

Questions and Answers on the nutrition requirements contained in Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC)

Introduction

This Q&A has been produced with the aim of providing informal, non-statutory advice and should be read in conjunction with EU FIC (relevant sections of which are referred to as appropriate). It is not exhaustive.

The examples in this Q&A should not be taken as an authoritative statement or interpretation of the law. Ultimately, the decision as to whether or not a particular aspect of nutrition labelling is acceptable is for the courts.

General

1. When do the new rules on nutrition labelling apply?

The new rules on nutrition labelling apply from 13 December 2016. Foods placed on the market or labelled before that date may be marketed until stocks are exhausted.

2. Do the rules on nutrition declaration laid down in the FIC Regulation apply to all foods?

Yes unless the foods are specifically exempt.

The rules do not apply to:

- foods exempted by Annex V of FIC; (*Article 16(3) of FIC*) (see Q&A 5 below)
- foods which are not prepacked or prepacked for direct sale; (*Article 44(1)(b) of FIC*). The UK has not set a national requirement for nutrition information in this area.
- food supplements - (these fall within scope of Directive 2002/46/EC); (*Article 29(1)(a) of FIC*)
- natural mineral waters - (these fall within scope of Directive 2009/54/EC); (*Article 29(1)(b) of FIC*)

- beverages containing more than 1.2% by volume of alcohol; (*Article 16(4) of FIC*).

In addition, the nutrition labelling rules in FIC apply without prejudice to Foods for Specific Groups (FSG), regulated by Regulation (EU) No 619/2013 and its delegated acts. So while FIC applies to Foods for Specific Groups, there may be specific requirements in the FSG regulations that take precedence over FIC for example foods for special medical purposes.

3. Does the nutrition information have to be presented in a certain format? Do I have to reduce sales/advertising information to comply?

Article 34(2) of FIC says that nutrition information shall be presented if space permits in tabular format with the numbers aligned. Where space does not permit, the declaration shall appear in linear format. However the regulation states that voluntary food information (e.g. advertising) shall not be displayed to the detriment of the space available for mandatory food information (Article 37 FIC).

4. Do salt and sodium need to be declared on the label? If the product contains no added salt can I make a claim?

The term “salt” must be used since it is more readily understood by consumers than “sodium”. The amount of salt in a product is calculated by determining the total sodium in a product (naturally occurring, and that deriving from salt and other additives) and multiplying by 2.5. The statement indicating that the salt content is exclusively due to the presence of naturally occurring sodium can appear in close proximity to the nutrition labelling on foods to which salt was not added, such as milk, vegetables, meat and fish. Where salt has been added during processing, or as the result of the addition of ingredients that contain salt, e.g. ham, cheese, olives, anchovies etc., the statement could not be used.

5. Do I have to take samples for laboratory analysis to produce nutrition declarations?

Under FIC, energy and nutrient content should be labelled as the 'average value', which means the value that best represents the amount of the nutrient which a given food contains, and allows for natural variability of foodstuffs, seasonal variability, patterns of consumption and other factors which may

cause the actual value to vary. The declared values shall, according to the individual case, be average values based on:

- a) the manufacturer's analysis of the food;
- b) a calculation from the known or actual average values of the ingredients used;
- c) a calculation from generally established and accepted data.

The need for laboratory analysis will depend on the recipe being followed accurately, complexity of the production process (e.g. product losses during cooking) and the nature of the ingredients used to make the food. To support nutrition declarations based on calculations from known values or generally accepted data, manufacturers should keep records to show how the nutrition calculations have been applied. It is recommended that manufacturers discuss their plans for determining nutrition information with their Local Authority.

If using laboratory analysis, the chosen laboratory will be able to advise on precise sampling requirements which will consider sampling within a given production batch and across other batches to achieve a reliable nutrition profile.

6. What prepacked foods listed in Annex V are exempt from mandatory nutrition labelling?

Foods which are exempted from mandatory nutrition labelling, except when a nutrition or a health claim is made are listed in Annex V of FIC:

1. Unprocessed products that comprise a single ingredient or category of ingredients;
2. Processed products which the only processing they have been subjected to is maturing and that comprise a single ingredient or category of ingredients;
3. Waters intended for human consumption, including those where the only added ingredients are carbon dioxide and/or flavourings;
4. A herb, a spice or mixtures thereof;
5. Salt and salt substitutes;
6. Table top sweeteners;
7. Coffee extracts and chicory extracts, whole or milled coffee beans and whole or milled decaffeinated coffee beans;
8. Herbal and fruit infusions, tea, decaffeinated tea, instant or soluble tea or tea extract, decaffeinated instant or soluble tea or tea extract, which do not

contain other added ingredients than flavourings which do not modify the nutritional value of the tea;

9. Fermented vinegars and substitutes for vinegar, including those where the only added ingredients are flavourings;

10. Flavourings;

11. Food additives;

12. Processing aids;

13. Food enzymes;

14. Gelatine;

15. Jam setting compounds;

16. Yeast;

17. Chewing-gums;

18. Food in packaging or containers the largest surface of which has an area of less than 25 cm²;

19. Food, including handcrafted food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer.

Questions 7– 13 - Annex V, Exemption 19 – Food directly supplied by manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer

7. How does the exemption work?

Prepacked food from manufacturers meeting the definition of a micro business, supplied direct to the consumer (including distance sales, e.g. internet sales), need not have nutrition labelling under this exemption.

Prepacked food from those micro businesses supplied to the consumer via a third party, if this third party is a local retail establishment supplying direct to the consumer, need not have nutrition labelling under this exemption.

8. What is a manufacturer of “small quantities”

To assist with determining this question the UK relies on the EU definition contained in Commission Recommendation 361/2003 which defines a micro business as a business with:

- Less than 10 full time equivalent employees **and**

- Turnover or a balance sheet total of less than €2m (or equivalent in sterling).

9. What does ‘full time equivalent’ mean?

The staff criterion covers full-time, part-time, temporary and seasonal staff. Apprentices or students and employees on maternity or parental leave should not be included in the staff headcount.

10. What is the difference between annual turnover and annual balance sheet?

Annual turnover is determined by calculating the income that an enterprise received during the year in question from the sale of products and provision of services falling within the company’s ordinary activities, after deducting any rebates. Turnover should not include value added tax (VAT) or other indirect taxes.

The annual balance sheet total refers to the value of a company’s net assets (e.g. fixed or current assets) less the liabilities of the company.

11. What happens if I go above the micro business threshold during the course of the reference year?

If a business exceeds the headcount or financial limit for micro business status during the course of the reference year, this will not affect its situation and it will retain the micro status with which it began the accounting year. However the business will lose the micro status if it goes above the quota for two consecutive accounting periods.

12. What is ‘local’?

The definition of “local” is contained in the local authority approvals guidance.

In that guidance “local” is “within the supplying establishment’s own county plus the greater of either the neighbouring county or counties or 30 miles/50 kilometres from the boundary of the supplying establishment’s county”. In NI, this may include neighbouring counties of Northern Ireland and the Republic of Ireland.

13. Does a manufacturer have to meet the micro business requirements (less than 10 employees and turnover/balance sheet of less than €2m million) and supply locally to avail of the point 19 exemption?

There are two requirements that must be met in order to avail of point 19 exemption:

1. The manufacturer must firstly meet the definition of a micro business. The definition is comprised of two parts:
 - Less than 10 full time equivalent employees **and**
 - Turnover **or** a balance sheet total of less than €2m (or equivalent in sterling).
2. The manufacturer then must either supply the product directly to the final consumer or if it is via a 3rd party, such as a retail establishment that 3rd party must be a ‘local’ (i.e. meets the definition of local outlined in Q&A 12) retail establishment which then directly supplies to the final consumer.

Scenarios

14. I am a food manufacturer that meets the requirements of a micro business and I also supply all my products locally apart from one prepacked product that I supply to a business which falls outside the definition of ‘local’? Can I just provide nutrition labelling for that one particular product?

Yes in this scenario the one product would be required to have nutrition information. The exemption applies to the ‘food’ not the business.

15. I own a bakery that has a manufacturing site and I also own 2 small retail shops. Should the whole business i.e. the

manufacturing site and the 2 shops be considered when looking at the balance sheet and numbers of staff? (There would be less than 10 staff in the manufacturing site but more than 10 in total if you also include the 2 retail shops).

Yes the business as a whole i.e. production and retail operations would need to be factored in when considering if the bakery meets the definition of a micro business.

16. I prepack whole apples. Am I required to provide nutrition labelling?

If the only ingredient in the pack is uncut apples then exemption 1 (unprocessed products that comprise a single ingredient or category of ingredients) applies.

17. I am a micro business that advertises prepacked food on the internet. How am I affected by the nutrition labelling requirements?

The answer to this question will depend on:

(a) If the consumer buys the product direct from you or directly from you via a market place style website, nutrition labelling is not required.

(b) However, if another on line retailer is involved in the supply the retailer would need to be local to the manufacturer for the prepacked food to benefit from the exemption from nutrition labelling.

18. I operate a business taking orders via the telephone and internet for fresh meat (e.g. poultry) and prepared foods (e.g. lasagne) which are not pre-packed and collected by my customers or delivered to them. Do I need to provide nutrition information for my products?

a) For fresh meat, sold loose over a counter or cut and packed at the request of a customer to be sold on the premises or over the internet, nutrition information is **not** needed as long as that customer is the final consumer or a mass caterer. This is because nutrition information is not required for non-prepacked food.

b) For multi-ingredient products like lasagne, if they are sold loose over a counter or packed at the request of a customer to be sold on the premises or over the internet, as long as that customer is the final consumer or mass caterer these types of supply would be classed as non-prepacked food and nutrition information is not required.

19. I am a micro business supplying food direct to the final consumer or through local retailers that supply direct to the consumer. How do I let my customers and the local authorities that audit the shop I supply know that my products do not have nutrition labelling because I am exempt?

There is no prescribed way that this should be done. This could be done in your original contract with the business, or through informal communications. An example of best practice would be to include this information on your invoices as this would be a document available to the business you supply and the local authority on request. This best practice would be useful for Northern Ireland businesses supplying local neighbouring counties in the Republic of Ireland.