence for change to the original 2002 Guidance has been deduced from the Agency stakeholder meeting in 2005 where it was argued that advice for some of the terms might not be in line with currently understood meanings and new terms had come into use, which might be being used in potentially misleading ways. In my experience, attendees at stakeholder meetings are not normally representative of the average consumer, and to suggest that “new terms” have come into use since 2002, such as farmhouse pate, handmade, quality, selected, premium, finest and best, would seem to confirm that the pressure for change has not come from the “average consumer” but from other sources.

37. The Guidance is stated to be in line with current consumer understanding. However, it is also stated that “the advice on Fresh, Pure Natural was **not** identified as requiring any consumer research” but these terms have been revised in the light of recent enquiries and issues that have arisen. This comment would appear to support the view that other reasons for the changes have been introduced.

38. The guidance is intended as much to help industry as it is for consumers. Before finalising changes to advice on existing terms that appear to have been introduced to “take account of further information on industry practices that have come to light”, there should be a full, technical discussion with suppliers, users and enforcement to ensure that all aspects of the specific changes have been considered.

## NEVILLE CRADOCK – NATURAL

“**NATURAL**” It is noted that no problems were highlighted by consumers and no research conducted to support the proposed amendments:

- I fully support retention of the general criterion: *“To describe single foods, of a traditional nature, to which nothing has been added and which have been subjected only to such processing as to render them suitable for human consumption.”* It would, with hindsight, be helpful for the Guidance to give greater guidance on what is considered to fall within the scope of “suitable” for consumption. For example, whilst “suitable” may generally be considered as the minimum necessary to ensure safety (e.g. washing of cassava to remove known cyanogenic compounds, cooking of kidney beans etc), any mandatory processing to ensure safety should also be included. Similarly, some natural plant products are unpalatable when freshly harvested and require a period of fermentation / maturation, followed by heat treatment to make them edible.

43. *It is advised that certain permitted additives (those with E numbers), and certain flavourings, may be described as “natural”, i.e. not synthetically derived substances, (in conformity with legislation where it exists) (see paragraph 47). When ingredients that are not additives or flavourings have been produced using physical processes such as solvent extraction, the use of such processes is not likely to be in line with consumers’ expectations for foods that are described as “natural”.*

Again with hindsight, I believe the original advice may have been deficient in this area. I believe FAC highlighted the situation for additives and flavourings but failed adequately to address the distinctions between additives, flavourings and ingredients – making the false assumption that what is permissible for emotive materials such as additives would automatically, by extension, logically apply to ingredients in general.

It is not logical to permit certain processes for additives and flavourings but not for ingredients generally, subject to certain additional criteria being met. For example, certain extraction and purification processes are widely used to refine crude extracts of ingredients, without changing in any way the properties of the ingredient in question.

On further reflection, I would also invite FSA to consider whether recognition of certain processing techniques as “natural” for additives and flavourings but not for other food ingredients is actually legally sustainable, since the former are in fact sub-categories of the latter. The anomaly of the current approach can be best illustrated by the potential examples whereby it permits extracted additives (providing they meet the criteria) to be described as “natural” but not fruit and vegetable extracts produced in the same way.

A further area where the approach is likely to be confusing is the use of vegetable, spice and herb extracts which may be used for both food and / or additive (colouring) properties in different applications. I am aware that this is an on-going debate within the new Food Improvement Agents package.

In summary, I would suggest that the Guidance should permit extraction and purification techniques in the production of food ingredients, where this does not change the composition of the substance or (in parallel with other materials) result in detectable residues.

44. *The amendment: Other processes such as microbial synthesis, enzymatic treatment, solvent extraction, carbon filtration and ion exchange purification, or acid or alkali treatment are also not in line with current consumer expectations of “natural” and so should not be referred to as natural foods or ingredients.*

The proposed extensions introduce more anomalies and problems than they solve, and must be considered much more fully before the Guidance is finalised. I am sure that interested sectoral responses will highlight specific examples, but I give several below to illustrate my concerns:

- *Microbial synthesis*: this is a very wide expression that, without a clearer explanation could encompass a very wide range of materials. In many cases, it is synonymous with fermentation and it is difficult to see how its inclusion in the Guidance, *simpliciter*, is helpful to any party.

- *Enzymatic treatment:* I do not believe that enzymatic treatment would not be in line with consumer expectations if typical examples were to be given; the most obvious is, of course, cheese-making but purification and clarification of many natural juices and similar liquids is done by enzymatic treatments, without in any way affecting the fundamental properties of the food and its subsequent description as “natural”.

Before detailed guidance on the status of enzymatic treatment is added to the FSA text, a much fuller consideration and exposé of the uses of enzymes, and perhaps their origins, is required to determine those applications that may be considered “natural” and those that are not.

- *Carbon filtration:* during the extraction of ingredients from their natural origins, carbon filtration is a common process used to refine the crude extracts, which contain many unwanted materials that impart undesirable colour and/or flavour that would, after further concentration and/or drying result in an unacceptable and possibly unpalatable final product, unsuitable for its intended purpose. The crude extract / solution is therefore passed over a carbon filter which removes most of the colour/flavour but little else. The use of this carbon filter and removal of the co-extracted materials does not in any way change the structure or properties of the target ingredient and should not be regarded as having any impact on its “natural” status. This process is, quite simply, a modern application of the use of “active charcoal” for the same purposes, which has been carried out for centuries.
- *Ion exchange:* very similar arguments apply to the use of ion exchange to refine / separate a target ingredient from its natural sources. In outline, it is used to separate the target ingredient from unavoidably co-extracted soluble materials of varying molecular weights. Ion exchange removes most of the inorganic, non-target material from the crude extract solution. It does not impact the dissolved target material, and has no effect on the physical or chemical structure itself or, therefore, its “**natural**” status.

I would, however, accept that neither carbon filtration nor ion exchange is a “**natural process**” but, both illustrate the need to establish a clear distinction between a “**natural**” product and one that has been “**naturally processed**”. Both are examples of where the process cannot be regarded as “natural” but where the product undoubtedly is.

45. For single ingredient foods such as cheese, yoghurt, butter [*and spreadable fats derived exclusively from milk and milk products*], acceptable processing is that which is strictly necessary to produce the final product ... , *and avoiding the addition of significant quantities of water to the final product.*]

I assume the reference to “exclusively from ...” is intended to ensure that the scope extends to “modified / spreadable” butters but still to exclude the emulsified blends of various dairy ingredients such as whey solids, buttermilk etc and where water and a range of additives are added / necessary?

## PEPSICO – NATURAL

Paragraph 46: the name “natural mineral water” is legally defined – the relevant legislation does not set conditions for the descriptor natural, but does set requirements for a “natural mineral water”. Consequently it would be more accurate to state that “Natural mineral water” may be used in accordance with.....”.

Paragraph 47: In recent years there has been a significant increase in consumer demand for products with natural (as opposed to artificial) ingredients. Whilst a desire for natural [unprocessed] foods may have driven the definitions included in the current guidance, there is also now an ongoing pull for composite processed foods made from natural ingredients. The Guidance currently makes it difficult to deliver such products owing to the detailed restrictions on various processing techniques that may in fact be accepted as treatments for natural ingredients by consumers, without misleading them.

Paragraph 47a): We agree that processing and treatments can be important and relevant in defining “natural” foods and ingredients. However, we believe that there are situations where processes may not be viewed by consumers as rendering a food or ingredient “non-natural”. We believe the guidelines should allow for greater flexibility in the use of “natural” for foods and ingredients of natural origin, that are minimally processed, where the material natural characteristics of an ingredient remain unchanged, and where it can be demonstrated that consumer expectation is being met. This might apply to some common or store-cupboard ingredients (e.g. sugar, vegetable oil, water) that consumers generally view as natural. The list of processes newly added to the third bullet appears excessively detailed and unlikely to be based on consumer discussion – indeed some of these processes may be viewed as immaterial to natural status when used in the production of store-cupboard ingredients e.g. to purify or isolate in order to render suitable for consumption, particularly where processes are physical and/or traditional.

The examples of carbon filtration and ion exchange purification do not appear to be appropriately defined as non-natural. Domestic water filter jugs work on exactly these processes and it would be impossible to justify that the resulting water was not natural.

The exclusion of solvent extraction for ingredients other than additives and flavourings would mean that the processing of most vegetable oils (which are typically hexane extracted) would be considered non-natural. This seems disproportionate when solvent extraction is a physical process, is permitted for natural flavouring and additives, and most consumers would readily accept vegetable oils (other than those which are hydrogenated) as natural.

This list of processes would also appear to exclude many foods that are either:

- permitted elsewhere in the guidance to be described as ‘natural’, e.g. cheese (enzymatic treatment with rennet or chymosin), or
- of a traditional nature, marinated meat or fish (acid treatment), traditional Mexican tortillas which are made using lime to soften the maize kernels prior to mixing the dough (alkali treatment), or
- are frequently used as ‘natural’ alternatives to processed sugar or synthetic additives, e.g. natural colouring foodstuffs (concentrated whole extracts of plant material), powdered apple juice used as an alternative to sugar (concentrated)

Finally, Paragraph 47a) (second bullet point) states “fermentation is itself a natural process but subsequent processes may disqualify the final product from the description “natural” unless appropriately qualified. This statement contrasts with Para 47a (3<sup>rd</sup> bullet point) which suggests that “microbial synthesis” would not accord with a consumer expectation of “natural”.

Paragraphs 47 b) and c) require that food ingredients or additives must be from a recognized food source in order to classify as natural. In our view this is an overly restrictive requirement – we believe that many consumers would consider (for example) an extract from a flower, plant or similar as natural, regardless of whether it is a recognized food source.

Paragraph 48: There are many composite products on the market today described as “natural”. As most composite products are obviously man made, it is unlikely that consumers would be misled to a material degree if they were described as “natural” rather than “made from all natural ingredients”. In these cases, “natural” is likely to be taken to mean that the product is made from natural ingredients. We recommend that this paragraph is reworded to allow composite foods to be described as “natural”

provided all ingredients classify as natural, and provided that the use of the term would not mislead consumers.

Paragraph 55, first bullet point: we consider that “free from x” claims can provide useful and desirable consumer information, particularly where the nature of a product and its ingredients is not well understood or where consumers are choosing between categories. We believe this paragraph should be reworded to allow “free from X” claims provided the claim does not imply that other foods in the same category do contain X when they do not.

Paragraph 55, second bullet point: similarly such claims relating to the absence of specific classes of additives provide useful and desirable consumer information. Consumers may be interested in only selected additive categories (e.g. artificial colours, following reports of the Southampton research on hyperactivity in 2007). Consequently it seems disproportionate to recommend against providing such information in situations where other classes of additive are present.

## THE SUGAR BUREAU - Natural

Refined white sugar has traditionally been described as “Pure” and “Natural” for generations. There is no evidence that consumers are either misled or confused by these descriptions when applied to this product.

An earlier FSA stakeholder meeting as recently as 2006 addressed the use of these terms for sugar and concluded that their use was acceptable.

It is therefore with some surprise that we note that this Consultation proposes additional restrictions on the use of the word “Natural” in food labelling that raise entirely new issues capable of application to sugar. Moreover, these proposals are not based on consumer research indicating any consumer demand for these restrictions but “in light of recent enquiries and issues that have arisen”. This is clearly an unreasonable basis for proposing changes with far reaching implications for consumer information.

### **Justifications for the use of the word “Natural” to describe refined white sugar**

(paragraphs referenced are from the FSA Consultation document  
<http://www.foodstandards.gov.uk/consultations/consulteng/2007/freshpurenaturaleng07>)

White sugar is a single food of traditional nature (paragraph 47a) derived from a recognised food source (paragraph 47 b).

All the white sugar available for sale in the UK and Europe is produced from natural sugar beet or sugar cane that has not been subject to genetic engineering. (paragraph 43 refers)

The processing of raw sugar beet or sugar cane to white sugar is restricted to those treatments that are necessary to remove impurities and isolate the foodstuff suitable for use in the home as a condiment or ingredient for cooking. (paragraph 47a)

None of the processing treatments alters the nature of the sugar or adds unnatural components. (paragraphs 43 and 47a)

It is clearly important that consumers are allowed to distinguish natural sweeteners such as sugar, from the range of artificial substitutes and mixtures now available on the market. Consumer research shows this is an important determinant of the purchasing choices of many consumers.

It would lead to consumer confusion if the designation “Natural” was no longer available for use to distinguish pure sugar from substitutes and, especially, mixtures of sugar with artificial sweeteners.

### **Comment on FSA proposals restricting the use of the term “Natural”**

The additional restrictions proposed in square brackets in paragraph 47a bullet point 3 are asserted to be “not in line with current consumer expectations”. These are:

**“Other processes such as microbial synthesis, enzymatic treatment, solvent extraction, carbon filtration and ion exchange purification, or acid or alkali treatment...”**

It is not clear on what basis of fact this assertion is made, since no consumer research has been conducted on this topic.

Moreover, these restrictions are ambiguous, since it is unclear whether they merely represent detail related to the generally accepted restriction that the product cannot be considered natural if subject to processing that alters its chemical nature (although, of course, traditional smoking and the various cooking techniques mentioned in paragraph 47a bullet point 1 alter the chemical composition of any product subject to these treatments). An alternative interpretation of these words is that these restrictions represent a radical extension of restrictions to encompass processing methods that do not affect the final product. It is this possible interpretation that we wish to question.

Several of the processes cited in this paragraph may be used as a means of removing impurities in a number of food products, not just sugar. If used in this way they clearly do not alter the fundamental nature of the main component.

For example Council 80/777/EEC as amended

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1980L0777:20031120:EN:PDF>)

regulates the treatments permitted for the purification of Natural Mineral Waters (Article 4). These include filtration and treatment with ozone enriched air. The criterion for limiting which treatments may be used is that it should not “alter the composition of the water as regards the essential constituents that give it its properties”. This would seem a good general principle to apply, *mutatis mutandis*, to all uses of the description “Natural”.

Provided the nature of the end product remains the same as the natural food component found in nature, then processes that merely remove impurities should not be restricted merely on the grounds that they have been questioned, especially without evidence that such questions are based on an adequate understanding of the processes involved.

These additional restrictions should therefore be removed from the revised draft, since their only reasonable meaning repeats conditions already mentioned in the existing texts.

### **Inter-country trade**

The current proposals extend the limitations on the use of the description “Natural” beyond those currently in force in the major trading partners of the UK, both within the EU and outside.

It would be unreasonable to so restrict UK manufacturers, especially since imported products produced within the EU, but not subject to the same limitations, would continue to be permitted to be sold in the UK.

**For these reasons alone, the additional restrictions should be removed from the text.**

## **YORKSHIRE AND HUMBER TRADING STANDARDS – RESPONSES TO SPECIFIC ENFORCEMENT QUESTIONS**

**We welcome comments on the change from 50 years / 2 generations to 25 years / 1 generation when referring to the term ‘traditional’.**

YAHTSG feels the existing definition of 50 years / 2 generations is more appropriate for a ‘traditional’ product. 25 years / 1 generation will allow many more foods to be considered traditional, lessening the meaning of the term. In addition please see comments below regarding the conflicting guidance for the terms ‘traditional’ and ‘home-made’.

**We welcome views from small business, industry and enforcement authorities, with regards to costs of familiarisation with the revised Guidance in particular.**

Option 2 in the ‘Summary: Intervention & Options’ section estimates the time required by business and enforcers to read the new guidance to be 30 minutes. We do not feel this is a realistic timescale to be used here as, although the guidance may take 30 minutes to read, it does not take into account the time required to assimilate the guidance and assess its implications.

**We welcome views from small business, industry and enforcement authorities on whether the status of the guidance is clear, and also on whether the suggested best practice is clearly set out in the text.**

There is a distinct lack of legislative detail in this document compared to other FSA guidance documents recently subject to consultation. In particular the consultation on the ‘Country of Origin Labelling Guidance’ contains justifiably detailed information on the applicable legal requirements in annexes B, C and D.

Paragraph 7’s reference to ‘...little specific legislation on the use of the terms...’ is factually correct; however it clearly and significantly understates the principle that businesses must not misdescribe foods or mislead purchases as laid down by the Trade Descriptions Act 1968; Food Safety Act 1990 – sections 14 & 15, and EC regulation 178/2002 – Article 16. The guidance also fails to cover the Name of the Food provisions contained in regulations 6 to 8 of the Food Labelling Regulations 1996.

The contents of paragraph 9 should not be described as merely ‘recommendations’ – the text describes practices which are effectively prohibited by the above legislation and/or steps which would need to be taken for a person to avail themselves of a ‘due diligence’ defence. There is no reference to the defence. This paragraph is a confusing mix of legal requirement and advice.

Paragraph 12 states that: ‘We suggest that any use of the terms covered by this advice should be capable of being [justified by evidence]’. Such ‘advice’ must be given in the context of ‘due diligence’.

## GNT – NATURAL

For some time, there has been a steadily growing demand from consumers for healthy, natural products and to avoid the use of artificial colours or colour additives and certain other groups of additives in food products.

During the period since 2002, when the existing guidance was published, this demand has accelerated, as have the efforts of the food industry to respond to this wherever technically feasible. This acceleration has been fuelled by the recent publication of FSA research at Southampton University on the potential adverse effects of a group of colour additives and the wishes of the Agency that industry should move away from the use of those colours.

While the Flavourings legislation includes a definition of natural flavourings, no such definition is included in the colours or other additives legislation.

There are no definitions within the European food additives legislation for the term “natural colours”. Therefore, the FSA guidance plays an important role for both UK and internationally operating companies for the determination whether a food additive colour or food ingredient with inherent colouring properties (colouring foodstuffs) can be claimed as “natural”. For this reason we place a high level of importance on the Guidance for both the UK and wider European market.

### 2. Specific comments 3.1 Comments on paragraph 44

*44. [It is advised that certain permitted additives (those with E numbers), and certain flavourings, may be described as “natural”, i.e. not synthetically derived substances, (in conformity with legislation where it exists) (see paragraph 47). When ingredients that are not additives or flavourings have been produced using physical processes such as solvent extraction, the use of such processes is not likely to be in line with consumers’ expectations for foods that are described as “natural”.]*

When the food industry makes significant changes to its product it is important to inform the consumer of those changes, especially when the consumer perceives them to be important. The Guidance places significant barriers in the way of this, as highlighted in the new paragraph 44, and in the current climate its negative impact on product development is much more significant than when it was first written. This raises questions about the existing Guidance in the context of consumer demand and other pressures placed on the food manufacturer.

Food additives are viewed very negatively by the average consumer, but it seems that Guidance treats additives much more leniently than single foods and ingredients when setting out criteria for describing them as “natural”. For example, the group of colour additives commonly described as “natural” may utilise any physical process including organic solvents, whereas ingredients are excluded from the description “natural” even though they may only have used the most benign physical treatments.

This new paragraph would mean that ingredients such as colouring foodstuffs have a disadvantage regarding the use of the claim “natural” in comparison to additive colours. We understand that a consumer would not expect that a colouring foodstuff is extracted with a non-food solvent – as this is given in the new paragraph 44, however we believe other benign physical treatments or only water as a solvent should be in line with consumer expectations for “natural”.

### 3.2 Comments on paragraph 47 a and b

*47. The term “natural” without qualification should be used only in the following cases:*

- a) To describe single foods, of a traditional nature, to which nothing has been added and which have been subjected only to such processing as to render them suitable for human consumption: ....*
- b) To describe food ingredients obtained from recognised food sources and which meet the criteria in a).*

When additives are removed from products it is usually necessary to replace their technical functions by utilising the properties of individual ingredients, or maybe groups of ingredients, in order to maintain product quality and integrity. Those ingredients may require a degree of

modification to achieve their effectiveness for these purposes in final products and it is unhelpful to exclude the use of quite benign processes, e.g. freezing, concentration, filtration, etc., just because no specific legislation exists on this point for ingredients as opposed to additives.

For example, ingredients such as an apple juice concentrate would undergo various physical treatments, including mashing, ultra-filtration, enzymatic treatment, pasteurisation and evaporation. Such physical processing is quite common in the food industry for food ingredients and consumers perceive quite rightly such foods and ingredients as “natural”. Therefore, we feel that there should be a distinction with regard to the level of processing accepted for the term of “natural” between single foods (to be consumed directly or as such) – refer to 47a – and food ingredients which have to be processed to receive their purpose into a compound food and drink – refer to 47b of the Guidance.

Physical processes and concentration, which do not characteristically change the nature of the ingredient or starting food, and in relation to colouring foodstuffs which retain the characteristics of the original foodstuff and are not manufactured with a selective extraction process, should be perceived as “natural” food ingredients. Based on this we request that a comment for further clarification under 47b should be added.

### 3.3 Comments on paragraph 48

*48. Compound foods should not themselves be described directly or by implication as “natural”, but it is acceptable to describe such foods as “made from natural ingredients” if all the ingredients meet the criteria in paragraph 47b), c) and d), as appropriate. [All additives in ingredients that are used to make the final product must also satisfy the criteria.]*

In paragraph 48 there is a new addition referring to “additives in ingredients...” We assume the term “ingredients” encompasses additives and flavourings and would ask that this should be further clarified in the guidance.

For example, an additive colour or colouring ingredient that would otherwise comply with the FSA principles of “natural”, would not be considered as “natural” when other additives not complying with the principles’ of “natural” are part of the formulation.

### 3.4 Comments on paragraph 55

*55. Other claims (which might be termed “negative claims”) that do not use the term “natural” or its derivatives directly, but the effect of which is to imply “naturalness” to the consumer, are potentially misleading and confusing. The following should not be used:*

Third bullet point:

- *a claim that a food is “free from one category of additive”, when an ingredient or an additive of another category having broadly similar effect has been used.*

It is always important for the consumer to be informed of significant product changes that are made in response to consumer demand, e.g. removal of certain types of additives, but the guidance restricts such information when the technical features are replaced without the use of additives. Paragraph 55, third bullet, precludes this, not just for “natural additives” but for ingredients also. This is extremely unhelpful to industry and consumers, especially at a time when the demand for such changes is growing significantly.

## 4. Comments on specific examples on additive colours

GNT is pleased that the Guidance makes provision to describe additives as “natural” if they are derived from recognised food sources and not containing other artificial additives/processing aids, in this respect we outline some additive colours as examples how we interpret the Guidance.

Examples of “non-natural” colour additives:

1. Carmine (E 120) is manufactured by extraction from dried bodies of insects precipitated with aluminium salts and formulated with propylene glycol.

Our understanding is that Carmine (E 120) should not be considered as “natural” because the starting raw material (dried bodies of insects) is not a recognised food source.

Furthermore the additive colour is chemically modified (precipitated with aluminium salts) – which is neither physical processing nor a traditional food preparation processes. Finally, the

colour is formulated with additives which do not comply with the criteria for “natural” or “free from artificial additives”.

2. Annatto (E160b): Bixin is manufactured from the seeds of the annatto tree with solvent extraction. Norbixin is prepared by chemical extraction by aqueous alkali of the extracted Bixin. Both colouring principles are normally formulated with polysorbate and propylene glycol.

Therefore, we conclude that Annatto (E160b) should also not be described as “natural”. Bixin is not chemically modified, but organic solvents are used for extraction and additives, which do not comply with the guidelines of “natural”, are used in the formulation. In addition, Norbixin is prepared by a chemical process which should not be acceptable for “natural” or “free from artificial additives”.

3. Copper Complexes of Chlorophyllins (E 141) manufactured by extraction from edible plant materials, grass, lucerne, or nettle, reacted with copper salts and normally formulated with polysorbate and propylene glycol.

Similar to Carmine, Copper Complexes of Chlorophyllins (E 141) should not be considered as “natural”.

The starting material can be either a recognised food source or not. However the process is a chemical modification, so called man made, and the additive colour is normally formulated with additives, which should not be acceptable for “natural” or “free from artificial additives”. We hope that these examples are helpful support for our other comments.

In summary, we should like to reiterate that there is a clear and growing demand for food products to be made without the use of additives, particularly those that are artificial, and for such products to be made with natural, minimally processed ingredients wherever possible. The existing and proposed modified Guidance places restrictions on the ability of the food industry to inform consumers of the changes made in response to their demands.

The restrictions on ingredients to be described as “natural” are greater than those placed on additives, even though there is no definition of “natural” in food additives legislation.

Ingredients such as colouring foodstuffs are therefore placed at significant disadvantage from the point of view of their production criteria and the provision of consumer information. For compound foods we support that all ingredients/additives must satisfy the criteria of “natural”, which would then include for example all additives used in the formulation of additives colours.

We are aware that our comments extend beyond the proposed changes to the guidance and are partly related to the Guidance as it already exists. This coincides with a time when the differentiation between colouring foodstuffs and colour additives is under discussion between the Commission and Member States in Brussels. If it would help clarify any of the issues raised by us in this response, GNT UK Ltd. would be very happy to meet with the Agency to explain any points in greater detail.

## Comité européen des fabricants d'inuline

This is in reference to the FSA Public Written Consultation related to the criteria for the use of the terms fresh, pure, natural etc. This submission is on behalf of CEFI, representing the European Confederation of Inulin Producers, and relates more specifically to the use of the term "natural".

In the revised draft of 2007 as compared to the December 2002 edition, we see that certain processes are added, which are stated not to be in line with current consumer expectations of "natural" and so should not be referred to as natural foods or ingredients. More specifically, carbon filtration and ion exchange purification are included as such processes.

We like to stress that these are non-aggressive techniques which often need to be used to produce high-quality and acceptable-tasting ingredients. Furthermore, carbon filtration is widely used in drinking water treatment in order to remove non polar or low polar organic material (alcanes, aromatic compounds, pesticides). In our case, the chicory root is used as the only raw material for source of inulin. The chemical structure, composition, and chain length distribution of the obtained inulin endproduct does not differ in any way as compared to its native presence in the chicory root. Also, on a dry matter basis, the concentration of inulin in chicory root and the inulin commercial powder are of the same order, i.e., the latter is not highly concentrated from the plant source. The techniques however are necessary to remove the salt and typical bitterness (such as sesquiterpene lactone) associated with the chicory root, in order to obtain the neutral/lightly sweet taste of natural inulin. In addition, several countries allow both techniques within "organic" production & labelling of foods and ingredients.

We hereby like to request the deletion of the processes carbon filtration and ion exchange purification as limiting steps for natural ingredient processing.

## HYBU CIG CYMRU - MEAT PROMOTION WALES (HCC)

Note: These comments have not been included in the sections above as they are the same as the comments from the Meat and Livestock Commission.

Hybu Cig Cymru - Meat Promotion Wales (HCC) is the industry-led organisation responsible for the development, promotion and marketing of Welsh red meat. HCC's stakeholder representatives implement, on behalf of all Welsh farmers and other key industry participants, a strategic plan to develop profitable and sustainable markets for Welsh red meat to derive benefit for all in the supply chain.

We commend the Agency's attempts to improve the consistency of the use of terms such as those in this document, which are capable of being used in ways that may mislead a consumer. In general, we agree with the Agency's positioning, however it could be made more clear that the guidance in particular cases may be inappropriate (whether too restrictive or insufficiently restraining) and that therefore labellers should consider the detailed circumstances on each occasion when they are proposing to use these or similar terms.

We provide specific comments, as follows:

**Paragraph 11** -We suggest modifying this to finish 'by labelling that is at least as clear and prominent as the pictures'.

**Paragraph 13** -We suggest replacing 'successfully' with 'properly'.

**Paragraph 15** - We suggest adding 'where reasonably practicable' after 'provided'.

**Paragraph 16** -We do not understand why this should be any more confusing than similar style indications.

**Paragraphs 27 & 28** -We concur.

**Paragraph 38** -The sub-heading is ambiguous - it is not clear whether 'frozen' applies to both of the nouns separated by an oblique stroke.

**Paragraph 44** - The inclusion of 'it is advised that' is different from the general case in this guidance and we do not understand the inferred distinction since we suggest that the whole of this guidance essentially provides advice except insofar as regulatory statements are quoted.

**Paragraph 47(a)** - We are not convinced that naturalness can only be attributed to foods of a traditional nature, although for other reasons we concur with the exclusion of foods derived from novel processes.

**Paragraph 49** -We suggest this is too restrictive and that where the taste, flavour or colour as appropriate is not significantly influenced by the presence of non-natural ingredients that have no effect on the relevant quality other than a dilution effect, then such statements may be justified.

**Paragraph 59** - We suggest that an indication of possible allergenic cross contamination is to be commended rather than just acceptable and that therefore this text should be made more positive.

**Paragraph 59(a)** - The second point is not clearly consistent with the introductory statement to 59, in that pure would thereby be acceptable for adventitious contamination with a non-similar material but unacceptable for such contamination with a similar food.

**Paragraph 59(b)** – The principles indicated in relation to pectin have a broader application than jams and marmalades.

**Paragraphs 63 & 77** – We commend the addition of the italicised text but would suggest that it could be clarified so as to exclude preparation in any commercial kitchen (e.g. in pubs, where we would thus distinguish the pub kitchen from the landlord's private kitchen).

**Paragraph 80** – We do not accept this point, since it is a typical feature of homemade foods that they vary significantly depending on individual domestic preferences and resources and with time and that therefore there is unlikely to be a single 'same recipe' that has always been used.

**Paragraph 82** – 'Farmhouse' in our context can also be defined as being an adjective applicable to food that is similar to that which would be produced in such premises, and the use of 'can only' in this point is considered to be misleading and unduly restrictive.

**Paragraph 86** – We believe this is again too restrictive and that the use of 'farmhouse' in a list of ingredients or descriptively in the name of a food is generally proper insofar as that indication would be appropriate where the ingredient is being sold alone as such.

**Paragraphs 88 & 89** – We recommend reconsideration of this advice since 88 is too vague and 89 is too demanding.

**Paragraph 90** – We suggest replacing 'completely' with 'significantly'.

**Paragraph 91** – We disagree because making by hand may properly involve the use of processed ingredients.

**Paragraphs 92 & 93** – We concur, insofar as clarification is reasonably practicable and, in particular, the clarification need not appear on the label provided the selection parameters have been well-publicised by other means.

**Paragraphs 97 & 100** – 'Highest' is somewhat meaningless in this context since the necessary strength of controls depends on the particular circumstances; instead we commend a basis in the definition of food quality applicable under the EC rural development legislation, essentially that the quality shall be in significant excess of the regulatory norms with control mechanisms in place to ensure this.

**Paragraph 97** – The quantity of the main ingredient may have a poor relationship to the quality of a product.

**Paragraph 98** – As an exception to the generally realistic basis of this guidance at least in part on consumer appreciation of the meaning of terms, we believe that the inference here that quality is applicable only to fresh food products is absurd.

**Paragraph 101** – We do not see a justifiable and objective basis for the distinction between 'high' and 'highest' when this is compared with 97 and 100.

**Paragraph 102** – Other criteria could be 'best'.

Please note, the absence of a comment should not be taken to be an indication that we approve wholly or partially with the point in question.