



IFF Research

LBRO
Prosperity and Protection

‘Use By’ Date Survey Report

Prepared for the Local Better Regulation Office

By IFF Research

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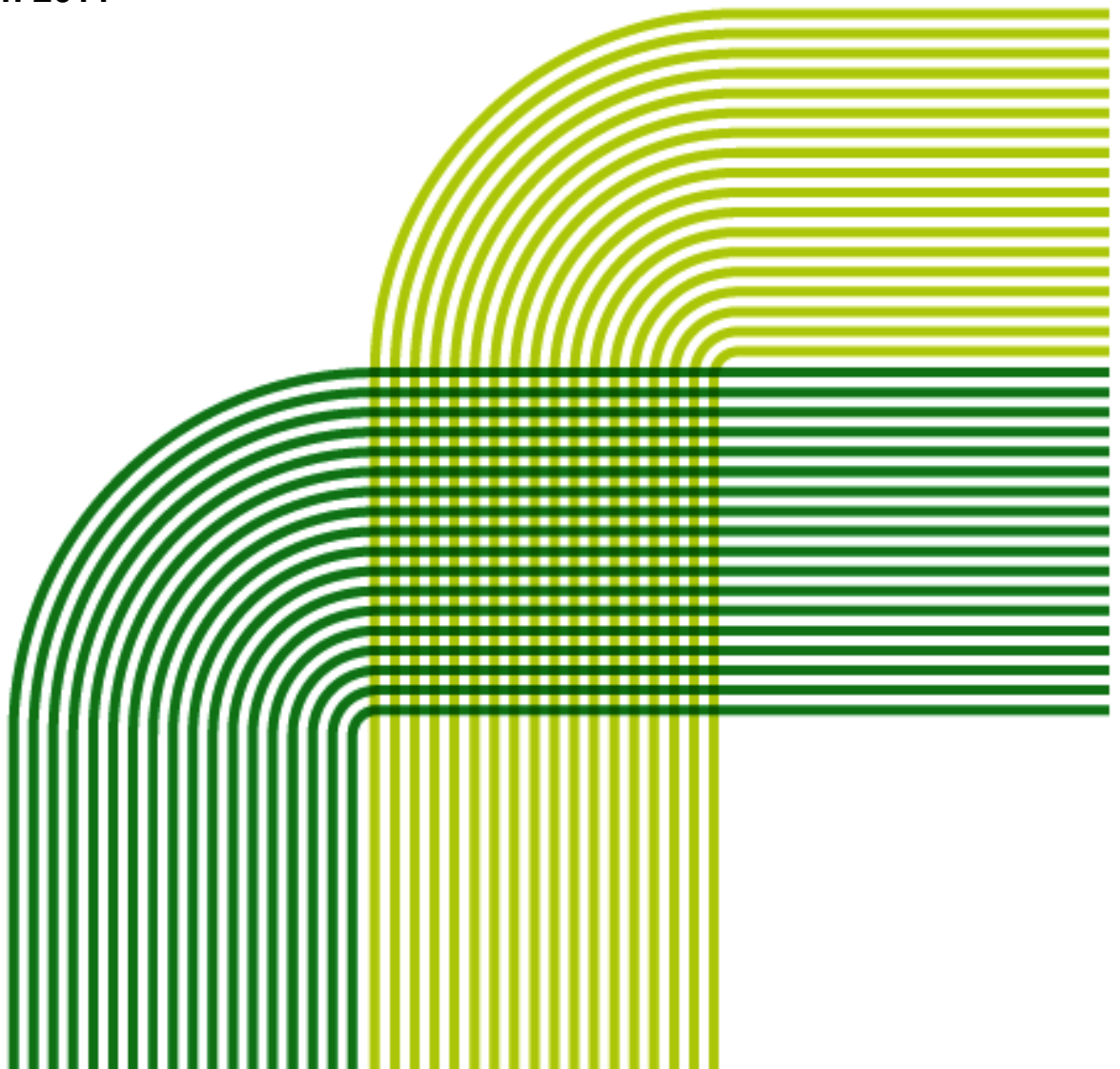


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1 Executive Summary

'Use by' dates are central to the regulatory process regarding the shelf life of food and drink products. In contrast to 'best before' dates, which focus on product quality, 'use by' dates provide guidance on product safety. In theory, any products that have exceeded their 'use by' date are unsafe to consume.

Businesses and trade associations have highlighted concerns surrounding 'use by' date coding regulations to the Local Better Regulation Office (LBRO). The 'Use By Date Survey' seeks to gain further understanding about this issue in order to inform an industry led review.

Working Practices Related to 'Use By' Dates

Working practices across the food retail, distribution and production sector related to 'use by' dates are relatively consistent (i.e. the products that require 'use by' dates, the checks made, company policy on products that have exceeded 'use by' date etc). Manufacturers apply 'use by' dates to a wide range of product types, though there is slight confusion about certain specific products. Wholesalers tend to have little influence in the application of 'use by' dates, but larger wholesalers can influence this to an extent. The checks that wholesalers make for 'use by' products are far more extensive than for 'best before' products.

Retailers typically remove 'use by' products on the date of expiry. Stock rotation checks and due diligence checks tend to make up most of the costs associated with complying with current regulations. Most retailers have agreed date control processes with their local authority, though this is slightly more likely to apply to larger retailers.

Industry Opinion on 'Use By' Date Issues

Participants in the study expressed their opinion on some key issues relating to the regulation of 'use by' dates. There was a degree of consensus regarding the general principle of 'use by' dates. Many felt that the guidelines are simple to follow and do much to protect the consumer.

However, many manufacturers, wholesalers and retailers believe that 'use by' date rules result in unnecessary levels of waste. They feel that products are coded on quality rather than safety, and many product types are microbiologically safe once they have exceeded their 'use by' date. There is also considerable concern amongst retailers about the severity of the regulations. Many consider the checks associated with 'use by' dates excessive, and the punishment for non-compliance disproportionate.

Potential Changes to 'Use By' Date Regulations

Manufacturers, wholesalers and retailers offered their suggestions on what could be done to improve current regulations. Manufacturers are more likely to be in favour of maintaining the status quo when compared to wholesalers and retailers. However, some manufacturers think that use by dates should be simplified and there should be clearer guidance for the consumer.

Wholesalers are predominantly focused on modifying the current system in line with reducing waste; many suggest exempting products from 'use by' rules, where the products do not pose an immediate health risk once the date is exceeded. Retailers are particularly unhappy with the criminal proceedings that can be lodged against businesses in the event of non-compliance i.e. selling products past their 'use by' date; most retailers think 'use by' rules should be decriminalised.

2 Introduction

2.1 Context and background

'Use by' dates are an integral part of the regulation of a range of products in a market that encompasses the food retail, distribution and production sectors. 'Use by' dates indicate that food products are no longer safe to consume after the specified date. When compared to another key area of consumer information - 'best before' dates - 'use by' dates represent a more robust assessment of how safe it is to consume food products from a microbiological perspective. While 'best before' dates are only advisory and refer to product quality, 'use by' dates aim to provide guidance on product safety; it is a criminal offence to sell a product after its 'use by' date.

Currently, local authorities are responsible for the enforcement of regulations for food businesses relating to 'use by' dates through their Trading Standards or Environmental Health Services. Businesses that trade across more than one local authority are able to access the Home Authority and Primary Authority Schemes in order to avoid incurring the extra cost of different systems to cope with different interpretations of the law in different areas. The Home Authority Scheme enables a business to liaise with one local authority (often where the firm's head office is) – that local authority then works with other local authorities to co-ordinate interactions with the business. The Primary Authority Scheme builds on the foundations of voluntary partnerships such as Home Authority but places the arrangements on a statutory footing. The primary authority is responsible for providing a single source of advice and guidance on regulatory compliance to the business and co-ordinates inspection and enforcement activity on behalf of the local regulatory system.

In principle, 'use by' dates are considered effective in minimising food safety risks for consumers. However, there is some concern that 'use by' regulations are becoming overly burdensome for businesses within the food retail, distribution and production sectors, as they lead to high levels of food waste and inflated costs associated with the checks businesses have in place to comply with the current regime.

In light of these concerns highlighted by businesses and trade associations to the Local Better Regulation Office (LBRO), IFF Research was commissioned to undertake research amongst businesses in order to inform an industry-led review group of the issues surrounding 'use by' date coding regulations.

The main aims of the survey are to:

- Estimate the size of the market affected by 'use by' dates;
- Establish costs of compliance activity by businesses;
- Explore experiences of activities needed to comply with 'use by' dates that are perceived to create unnecessary burden on businesses, and, on the other hand, of 'good practice';
- Establish the extent to which risk (i.e. risk of an outcome occurring, likely severity of consequences) is perceived to be factored into decisions by Home and Primary Authorities;
- Explore experiences of leaving audit trails to prove due diligence in this area;
- Any perceived benefits to 'use by' dates rules;
- Perceived disadvantages of the current rules and where the UK should emulate approaches elsewhere (e.g. in the EU).

2.2 Method

The survey was conducted via two main elements. Firstly, a set of self-completion postal questionnaires were distributed to individual businesses by members of the Industry Review Group (copies in appendix). Organisations in the food retail, distribution and production sectors returned these to IFF for analysis. A list of industry review group members that the survey was sent to can be found in the appendix. Following this, telephone qualitative interviewing was conducted amongst businesses affected by 'use by' dates. These interviews explored in greater detail how stakeholders within the food retail, distribution and production sectors are affected by 'use by' dates.

Twenty six self-completion questionnaires and three interviews were completed over these two stages. Although the total number of interviews achieved is not large enough for statistically robust analysis, the data can be used to provide a strong indication of industry opinion on 'use by' dates – particularly as responses were received from some of the largest organisations, accounting for approximately 45% of the food manufacturing market, 17% of the food wholesale market and 53% of the food retail market.¹

Table 2.1: Interviews completed

	Manufacturers	Wholesalers	Retailers	Total
Self-completion	17	4	5	26
Qualitative	-	1	2 (1 large, 1 small retailer)	3
Total	17	5	7	29

A full breakdown of the questionnaires/interviews completed, and the responses given, can be found in the appendix.

¹ Market shares were calculated by taking the midpoint of range responses given in relevant questions in the self-completion questionnaires (Q5B for Manufacturers, Q6B for Wholesalers and Q6 for Retailers). The market share of some particularly large retailers was also informed by desk research.

3 Working Practices Relating to 'Use By' Dates

Chapter Summary

Most products that manufacturers pack require a 'use by' date, though there is slight confusion over whether to apply 'use by' dates to fruit and vegetables. Microbiological safety is typically the primary reason for manufacturers to apply 'use by' coding rather than 'best before' coding, but retailer specification and product quality considerations are also cited as factors for dairy products.

Wholesalers can have a degree of influence in the application of 'use by' coding rather than 'best before' coding, but this tends to apply to larger wholesalers. In most cases, stock that is past its 'use by' date is destroyed by wholesalers. However, wholesalers sometimes have the authority to return stock past its 'use by' date to their suppliers, but they tend not to take out of code stock back from their own customers.

The checks that wholesalers make for 'use by' products are generally more thorough than for 'best before' products, with such products checked daily rather than weekly or fortnightly. Stock rotation and due diligence checks account for most of retailers' cost of complying with 'use by' rules.

Retailers tend to remove products with a 'use by' date on the date of expiry. Most retailers have agreed date control processes with their local authority, with large retailers slightly more likely to have done so. Formal investigations into out of code food are usually because of routine council investigations rather than customer complaint. Some retailers believe that some customers would happily buy products past their 'use by' date for a discounted price, but retailers generally think that customers would complain in such circumstances.

3.1 Application of 'use by' dates; journey from manufacturer to end customer

Manufacturers, wholesalers and retailers were all asked about their approaches to the application of 'use by' dates. While there were some discrepancies, there seemed to be a fairly consistent journey from the application of 'use by' dates by manufacturers, until they reach the end customer.

Manufacturers

Manufacturers apply 'use by' dates to a wide range of products. This includes raw meat, cooked meat, cured meat, dairy, ready meals, sandwiches and sandwich fillers. One manufacturer said that they generally do not apply 'use by' dates to salads or fruit and vegetables, but do so for prepared vegetables and salads. For salads specifically, this manufacturer considers the main exception to applying 'use by' coding rather than 'best before' coding to be whether it is a product that is 'wash before use'. Consequently, they felt there needed to be much clearer guidance in such instances in future, particularly on salads that 'rely on consumer preparation or decontamination'.

Individual manufacturers tend to be dealing with relatively few types of product lines. The type of product line that the manufacturers involved were most likely to be dealing with was dairy products (seven of the 17 manufacturers do so). Other product line types are mentioned by between one and three of the 17 manufacturers. See the Appendix page 30 for a detailed breakdown.

Wholesalers

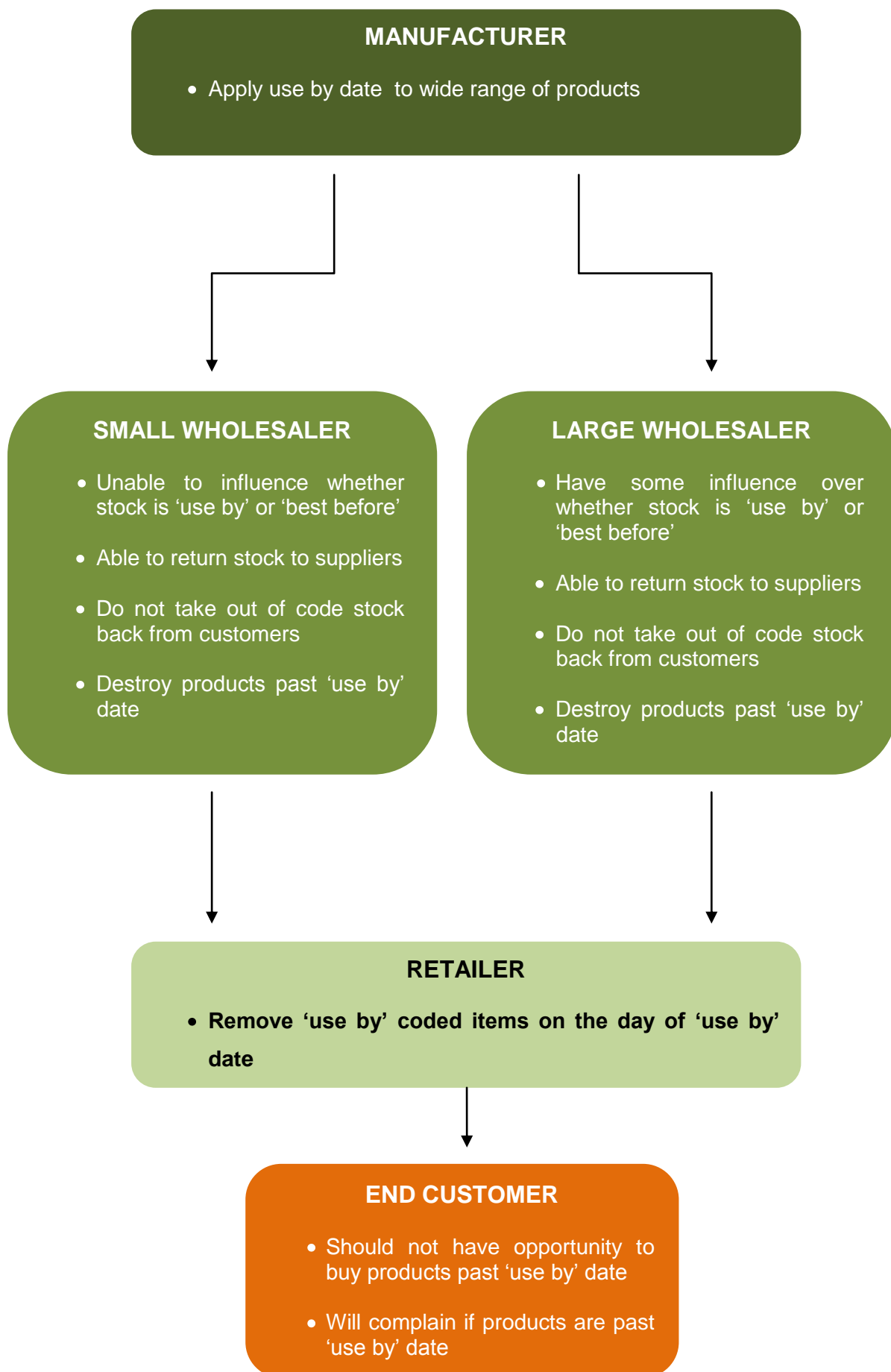
Once the products reach the wholesaler, the amount of influence they have over the type of date coding that is applied to stock tends to depend on the size of the wholesaler, with smaller wholesalers having no influence and larger wholesalers claiming that they have a degree of influence in this area. For instance, Makro Self Service Wholesalers Ltd, a cash and carry organisation that has thirty sites across the United Kingdom and deals with a range of chilled products, can influence date coding in its fish and meat departments when preparing these products for its customers.

At an overall level, wholesalers appear consistent in their approach towards products that require 'use by' date coding. They tend to set a minimum shelf life for all items before sending out to customers, most are able to return short coded stock to their suppliers but rarely take back products that have reached their 'use by' date from their own customers, and they usually dispose products to waste once they reach their 'use by' date.

Retailers

Retailers also appear to adopt a similar approach towards 'use by' dates. Most retailers remove all 'use by' coded items on the 'use by' date. One exception is a large retailer that employs over one thousand employees across the United Kingdom, which removes items according to the earliest date marked, such as the 'display until' date. Retailers generally believe that if any products do reach customers that are past their 'use by' date then those customers will complain. Yet some think that customers are happy to purchase items past their 'use by' date if they are discounted. The diagram below outlines the typical journey of 'use by' coded items from the manufacturer until it reaches the end customer.

Typical journey from manufacturer to end customer:



3.2 Company checks in place

Wholesalers

The company checks that wholesalers have for 'use by' coding are generally different than for 'best before' coding. While 'best before' items are usually checked on a weekly or fortnightly basis, 'use by' coded items are checked daily. Such checks can be of significant cost to the organisation. For example, the checks at Makro Self Service Wholesalers cost approximately £2m per annum. Other compliance costs mentioned by wholesalers range from c. £64,000 to c. £250,000 per annum.

Retailers

Retailers tend to have four main checks in place to ensure that products do not remain on display past their 'use by' date; these being stock rotation checks, due diligence checks, internal auditing checks and external auditing checks.

Type of check	Description	Minimum cost per year (estimate)	Maximum cost per year (estimate)
Stock rotation	Practice of moving products with an earlier 'use by' date to the front of a shelf so they get picked up and sold first, and of moving products with a later 'use by' date to the back	£200,000 (c.100 stores)	£25,000,000 (c.2,000 stores)
Due diligence	Essentially a defence in the event of prosecution; retailers are required to keep documented evidence proving that procedures were carried out at a relevant time and by an appropriate person	£300,000 (c.100 stores)	£16,000,000 (c.500 stores)
Internal/External auditing	Evaluation of 'use by' checks, either by members of staff within the organisation, or by third parties contracted by the retailer	£35,000 (c.2,000 stores)	£100,000 (c.500 stores)

Again, as the table above demonstrates, such checks can be of significant cost to the organisation: food retailers cite compliance costs ranging from c. £600,000 to c. £30m per annum overall². Stock rotation and due diligence checks generally make up most of the cost. The stock rotation costs cited range from c. £200,000 to c. £25m per annum, whilst the due diligence costs cited range from c. £300,000 to c. £16m per annum. Internal auditing checks accounted for a smaller proportion of the overall costs (ranging from c. £10,000 to c. £100,000). External auditing checks were not as frequently cited as other checks. Extrapolating the data³ we have to give an indication of costs for the entire market, we estimate the total cost of company checks to be c.£110m to the retail sector overall per annum; with stock rotation costing c.£81m; due diligence costing c.£86m; internal auditing costing c.£1m; and external auditing costing c.£100,000 per annum.⁴ However this data cannot be considered to be statistically robust, and should only be used as an indication of the likely total costs to the retail sector.

Large national retailers are slightly more likely to agree date control processes with their Primary or Home Authority, with retailers that trade across a small number of regions less likely to have such an agreement. Investigations into out of code food tend to be as a result of routine regulatory council inspections, though can often result from customer complaint as well.

An example of an investigation undertaken by a local council from a customer complaint involves a significant national retailer that accounts for between 1 and 5% of the UK market. Fifteen fresh food items, mostly yoghurts, were investigated for being 1-2 days beyond their 'use by' date. As a result, Police and Criminal Enforcement (PACE) interviews were conducted and the retailer had to give a thorough demonstration of the due diligence system it had in place. Recommendations were then made by the enforcement officer, but no further enforcement action was taken.

² The business with checks of £600,000 has 117 UK stores, while the business with checks of £30m has 2,032 UK stores

³ These estimated costs were derived by using the market shares of the companies that have provided costs to calculate an equivalent cost for the entire market (i.e. if X% of the market have given us a total cost of £Y, we can infer that the cost to the entire market is $(£Y/X) \times 100$)

⁴ The estimated breakdown of costs does not sum to the estimated total cost because different individual respondents gave answers to the different breakdown parts of the question

3.3 Primary reasons for applying 'use by' coding

Manufacturers

As mentioned earlier, manufacturers apply 'use by' dates to a wide range of products, including meat, dairy, ready meals and sandwiches. There were some types of products, for example salads and vegetables particularly for items that are 'wash before use', where manufacturers did not always apply a 'use by' date,

For most products, the primary reason for manufacturers to apply a 'use by' date rather than a 'best before' date is microbiological safety reasons. This is especially true of raw meat, cured meat and cooked meat products. Manufacturers are less conclusive in their reasoning for applying 'use by' date coding to dairy products, with organisations often citing retailer specification and product quality considerations as the primary factors.

Manufacturers can also take other considerations into account before applying 'use by' coding. For instance ready meals that have a low pH rating which could lower microbiological risk may not require a 'use by' code, and some dairy products that have an extended shelf life are given a 'use by' date as they do not meet the legal definition of prescribed UHT temperatures.

Retailers

Similarly, retailers were asked to rank their motivations for removing stock prior to their 'use by' date. Most believe that the primary reason for removing products prior to their 'use by' date is to minimise the risk of the product staying on the shelf beyond its 'use by' date (with the attendant risk of enforcement action). However, there was also a degree of importance attached to rotating stock in order to minimise future waste. Public health concerns appear to be slightly less of an important reason amongst retailers.

4 Industry Opinion on ‘Use By’ Date Issues

Chapter Summary

Generally, manufacturers, wholesalers and retailers consider ‘use by’ dates to be a clear and understandable regulatory process. However, there is some concern, particularly amongst manufacturers, regarding certain inconsistencies in the application of ‘use by’ dates. In addition, some retailers believe that consumers are confused about the rationale of ‘use by’ dates.

The main industry-wide criticism of ‘use by’ dates is the level of waste that they generate. There is a strong feeling that ‘use by’ dates are becoming increasingly linked to product quality rather than product safety, and there is also a belief that many products do not require a ‘use by’ date as they are of low microbiological risk.

Retailers generally feel that the checks required in order to comply with current regulations are excessive and too expensive. In addition, retailers are particularly aggrieved by the fact they can be subject to criminal prosecution in the event of non-compliance. Many feel this is unjustified because their overall compliance with ‘use by’ regulations can be disregarded, and the low microbiological risk of certain ‘use by’ products is not taken into account.

4.1 Are 'use by' dates clear and do they protect the consumer?

There is a degree of consensus across the food retail, distribution and production industry that 'use by' dates are clear and easy to understand in principle. Many within the industry feel that such simplicity, as well as the relative stringency of the current regulations, do much in protecting consumers. A few retailers share this opinion, though manufacturers and wholesalers subscribe to this view to a greater extent:

"Use by' dates are a clearly understood and necessary mechanism for ensuring food safety and integrity. The penalties for breaching regulation are serious but are understood and respected by legitimate businesses." (Wholesaler)

"There are clear rules that 'use by' dates are for products that are highly perishable from a microbiological point of view." (Manufacturer)

Although many are positive about the general clarity of 'use by' dates, there is some concern, mostly amongst manufacturers, regarding their application in specific areas.

"There does appear to be misunderstanding in some food categories where 'use by' is applied when it should be 'best before'" (Manufacturer)

Examples of manufacturer confusion in 'use by' application:

- **Salad and vegetables that are 'wash before use'**
- **Ready Meals with a low pH and thus be of lower microbiological risk**
- **Different types of cheese – maturing cheese, unpasteurised cheese and 'Protected Designation of Origin' (PDO) cheese**
- **Frozen foods that have been thawed for use at a later time (such as party foods)**

There is also a feeling amongst some retailers that consumers are not entirely clear about current regulations. One major national retailer believes that 'use by' dates are too widespread and, as a result, counterproductive in protecting consumers.

“I believe customers are confused. Surveys have shown that they are, some people follow the ‘use by’ dates very closely when others don’t even look at it. The reason is that there are too many products carrying ‘use by’ dates that don’t really need it. The seriousness of the ‘use by’ date is completely diluted.” (Retailer)

4.2 Do 'use by' dates lead to unnecessary levels of waste?

The primary grievance held across the industry regarding the current regulations is the amount of waste that ‘use by’ dates can lead to. Products that exceed their ‘use by’ date are generally disposed of by manufacturers, wholesalers and retailers. Many consider the level of waste to be unnecessarily large, for instance, the value of markdowns from ASDA stores in 2010 was reported to be £230m, and there appear to be two factors that contribute to this.

Firstly, there is some discontent about the general approach to applying ‘use by’ dates, with many feeling that dates are currently coded too cautiously. This is principally linked to the application of ‘best before’ dates; there is concern that ‘use by’ dates are increasingly being based on product quality rather than product safety leading to unnecessary waste. Wholesalers and retailers are slightly more likely to be of this opinion.

“The use of ‘use by’ dates should come from microbiological reasons but it’s not the case. Most of the time the ‘use by’ date on a product reflects quality and not microbiological safety.” (Retailer)

Secondly, the range of items that currently require ‘use by’ dates is thought to be unnecessary. Many believe that several products that have ‘use by’ dates are perfectly safe to consume once the ‘use by’ date is exceeded and consequently, products that are not a safety risk are being needlessly wasted.

“Some products will be safe beyond the ‘use by’ date due to the processing being very vigorous in removing pathogenic bacteria. Food wastage is increased by having a definite ‘use by’ rather than allowing flexibility to use until the product tastes off.” (Manufacturer)

However, there is a feeling amongst some businesses that the level of waste associated with products carrying ‘use by’ dates is a justifiable expense. One wholesaler that predominantly supplies raw meat products comments as follows:

“Anything we have which has gone past its ‘use by’ date is given to the company who collects our waste and bones; it then gets incinerated. This method has to be, it’s wise and proper to dispose of meat that can no longer be used . . . at the end of the day, we’re talking about public health.” (Wholesaler)

4.3 Are the checks/costs associated with the 'use by' date rules reasonable?

As mentioned earlier, retailers generally have four main checks in place in order to comply with ‘use by’ regulations – stock rotation, due diligence, internal auditing and external auditing checks. There is a general acceptance amongst retailers that some of these checks are necessary. However, some retailers consider the regulations overly burdensome, and the cost of the checks unreasonable as a result.

“There are certain justified costs. But at present ‘use by’ dates are expected to be checked 100% on all products. On top of daily checks, there are management checks to make sure the daily checks are carried out correctly. Then there are audit checks, when stores are being audited to see if the checks on checks are being done right. On top of all of that, there’s the cost from the local authority coming in and checking. All in all, it’s a very costly regime.” (Retailer)

There is a strong feeling amongst some smaller retailers that it is too costly to comply with ‘use by’ regulations, something which has been made particularly difficult because of the economic climate.

“Big retailers are not hit as hard as cornershops are. Their turnover is minimal compared to big names. For them to comply, attending training and courses ends up being very expensive. Especially nowadays with the recession, there are very few free workshops available.” (Retailer)

4.4 Is the punishment for non-compliance too severe?

Currently, retailers can be subject to criminal prosecution if they sell a product past its ‘use by’ date. Most retailers consider this form of punishment to be too severe, particularly because many items that exceed their ‘use by’ date are not a microbiological risk.

“In our experience the local authorities do not carry out any microbiological testing on food found to be past the ‘use by’ date. Therefore, there is no scientific evidence that the food is unfit for human consumption and as such, consideration should be given to increasing the shelf life of these products or removing the absolute offence from the regulations” (Retailer)

In addition, retailers believe that prosecution is unjustified when considering the overall compliance of the organisation rather than specific instances of non-compliance.

“At the moment we’re being prosecuted for having four items out of date in a store, and that’s out of hundreds of thousands of items on display . . . In any other field you don’t get prosecuted for 99.9% compliance.” (Retailer)

5 Potential Changes to 'Use By' Date Regulations

Chapter summary

Manufacturers tend to be the least dissatisfied with 'use by' date regulations, with many feeling that no changes need to be made. However, several manufacturers believe that the 'use by' date regulations can be simplified, with some suggesting that they should be closer aligned to 'best before' dates. Some manufacturers also believe there is confusion about applying 'use by' dates to certain products, such as dairy products, and that there should be clearer guidance in these areas.

Many wholesalers and retailers believe that 'use by' regulations should be changed in order to reduce waste and that certain products that do not pose a serious health risk should be removed from the regulatory process. Wholesalers tend to be more likely to suggest that the current regulatory system should not encompass the range of products that it does currently; some suggest improving guidance for both customers and the industry in line with simplifying 'use by' regulations and, in turn, reducing waste.

One of the main areas of concern for retailers is the legal avenues that can be pursued by regulators if products have exceeded their 'use by' date. Many retailers consider this form of punishment to be excessive, and suggest decriminalising the regulatory process.

5.1 Ideas for improvements from businesses

Manufacturers, wholesalers and retailers were asked about specific improvements that could be made to UK regulations regarding 'use by' dates. Although there were common suggestions evident in all of the organisations surveyed, some clear themes begin to emerge when analysing them separately, with manufacturers focussing on improving the clarity of 'use by' regulations, wholesalers focussing on reducing waste and retailers focussing on easing the perceived punitive nature of the current system.

Manufacturers

Of the three groups, manufacturers appear to be the most positive about the current regulations, with many saying that no changes need to be made to the current system. Such manufacturers tend to think that current regulations are clear for the consumer and strike the right balance between the advisory nature of 'best before' dates, and the safety focus of 'use by' dates.

"'Use' by dates indicate that the food is highly perishable from a microbiological point of view and therefore likely to be a danger to health after a short time. 'Use by' is a specific direction whereas 'best before' is advice" (Manufacturer)

However, many manufacturers believe that improvements can be made, and this often centres on clarity, both for the customer, and for manufacturers themselves. Manufacturers are particularly keen on simplifying 'use by' dates and increasing flexibility for consumers, and in some cases aligning it more with 'best before' regulations. Suggestions include:

"Perhaps use by dates could be followed with a statement like 'not to be consumed after this date', or in the case of frozen products 'freeze before use by date and cook from frozen'" (Manufacturer)

"Use by should not be a definite date. It should be made more flexible by having something like 'use by + 2 days if kept chilled'. This would help sound a warning but give more opportunity for food to be used, thus bringing it in line with 'best before' criteria" (Manufacturer)

On a broader scale, some manufacturers consider the general awareness of 'use by' dates to be insufficient, and believe there is a degree of confusion between 'use by' and 'best before' dates. In addition, a few manufacturers believe that there should be clearer guidance for applying 'use by' dates by product type. A manufacturer in the dairy sector described this issue:

“There should be clearer guidelines, possibly product specific. For instance in our sector, we have unpasteurised cheeses, maturing cheeses and Protected Designation of Origin (PDO) cheeses” (Manufacturer)

Although not as frequently cited as wholesalers or retailers, manufacturers express some concern over the amount of waste that ‘use by’ dates can lead to. One manufacturer suggested one radical way of tackling this problem:

“Buy one get one free should not be allowed to apply by law to perishable foods as this leads to greater waste due to the dating procedure” (Manufacturer)

Wholesalers

The main concern that wholesalers have with current regulations is the amount of waste that it is perceived to generate.

“I would ask the question are we getting the full shelf life from the manufacturer? Is it a case that some of the shelf life is taken off to be on the safe side? The disadvantage of this could in effect generate more waste due to not being sold by the ‘use by’ date, when it is still microbiologically sound” (Wholesaler)

As a result, the improvements that wholesalers suggest should be made to the current system generally focus on reducing the amount of waste that occurs currently. However, wholesalers often concede that this could be difficult to implement:

“Although very difficult to establish in practice, it would be preferable to remove from the regulations the automatic assumption that food is ‘unfit’ as soon as the ‘use by’ date is exceeded. Guidance for enforcement officers and industry alike may be a way through though” (Wholesaler)

Generally, wholesalers believe that products that do not pose a serious health risk once they have exceeded their use by date should be removed from ‘use by’ regulations. Despite wholesalers appearing to be unhappy with ‘use by’ products with regard to waste, there is also a degree of dissatisfaction with ‘best before’ regulations. One wholesaler claimed that ‘best before’ regulations are of greater concern:

“In regulatory terms, our issues are much more around the use of ‘best before’ dates. These are far more numerous, are often random in placement and are hard to read, and often bear no relationship to the quality of the product . . . We would welcome root and branch reform of these regulations” (Wholesaler)

Retailers

Of primary concern to retailers, regardless of size, are the criminal convictions that out of code products on display can lead to. Retailers generally consider this form of punishment to be disproportionate to the offence and as a result, believe that 'use by' date rules should be decriminalised:

“Date marking is a labelling issue; the date is put there for the customer’s benefit as well as to aid rotation. The EU Directive did not foresee a criminal offence being created for displaying goods past its ‘use by’ date – this a clear example of ‘gold-plating’ by the UK Government” (Retailer)

Some smaller retailers consider 'use by' regulators to be inflexible in accommodating their particular needs. One small retailer suggested the following changes:

“We need to bear in mind that for a lot of small retailers, English is their second language. It’s all very well to have rigorous regulations, but they need to be explained to the small shopkeepers. Starting with a friendly approach would be a good beginning, the regulator who comes in could be bi-lingual and offer a ground for discussion.” (Retailer)

Like wholesalers, retailers tend to believe that 'use by' regulations are not necessary for all products, and should only be applied to products that present a serious health risk once they have exceeded their 'use by' date.

“Ideally, the ‘use by’ date would be restricted for products that actually need it in terms of customers’ safety. We wouldn’t get prosecuted continually about having gone ‘use by’ date products on show. Local authorities would save money as well” (Retailer)

“The notion that a food is unsafe past its ‘use by’ date is misguided because these dates are not being used as envisaged by the EU Directive. To say that consumers’ health is at risk due to products being on sale past their ‘use by’ date is, in almost all cases, incorrect” (Retailer)

Another issue that retailers have with 'use by' dates is the amount of waste they contribute to. A major national retailer believes that such products could be dealt with in an alternative way:

“This dating regime, like any other, is potentially very wasteful. I think the solution may be to give it away to charity, especially with the use of ‘display by’ products” (Retailer)

There is also a degree of concern amongst retailers that current regulations are too complicated and need to be simplified. One retailer suggested reforming the system in the following way:

“To simplify matters, it would be better to have one policy for all removal dates, whether ‘best before’, ‘use by’ or ‘display until’. Everyone should remove on the day of the code so one rule applies to all” (Retailer)

6 Conclusions

The 'Use By Date Survey' was commissioned by the LBRO in light of concerns raised by businesses in the food retail, distribution and production sectors in relation to 'use by' regulations. The research has shown that there are a range of opinions across the industry about the effectiveness of 'use by' regulations. 'Use by' dates appear to be a justifiable form of regulation in principle, but businesses within the sector highlight some significant weaknesses.

'Use by' dates are a robust part in the regulatory system of the shelf life of food and drink products. Manufacturers, wholesalers and retailers appear to respect the legitimacy of 'use by' dates and have a thorough understanding of the part they play in food safety. This is emphasised by the consistent working practices that businesses have in place in order to comply with the regulations. Of the three types of businesses interviewed, manufacturers tend to be the most likely to be satisfied with 'use by' date rules.

However, there is concern regarding the flexibility of 'use by' date regulations, particularly amongst wholesalers and retailers. The main grievances that businesses have with 'use by' dates focus on the level of waste they can generate, and the criminal punishment that non-compliance can result in (a complaint mostly expressed by retailers); unsurprising given they are at risk of prosecution.

The amount of products that require a 'use by' date is one of the key factors behind the idea that wastage is too high – many consider several products to be safe to consume after their 'use by' date. In addition, there is a feeling that many products with a 'use by' date are being incorrectly coded on quality rather than safety. The criminal prosecution that retailers can be subject to in the event of regulatory non-compliance is largely viewed as unjustified, particularly because many products that exceed their 'use by' date are not an immediate health risk. For example, there is a feeling that ready meals are of a lower microbiological risk as they are usually pre-cooked.

Consequently, three main themes begin to emerge when looking at the changes that businesses in the food retail, distribution and production sectors wish to make to 'use by' regulations. Ideally, 'use by' dates should only apply to products that are a microbiological risk past their 'use by' date; their dating should reflect the point at which the product becomes unsafe (rather than when it passes optimum quality); and any regulatory punishment for non-compliance should be decriminalised.

7 Appendix

The following list details the industry review group members that the survey was sent to:

Group member	Questionnaire		
	Retailers	Manufacturers	Wholesalers
Association Convenience Stores	Yes	No	No
Provision Trade Federation	No	Yes	No
Food and Drink Federation	No	Yes	No
British Meat Processors Association	No	Yes	No
Federation of Wholesalers and Distributors	No	No	Yes
National Federation of Retail Newsagents	Yes	No	No
Waitrose	Yes	No	No
Sainsburys	Yes	No	No
ASDA	Yes	No	No
Tesco	Yes	No	No
Co-op	Yes	No	No

Survey responses

Twenty six responses were received to the self-completion questionnaire and 3 telephone interviews were undertaken.

Manufacturers	Small (1-49 employees)	Medium (50-249 employees)	Large (250+ employees)	Total
Self-completion	2	6	9	17
Qualitative	-	-	-	-
Total	2	6	9	17

Wholesalers	Small (1-49 employees)	Medium (50-249 employees)	Large (250+ employees)	Total
Self-completion	-	-	4	4
Qualitative	1	-	-	1
Total	1	-	4	5

Retailers	Small (1-49 employees)	Medium (50-249 employees)	Large (250+ employees)	Total
Self-completion	-	-	5	5
Qualitative	1	-	1	2
Total	1	-	6	7

The following organisations participated in the survey and were willing to be identified:

Manufacturers - Castelli UK Ltd; Direct Table Foods Ltd; Dawn Fresh Foods Ltd; Dairy Crest; Perimax (Scotland) Ltd; Eurilait Ltd; S & A Foods; Danone Ltd;

Wholesalers - A G Parfett & Sons Ltd; Booker Ltd; Makro Self Service Wholesalers Ltd; Palmer & Harvey McLane Ltd;

Retailers - Asda Stores Ltd; Capper & Co Ltd (incorporating Wayne's Foods Ltd)

In view of the larger number of responses from manufacturers, their responses were inputted into a data analysis package and the results were tabulated. Results for retailers and wholesalers were analysed qualitatively, i.e. by manually identifying patterns and themes within the responses given.

Full breakdowns of the responses given to each of the three questionnaires (i.e. manufacturers, wholesalers, retailers) are given below. Note that all averages given are mean averages.

Manufacturer responses

	Q1a Which trade association(s) are you a member of?		Q1b Which trade association sent you this questionnaire?	
	PLEASE CROSS ALL THAT APPLY TO YOU	%	PLEASE CROSS ONE BOX ONLY	%
Association Convenience Stores	-	-	-	-
National Federation of Retail Newsagents	-	-	-	-
British Retail Consortium	2	12%	-	-
Provision Trade Federation	9	53%	10	59%
Federation of Wholesalers and Distributors	-	-	-	-
Food and Drink Federation	2	12%	-	-
British Meat Processors Association	6	35%	3	18%
Other (PLEASE CROSS AND WRITE IN BELOW)	5 (Chilled Food Association x 3, Dairy UK x 2)	29%	4 (Chilled Food Association x 4)	24%
None of these	-	-	-	-
Don't know	-	-	-	-
Refused	-	-	-	-

Q4 Overall (including yourself) how many employees does your business currently employ across the UK?	PLEASE CROSS ONE BOX ONLY	%
1-9	1	6%
10-24	-	-
25-49	1	6%
50-249	6	35%
250-499	1	6%
500-999	3	18%
1000+	5	29%
Don't know	-	-

Q5a How many sites does your organisation have across the United Kingdom? PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
Min = 1 Max = 16 Average = 4

Q5b What approximate percentage share does your organisation have of the UK fresh food manufacturing market?	PLEASE CROSS ONE BOX ONLY	%
Less than 1%	6	35%
1% - 5%	2	12%
6% - 10%	-	-
11% - 15%	1	6%
16% - 20%	-	-
21% - 25%	1	6%
26% or more (PLEASE CROSS AND ESTIMATE TO THE NEAREST 5% IN THE BOX BELOW)	-	-
	_____ %	
Don't know	7	41%

Please note that, in the rest of this questionnaire, we are looking at products with a 'use by' date specifically (as opposed to 'best before' dates) – except where the questionnaire states otherwise.

Q6
Which of the following categories of chilled products do you pack and which of these do you apply a 'use by' date code to?

PLEASE PUT A CROSS IN THE TABLE BELOW FOR:

- EACH TYPE OF CHILLED PRODUCT THAT YOU PACK, IN THE FIRST ROW, AND
- EACH TYPE OF CHILLED PRODUCT THAT NEEDS A 'USE BY' DATE, IN THE SECOND ROW.

IF YOU DON'T KNOW PLEASE WRITE IN DK

	Do you pack this type of product?		Do you apply a use by date to this type of product?	
a) Meat (raw)	3	18%	3	18%
b) Meat (cured)	3	18%	3	18%
c) Meat (cooked)	3	18%	3	18%
d) Fish (raw)	-	-	-	-
e) Fish (processed and cooked)	-	-	-	-
f) Dairy	7	41%	7	41%
g) Salads	1	6%	-	-
h) Fruit and veg	1	6%	-	-
i) Ready meals	2	12%	2	12%
i) Sandwiches	1	6%	1	6%
k) Other (PLEASE SPECIFY:)	2 (Prepared vegetables and salads, sandwich fillers)	12%	2 (Prepared vegetables and salads, sandwich fillers)	12%
No answer	1	6%	1	6%

Q7a

For each of the following types of chilled product that you apply 'use by' dates to, please can you rank the factors that you consider when deciding to apply 'use by' coding rather than 'best before' coding, in order of importance?

SUMMARY OF FIRST MENTIONS

PLEASE DO THIS FOR EACH ROW

	N/A – Don't apply 'use by' dates to these	Don't know	PLEASE RANK 1, 2, 3 ETC ON EACH ROW					Something else
			Micro-biological safety reasons	Retailer specific at-ion	Conformity to government guidelines	Product quality considerations	Commercial considerations	PLEASE WRITE IN THE BOX BELOW:
a) Meat (raw)	-	-	3 (100%)	-	-	-	-	-
b) Meat (cured)	-	-	2 (67%)	1 (33%)	-	-	-	-
c) Meat (cooked)	-	-	3 (100%)	-	-	-	-	-
d) Fish (raw)	-	-	-	-	-	-	-	-
e) Fish (processed and cooked)	-	-	-	-	-	-	-	-
f) Dairy	-	-	3 (43%)	2 (29%)	-	2 (29%)	-	-
g) Salads	-	-	-	-	-	-	-	-
h) Fruit and veg	-	-	-	-	-	-	-	-
i) Ready meals	-	-	2 (100%)	-	-	-	-	-
i) Sandwiches	-	-	1 (100%)	-	-	-	-	-
k) Other (PLEASE SPECIFY:)	-	-	1 (Sandwich fillers) (100%)	-	-	-	-	-

Q7b

Are there any comments or notable exceptions to the factors you consider when deciding to apply 'use by' coding, rather than 'best before' coding, to each of the following types of chilled product?

PLEASE WRITE IN YOUR COMMENTS AND/OR EXPLAIN THESE NOTABLE EXCEPTIONS, IN THE RELEVANT BOXES BELOW

	Comments or notable exceptions, in terms of the factors you consider when deciding to apply 'use by' coding to this type of chilled product:
a) Meat (raw)	<p>i) All products that our company produces are frozen and almost all have a shelf life of 12 months at -18C or below. In view of this we always designate – Best before:- 12 months from production date</p> <p>ii) No exceptions. We believe that consumers expect an honest 'use by' date to be applied to this type of product which they tend to associate with risks of food poisoning. The relatively short life that we give to packaged cuts of raw meat reflect these concerns</p>
b) Meat (cured)	i) We use mainly 'use by' on our products as we packed retailer own brands and this is what they specify except for one retailer who requires 'best before'
c) Meat (cooked)	-
d) Fish (raw)	-
e) Fish (processed and cooked)	-
f) Dairy	<p>i) Have to take into account PDO regulations when specifying 'use by' dates e.g. maturation periods</p> <p>ii) Where retailers insist on using 'use by' rather than 'best before' for own label products</p> <p>iii) Goodies trifle has only 12 hard days shelf life as an exception to other yoghurts manufactured which have 30-34 days shelf life</p> <p>iv) Extended shelf life products are labelled with 'use by' on the basis that they are high temperature pasteurised but have not met the legal definition of prescribed UHT temperatures. The temperatures are much higher than standard pasteurisation temperatures but the products are maintained in the chill chain as they haven't reached the prescribed ambient shelf stable requirements</p>
g) Salads	i) If 'wash before use' however, the product looks like a competitors or is prepared in such a way which may lead the consumer into thinking it is RTE
h) Fruit and veg	-
i) Ready meals	i) Low pH products may mean the microbiological hazard is already controlled so organoleptic attributes may then take precedence
j) Sandwiches	-
k) Other (PLEASE SPECIFY)	-

Q8

Do you feel there is a need for clearer guidance on when to apply a 'use by' date as opposed to a best before date?

PLEASE PUT A CROSS IN EACH ROW ON THE TABLE BELOW.

IF YOU HAVE ANY COMMENTS ABOUT THIS ISSUE, PLEASE WRITE IN THE BOX PROVIDED

	Yes	No	Don't know	No answer
a) Meat (raw)	3 (18%)	4 (24%)	-	10 (59%)
b) Meat (cured)	3 (18%)	4 (24%)	-	10 (59%)
c) Meat (cooked)	4 (24%)	4 (24%)	-	10 (59%)
d) Fish (raw)	1 (6%)	3 (18%)	-	13 (76%)
e) Fish (processed and cooked)	1 (6%)	3 (18%)	-	13 (76%)
f) Dairy	6 (35%)	4 (24%)	-	7 (41%)
g) Salads	2 (12%)	3 (18%)	-	12 (71%)
h) Fruit and veg	2 (12%)	2 (12%)	-	13 (76%)
i) Ready meals	1 (6%)	4 (24%)	-	12 (71%)
i) Sandwiches	1 (6%)	4 (24%)	-	12 (71%)
k) Other (PLEASE SPECIFY)	-	1 (Sandwich fillers) (6%)	-	16 (94%)

Q9a Do you import from, or export chilled products to, the rest of the European Union (EU)?	PLEASE CROSS ONE BOX ONLY	%
Import from the rest of the EU	2	12%
Export to the rest of the EU	2	24%
Both	4	24%
Neither	4	24%
Don't know/No answer	3	18%

PLEASE ANSWER IF IMPORT FROM/EXPORT TO REST OF EU AT Q9a:

Q9b How consistent are UK regulations for 'use by' dates with regulations from the rest of the European Union (EU)?	PLEASE CROSS ONE BOX ONLY	%
Very consistent	-	-
Fairly consistent	5	50%
Not very consistent	2	20%
Not at all consistent	-	-
Don't know	3	30%

Q9c Would you say that UK regulations are more or less burdensome than regulations from the rest of the European Union (EU)?	PLEASE CROSS ONE BOX ONLY	%
More burdensome	3	30%
Less burdensome	-	-
About the same	4	40%
Don't know	3	30%

TO BE ANSWERED BY ALL:

Q10a

In what ways, if any, should UK regulations regarding enforcement of 'use by' dates emulate approaches used elsewhere?

Please tell us where the UK should emulate and in what ways.

PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Should be the same as EU
- ii) Don't know (x9)
- iii) A better term or description of the meaning of use by should somehow be explained to the consumer. Best before can reasonably be applied to many products and if an explanation is given that there is flexibility in the shelf life - it may help to reduce the level of waste. Buy one, get one free should not be allowed to apply by law to perishable foods as this leads to greater waste due to the dating procedure. More education is required on food anyway, starting in schools
- iv) Rest of EU appears to use "best before" dates more often than the UK. UK retailers need to allow (or educate) consumers to use their own judgement in deciding when is the best time to consume products throughout their product life. This would give consumers more say rather than dictating to them
- v) Clarification of when Use by should be used would be useful as there is some confusion between UB and BB
- vi) Retailers need to show consistency with UK regulations

Q10b

In your view, what are the advantages of the current UK regulations, regarding the enforcement of 'use by' dates, for food manufacturers such as yourself?

PLEASE WRITE IN ADVANTAGES IN BOXES BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Manage the food safety risks and so increases the integrity of the industry
- ii) Ensure safe products are in the market place
- iii) Clear rules that "use by" dates are for products that are highly perishable from a microbiological point of view
- iv) An advantage could possibly be that as more food is dumped on reaching date that more is purchased to replace it
- v) Don't know (x4)
- vi) None
- vii) Clear for the consumer
- viii) For our business the rules are clear and unambiguous
- ix) Clear for the consumer
- x) Ensuring susceptible dairy products are kept in the chill chain to maintain product quality
- xi) Use by is a very clear statement, but needs to be better published as to the difference (safety) from the Best Before
- xii) Use by dates indicate that the food is highly perishable from a microbiological point of view and therefore likely to be a danger to health after a short time. "Use by" is a specific direction whereas "Best Before" is advice
- xiii) Ensure safety of products
- xiv) No specific advantages

Q10c

In your view, what are the disadvantages of the current UK regulations, regarding the enforcement of 'use by' dates, for food manufacturers such as yourself?

PLEASE WRITE IN DISADVANTAGES IN BOXES BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) No disadvantage as long as even playing fields, especially with imports
- ii) None
- iii) Short shelf life of product increases chance of product wastage and may even be a barrier to purchase to some consumers because of this
- iv) Disadvantages are the finite nature of use by and the decision by retail business and consumers to dispose to waste perfectly good food. To get to use by dates, there is a tendency to over estimate the shortness of shelf life
- v) Don't know (x6)
- vi) Inflexible. They do not take into account the individual characteristics of certain products eg maturing cheeses
- vii) There does appear to be misunderstanding in some food categories where Use by is applied when it should be Best before
- viii) Regulations are woolie
- ix) Some products will be safe beyond the "Use By" date due to the processing being very vigorous in removing pathogenic bacteria. Food wastage is increased by having a definite "Use By" rather than allowing flexibility to use until the product tastes off. Many products will go off before the Use by date once opened and the consumer already has to use judgement if it's acceptable or not
- x) Products are cautiously life coded due to both quality and safety regulations
- xi) Consumers could be encouraged to throw away food which is still perfectly acceptable

Q11

What, if any, improvements should be made to UK regulations, regarding the enforcement of 'use by' dates?

PLEASE WRITE IN BELOW

IF NO IMPROVEMENTS CAN BE MADE PLEASE WRITE IN 'NONE'

- i) 10 day rule on non bot cook/equiv products
- ii) None (x5)
- iii) Use by should not be a definite date - probably should be made more flexible by having; use by + say 2 days if kept chilled would help to sound a warning but give more opportunity for food to be used. This would bring it more into; best before criteria
- iv) Simplify
- v) Clearer guidelines, possibly product specific e.g. for our sector - unpasteurised cheeses, maturing cheeses and PDO cheeses
- vi) A clear definition and criteria that should apply to the USEBY date decision
- vii) Simplification of the regulations allowing manufacturers to make their own risk assessments
- viii) Don't know
- ix) Just better understanding/education by consumers
- x) None, except perhaps follow the use by date with the statement "not to be consumed after this date" or something similar if freezing is allowed eg freeze before use by date and cook from frozen
- xi) Clarity and no ambiguity

Q12

Please use the space below if you wish to make any other comments about this issue, or to expand on any of the responses that you have given.

- i) While our company does not directly participate in use by criteria, it is clear that food waste has to be reduced and that shelf life at chill is a particular cause of significant waste throughout the food chain and particularly at retail
- ii) We follow customer requirements over specific UK/EU regulations, on the understanding that the retailer/customer has taken into account all relevant legislation. It would be useful to have clearer guidelines/reference points for EU legislation from, for example, the FSA. It would also be useful to understand the key differences between the UK and other member states interpretation and implementation on subjects such as this

Wholesaler responses

	Q1a Which trade association(s) are you a member of?		Q1b Which trade association sent you this questionnaire?	
	PLEASE CROSS ALL THAT APPLY TO YOU	%	PLEASE CROSS ONE BOX ONLY	%
Association Convenience Stores	1	25%	-	-
National Federation of Retail Newsagents	-	-	-	-
British Retail Consortium	-	-	-	-
Provision Trade Federation	-	-	-	-
Federation of Wholesalers and Distributors	4	100%	4	100%
Food and Drink Federation	-	-	-	-
British Meat Processors Association	-	-	-	-
Other (PLEASE CROSS AND WRITE IN BELOW)	-	-	-	-
None of these	-	-	-	-
Don't know	-	-	-	-
Refused	-	-	-	-

Q4 Overall (including yourself) how many employees does your business currently employ across the UK?	PLEASE CROSS ONE BOX ONLY	%
1-9	-	-
10-24	-	-
25-49	-	-
50-249	-	-
250-499	-	-
500-999	1	25%
1000+	3	75%
Don't know	-	-

Q5 How many sites does your organisation have across the United Kingdom? PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
<p>Min = 6</p> <p>Max = 177</p> <p>Average = 57</p>

Q6a Who does your organisation supply its stock to?	PLEASE CROSS ALL THAT APPLY TO YOU	%
Food service (e.g. restaurants, hotels, schools etc)	4	100%
Retail	4	100%
Other wholesalers	2	50%
Other (PLEASE CROSS AND WRITE IN THE BOX BELOW)	-	-

Q6b What approximate percentage share does your organisation have of the UK fresh food wholesale market?	PLEASE CROSS ONE BOX ONLY	%
Less than 1%	-	-
1% - 5%	3	75%
6% - 10%	1	25%
11% - 15%	-	-
16% - 20%	-	-
21% - 25%	-	-
26% or more (PLEASE CROSS AND ESTIMATE TO THE NEAREST 5% IN THE BOX BELOW)	-	-
	-	-
Don't know	-	-

Please note that, in the rest of this questionnaire, we are looking at products with a 'use by' date specifically (as opposed to 'best before' dates) – except where the questionnaire states otherwise.

Q7
 Approximately, how many individually date coded chilled items and how many product lines with use by dates pass through your warehouse(s) each year? Please answer for each category of chilled food below.

**PLEASE WRITE IN BELOW FOR EACH TYPE OF CHILLED PRODUCT.
 IF YOU DON'T KNOW PLEASE WRITE IN DK**

	Number of chilled items with a 'use by' date that pass through warehouse(s) each year	Number of lines with a 'use by' date that pass through warehouse(s) each year
1. Meat (raw)	Range of 290,903-10,500,000. Average of 3,859,421	Range of 49-677. Average of 287
2. Meat (cured)	Range of 20,000-823,137. Average of 327,721	Range of 8-122. Average of 47
3. Meat (cooked)	Range of 109,168-460,000. Average of 281,670	Range of 38-100. Average of 63
4. Fish (raw)	177,378 (only one response)	123 (only one response)
5. Fish (processed and cooked)	Range of 1,598-517,506. Average of 259,552	Range of 4-86. Average of 45
6. Dairy	Range of 660,000-1,968,902. Average of 1,276,301	Range of 117-520. Average of 274
7. Salads	Range of 73,083-660,000. Average of 327,694	Range of 9-43. Average of 26
8. Fruit and Veg	Range of 73,118-925,000. Average of 492,706	Range of 12-150. Average of 80
9. Ready meals	Range of 33,588-647,913. Average of 340,751	Range of 49-317. Average of 169
10. Sandwiches	Range of 9,119-16,776. Average of 12,948	Range of 5-409. Average of 143
11. Other (PLEASE SPECIFY IN BOXES ON THE RIGHT HAND SIDE AND WRITE IN FIGURES UNDERNEATH)	What is the 'other'?	What is the 'other'?
	How many?	How many?

Q8 Are you able to influence the type of date coding that is applied to stock that you handle, i.e. whether it is given either a 'use by' or 'best before' date?	PLEASE CROSS ONE BOX ONLY	%
Yes – can influence this a great deal	-	-
Yes – can influence this a little	2	50%
No	2	50%
Don't know	-	-

PLEASE ANSWER IF 'YES' AT Q8:

Q9 Please can you give some examples of when your organisation has influenced the application of 'use by' or 'best before' coding to stock? PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
<p>i) Fish & Meat Departments when cutting for customers.</p> <p>ii) Amongst our product listings are many own label lines. Some of these are chilled, short shelf-life products that may become unsafe for consumption at the end of their life and to these we apply 'use by'. Others have much longer shelf-life and will spoil over time and become unpalatable before they become unsafe – to these we apply 'Best Before'.</p>
PLEASE NOW GO TO Q10

TO BE ANSWERED BY ALL:

Q10 Do you set a minimum shelf life for how long you can keep items with a 'use by' date on, from receiving it to sending it out to your customers?	PLEASE CROSS ONE BOX ONLY	%
Yes, for all items	3	75%
Yes, for most items	-	-
Yes, for some items	1	25%
No, not at all	-	-
Don't know	-	-

Q11 Are you able to return short coded stock (i.e. stock that you are sent with short 'use by' dates) to your suppliers?	PLEASE CROSS ONE BOX ONLY	%
Yes	3	75%
No	1	25%
Don't know	-	-

Q12a Do you apply the <u>same</u> stock rotation checks to 'use by' date coded items as for 'best before' coded items?	PLEASE CROSS ONE BOX ONLY	%
Yes	1	25%
No	3	75%
Don't know	-	-

PLEASE ANSWER IF 'NO' AT Q12A:

Q12b How do these stock rotation checks and other checks differ between 'use by' and 'best before' coded items? PLEASE WRITE YOUR ANSWER BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
<ul style="list-style-type: none"> i) Daily checks on all these products. Best before are generally weekly or fortnightly checks ii) Date code checks on items of fresh food with a use by date are carried out on a daily basis. Checks on product with best before dates are carried out on a weekly, monthly or bi monthly basis depending on product and shelf life on delivery to us. iii) High risk, mainly 'use by' categories are checked daily e.g. chilled. Dry and Frozen categories are checked once a month as a minimum.
PLEASE NOW GO TO Q13

TO BE ANSWERED BY ALL:

Q13

What was the approximate overall cost (including direct costs and staff time) of stock rotation and other checks that you carried out in relation to 'use by' dates, in 2010?

PLEASE WRITE YOUR ANSWER IN POUND STERLING BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

Min = £64,000

Max = £2m

Average = £771,300

Q14

What is your policy with regard to the disposal of products that reach the end of their 'use by' date?

PLEASE WRITE YOUR ANSWER BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Disposed of at the Distribution Depot as soon as Use By date reached
- ii) Products will be reduced in price as they approach the use by date. If unsold after this they will be destroyed.
- iii) Disposal via Waste Management
- iv) Lines are 'reduced to clear' 2 days before the use-by date and continue to be displayed for sale up to and including the use-by date. Any stock unsold at the end of the use-by day is disposed of to waste.

Q15

Do you take products that have reached their 'use by' date back from your customers?

PLEASE CROSS ONE BOX ONLY

%

Yes, always

-

-

Yes, sometimes

1

25%

No, never

3

75%

Don't know

-

-

PLEASE ANSWER IF 'YES' AT Q15:

Q16

What is your policy on taking back products that have reached their 'use by' date, and what do you do with the returned products?

PLEASE WRITE YOUR ANSWER BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) If a product is returned for QA reasons, e.g. Product Recall, Quality Issue etc. Product could be disposed of internally using Waste Management or may be quarantined for supplier collection in the event of a claim.

PLEASE NOW GO TO Q17a

TO BE ANSWERED BY ALL:

Q17a

In your view, what are the advantages of the current UK regulations, regarding the enforcement of 'use by' dates, for food wholesalers such as yourself?

PLEASE WRITE IN ADVANTAGES IN BOXES BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Currently 'know where you are' – definitive date to work with. However can lead to large wastage of products when products are most probably fit to eat
- ii) Use by dates are a clearly understood and necessary mechanism for ensuring food safety and integrity. The penalties for breaching regulation are serious but are understood and respected by legitimate businesses
- iii) It is usually food that needs to be temperature controlled, these type of food are more likely to support the growth of pathogenic micro-organisms or the formation of toxins, which are a risk to health. Other such foods are those consumed either without cooking or after heat treatment (reheating) which is not sufficient to destroy food poisoning organisms that may be present. Therefore the advantage of having a 'USE By' date on products is from a food safety perspective rather than from a quality perspective.
- iv) Current regulations are clear and easy to understand and train-in.

Q17b

In your view, what are the disadvantages of the current UK regulations, regarding the enforcement of 'use by' dates, for food wholesalers such as yourself?

PLEASE WRITE IN DISADVANTAGES IN BOXES BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Excessive wastage of food when still fit for human consumption. Still confusion with the public over Use by, Best Before and the no longer used Sell BY
- ii) Primarily the time necessary to check and record dates on products to ensure we comply, and to deal with products approaching or at the end of their life.
- iii) I do not think there is a disadvantage from having 'use by' dates as they are there to protect the consumer. However I would ask the question are we getting the full shelf life from the Manufacturer. Is it a case that some of the shelf life is taken off to be on the safe side. But the disadvantage of this could in affect generate more waste due to not being sold by the 'use by' date, when it is still microbiologically sound.
- iv) Current regulations lead to unnecessary levels of food waste. Two factors impact on this. The first is the brand owner's opportunity to build in an extra margin of safety by shortening the scientifically established shelf-life in order to compensate for poor temperature control in the supply chain or consumer premises. The second occurs when the supply chain has maintained excellent temperatures leading to the product being well within the intended 'end of life' safety standards at its 'use by' date. In both cases the food is likely to retain its safety for some time after its labelled 'use by'

Q18

What, if any, improvements should be made to UK regulations, regarding the enforcement of 'use by' dates?

PLEASE WRITE IN BELOW

IF NO IMPROVEMENTS CAN BE MADE PLEASE WRITE IN 'NONE'

- i) Work required on the standards used to declare the 'safe' dates – believe a lot of products could have longer shelf lives if the correct storage conditions are observed. A date to work to from a stock control position is important.
- ii) Only products posing a serious risk of harm if used after their use by date should be encompassed in the regulations.
- iii) None
- iv) Although very difficult to establish in practice, it would be preferable to remove from the regulations the automatic assumption that food is 'unfit' as soon as the use-by date is exceeded. Guidance for enforcement officers and industry alike may be a way through.

Q19

Please use the space below if you wish to make any other comments about this issue, or to expand on any of the responses that you have given.

- i) In regulatory terms, our issues are much more around the use of best before dates. These are far more numerous, are often random in placement and hard to read, and seem often to bear no relationship to the quality of the product but just be a tool of manufacturers either gold plating their requirements on life “just in case” or in order to force consumers to discard perfectly safe and acceptable product. We would welcome root and branch reform of these regulations.

Retailer responses

	Q1a Which trade association(s) are you a member of?		Q1b Which trade association sent you this questionnaire?	
	PLEASE CROSS ALL THAT APPLY TO YOU	%	PLEASE CROSS ONE BOX ONLY	%
Association Convenience Stores	2	40%	2	40%
National Federation of Retail Newsagents	-	-	-	-
British Retail Consortium	4	80%	-	-
Provision Trade Federation	-	-	-	-
Federation of Wholesalers and Distributors	-	-	-	-
Food and Drink Federation	-	-	-	-
British Meat Processors Association	-	-	-	-
Other (PLEASE CROSS AND WRITE IN BELOW)	1 (Institute of Grocery Distribution)	20%	1 (LBRO)	20%
None of these	-	-	2	40%
Don't know	-	-	-	-
Refused	-	-	-	-

Q2b What is the nature of your business?	PLEASE CROSS ONE BOX ONLY	%
Supermarket	3	60%
Convenience store	2	40%
Newsagent	-	-
Off licence	-	-
Farm shop	-	-
Other (PLEASE CROSS AND WRITE IN NATURE OF BUSINESS BELOW)	-	-
	-	-

Q4 Overall (including yourself) how many employees does your business currently employ across the UK?	PLEASE CROSS ONE BOX ONLY	%
1-9	-	-
10-24	-	-
25-49	-	-
50-249	-	-
250-499	-	-
500-999	-	-
1000+	5	100%
Don't know	-	-

Q5 How many sites does your organisation have across the United Kingdom? PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
Min = 117 Max = 2032 Average = 678

Q6 What approximate percentage share does your organisation have of the UK fresh food retail market?	PLEASE CROSS ONE BOX ONLY	%
Less than 1%	1	20%
1% - 5%	1	20%
6% - 10%	-	-
11% - 15%	-	-
16% - 20%	1	20%
21% - 25%	-	-
26% or more (PLEASE CROSS AND ESTIMATE TO THE NEAREST 5% IN THE BOX BELOW)	-	-
	_____ %	
Don't know	2	40%

Q7a Does your organisation trade across more than one local authority area in the UK?	PLEASE CROSS ONE BOX ONLY	%
Yes	5	100%
No	-	-

PLEASE ANSWER IF 'YES' AT Q7A:

Q7b Within which of the following parts of the UK does your organisation trade?	PLEASE CROSS ALL THAT APPLY TO YOU	%
North East	4	80%
North West	4	80%
Yorkshire and the Humber	4	80%
East Midlands	3	60%
West Midlands	3	60%
East of England	3	60%
London	3	60%
South East	4	80%
South West	4	80%
Scotland	3	60%
Wales	4	80%
Don't know	3	60%
PLEASE NOW CONTINUE TO Q8		

TO BE ANSWERED BY ALL:

Please note that, in the rest of this questionnaire, we are looking at products with a ‘use by’ date specifically (as opposed to ‘best before’ dates) – except where the questionnaire states otherwise.

Q8

How many fresh food lines with ‘use by’ dates are on retail display at any one time? Please provide approximate figures across the following categories at an outlet level and a company-wide level.

PLEASE PROVIDE APPROXIMATE FIGURES IN BOXES BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

	Per outlet	Company wide
1. Meat (raw)	Range from 6-33. Average of 20	Range of 45-3,795. Average of 1,453
2. Meat (cured)	Range of 9-21. Average of 15	Range of 21-2,478. Average of 900
3. Meat (cooked)	Range of 17-35. Average of 26	Range of 36-4,130. Average of 1,502
4. Fish (raw)	2 (only one response)	Range of 4-145. Average of 75
5. Fish (processed and cooked)	2 (only one response)	Range of 12-236. Average of 124
6. Dairy	Range of 116-140. Average of 228	Range of 590-13,688. Average of 5,109
7. Salads	12 (only one response)	Range of 36-279. Average of 158
8. Fruit and Veg	36 (only one response)	Range of 78-160. Average of 119
9. Ready meals	Range of 15-59. Average of 37	Range of 28-6,962. Average of 2,533
10. Sandwiches	Range of 13-18. Average of 16	Range of 29-1,534. Average of 587
11. Other (PLEASE SPECIFY IN BOXES ON THE RIGHT HAND SIDE AND WRITE IN FIGURES UNDERNEATH)	What is the ‘other’?	What is the ‘other’?
	How many?	How many?

Q9

Please can you estimate the average number of 'use by' items sold each week?

Again, please estimate this across the following categories at an outlet and company-wide level.

PLEASE PROVIDE APPROXIMATE FIGURES IN BOXES BELOW.

IF YOU DON'T KNOW PLEASE WRITE IN DK

	Per outlet	Company wide
1. Meat (raw)	134 (only one response)	Range of 14,748-9,032,728. Average of 4,523,738
2. Meat (cured)	50 (only one response)	Range of 5,700-4,721,893. Average of 2,363,447
3. Meat (cooked)	128 (only one response)	Range of 14,793-7,650,997. Average of 3,832,895
4. Fish (raw)	-	2,222,757 (only one response)
5. Fish (processed and cooked)	5 (only one response)	307 (only one response)
6. Dairy	1371 (only one response)	Range of 157,751-29,288,482. Average of 14,723,116
7. Salads	93 (only one response)	Range of 10,220-5,542,296. Average of 2,776,258
8. Fruit and Veg	375 (only one response)	Range of 42,817-3,130,875. Average of 1,586,486
9. Ready meals	149 (only one response)	Range of 17,130-4,231,499. Average of 2,124,315
10. Sandwiches	56 (only one response)	Range of 6,464-4,463,681. Average of 2,235,073
11. Other (PLEASE SPECIFY IN BOXES ON THE RIGHT HAND SIDE AND WRITE IN FIGURES UNDERNEATH)	What is the 'other'?	What is the 'other'?
	How many?	How many?

Q10 What is the general company policy for the timing of removal of 'use by' coded items from sale? Do you remove them . . .	PLEASE CROSS ONE BOX ONLY	%
On the day	4	80%
One day before	-	-
Two days before	-	-
Three days before	-	-
More than three days before	-	-
Other (PLEASE CROSS AND WRITE IN THE ALTERNATIVE POLICY BELOW)	1	20%
'According to the earliest date marked (e.g. "display until"), on that day'		
No policy	-	-
Don't know	-	-

PLEASE ANSWER IF HAVE A COMPANY POLICY FOR REMOVAL OF 'USE BY' DATE CODED ITEMS AT Q10:

Q11a Does this policy apply to all the product lines you sell with a 'use by' date on?	PLEASE CROSS ONE BOX ONLY	%
Yes	5	100%
No	-	-

PLEASE ANSWER IF 'NO' AT Q11A:

Q11b

What are the exceptions to the general company policy for the removal of 'use by' coded items from sale?

PLEASE CROSS THE RELEVANT CATEGORIES AND SPECIFY THE ALTERNATIVE POLICY IN THE BOX BELOW

	Please cross if general company policy does not apply	Please provide details of alternative policy on timing of removal of 'use by' coded items from sale
--	---	---

NO RESPONSES TO THIS QUESTION

-

TO BE ANSWERED BY ALL:

Q12 If you do remove products prior to their 'use by dates', can you rank the reasons for your business to do this, in order of importance?	SUMMARY OF FIRST MENTIONS	%
To minimise risk of product staying on shelf beyond 'use by' date	3	60%
Public health concerns	-	-
Customer reluctance to buy 'on the use by day' products	-	-
To rotate stock and minimise future waste	1	20%
Marketing/brand reasons	-	-
Other (PLEASE CROSS AND WRITE IN BELOW)	-	-
	-	-
Don't know	-	-
Doesn't apply to our firm	1	20%
PLEASE NOW CONTINUE TO Q13		

Q13 What checks do you have in place to ensure that no product remains on the shelf beyond its 'use by' date?	PLEASE CROSS ALL THAT APPLY TO YOU	%
Stock rotation	5	100%
Due diligence checks	5	100%
Auditing (internal)	5	100%
Auditing (external)	3	60%
Other (PLEASE CROSS AND WRITE IN BELOW)	1	20%
"Potential Reductions" procedure		
Don't know	-	-

Q14 Overall, what were the total approximate costs (in pound sterling) involved in your 'use by' date checks in 2010 at an organisational level? Please break these down into specific areas if possible	PLEASE WRITE IN APPROXIMATE COSTS BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK. IF NO COST, PLEASE WRITE IN '0'
OVERALL COST OF CHECKS:	Range of £615,641-£30,700,000. Average of £11,038,547
Now please break this figure down into:	
- Stock rotation checks	Range of £201,435-£15,000,000. Average of £7,600,718
- Due diligence checks	Range of £306,566-£15,670,257. Average of £7,988,412
- Internal auditing checks	Range of £100,000-£107,640. Average of £103,820
- External auditing checks	-
- Other checks	-

Q15a At an organisational level, what was the approximate value of products (in pound sterling) with use by dates that you sold in 2010? PLEASE WRITE IN APPROXIMATE COST BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
Range of £7,465,062-£18,114,338. Average of £12,789,700

Q15b At an organisational level, what was the approximate value of products (in pound sterling) with use by dates that went to waste in order to comply with use by date legislation in 2010? PLEASE WRITE IN APPROXIMATE COST BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
£Range of £788,699-£230,000,000. Average of £115,394,350

Q16 Have you agreed your date control processes with your Primary Authority or your Home Authority?	PLEASE CROSS ONE BOX ONLY	%
Yes – agreed with our Primary Authority	1	20%
Yes – agreed with our Home Authority	2	40%
No – neither	2	40%
Don't know	-	-

TO BE ANSWERED IF 'YES' AT Q16:

Q17 To what degree are the date control processes you've agreed with your Primary Authority/Home Authority taken into account by other local authorities that have dealt with your business in relation to food labelling?	PLEASE CROSS ONE BOX ONLY	%
To a great extent	-	-
To some extent	1	33%
To a small extent	-	-
Not at all	1	33%
Don't know	1	33%
PLEASE NOW GO TO Q18		

TO BE ANSWERED BY ALL:

Q18 What are local council visits to inspect your shops for out of code items <u>most often</u> prompted by?	PLEASE CROSS ONE BOX ONLY	%
Routine inspections	3	60%
Complaints from customers	2	40%
Other (PLEASE CROSS AND WRITE IN BELOW)	-	-
Don't know	-	-

Q19

Can you provide details of what happened during a typical recent investigation into out of code food? Please provide details of the date and time of investigation, number of items under investigation, the type of items, the number of days that these items were beyond the date code and the outcome of the investigation.

PLEASE WRITE IN EACH BOX BELOW

Date of investigation	<ul style="list-style-type: none"> i) January 2010⁵ ii) March 2010 iii) December 2010 iv) January 2011
Number of items under investigation	<ul style="list-style-type: none"> i) 7 ii) 11 iii) 15 iv) 3
Type of items under investigation	<ul style="list-style-type: none"> i) Sandwiches, dips, desserts, sauces ii) Pies, pasta, raw meat iii) Mixed fresh food items, mainly yoghurts iv) 2 sandwiches, 1 salad
Number of days these items were beyond date code	<ul style="list-style-type: none"> i) 1-4 days ii) Up to 4 days iii) 1-2 days iv) 1 day
Were any of the products microbiologically tested as part of the investigation?	<ul style="list-style-type: none"> i) No ii) No iii) No iv) No
Outcome of investigation	<ul style="list-style-type: none"> i) Summons withdrawn ii) Prosecution iii) PACE interviews, demonstration of due diligence system, recommendations given by enforcement officer and taken into account. No further enforcement action taken iv) Warning letter from local authority for all 3

⁵ Numbers i) - iv) consistently represent specific respondents throughout this table

Q20 How many matters relating to out of date food were raised with your business by letter, through investigations or by instigation of enforcement action, in 2010?	PLEASE CROSS ONE BOX ONLY	%
None (PLEASE CROSS BOX)	-	-
One or more (PLEASE WRITE IN NUMBER. IF YOU DON'T KNOW PLEASE WRITE IN DK)	5 (2, 1, 211, 10, DK)	100%

PLEASE ANSWER IF ONE OR MORE MATTERS RAISED AT Q20:

Q21a Of these, in how many of these instances was microbiological testing carried out? PLEASE WRITE IN NUMBER BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK	PLEASE CROSS ONE BOX ONLY	%
None	4	80%
One or more (PLEASE WRITE IN NUMBER. IF YOU DON'T KNOW PLEASE WRITE IN DK)	-	-
Don't know	1	20%

Q21b How many different local authorities raised matters of out of code food (via letter, investigations or instigation of enforcement action) with your business in 2010?	PLEASE CROSS ONE BOX ONLY	%
None	-	-
One	1	20%
More than one (PLEASE WRITE IN NUMBER)	4 (2, 10, 105, DK)	80%

PLEASE ANSWER IF MORE THAN ONE LOCAL AUTHORITY RAISED MATTERS AT Q21b:

Q22a In your experience, does the approach to dealing with matters relating to out of code food vary markedly between local authorities?	PLEASE CROSS ONE BOX ONLY	%
Yes	3	75%
No	1	25%
Don't know	-	-

PLEASE ANSWER IF 'YES' AT Q22a:

Q22b

In what ways do these local authorities' approaches to raising these matters differ?

PLEASE WRITE IN BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK

- i) Options range from inspecting on a 6 monthly, 12 monthly, 2 yearly basis. Some Authority's refer to Home Authority when issues found, some respond to store, others escalate to Head Office. Visits range from Routine inspections to complaint or intelligence led or TSO complaints re their shopping. Actions ranging from notification to referral to formal action and PACE. Some authority's follow the rule of 20, some a rule of 15. Others have found a high number of items outside the date code but have given opportunity to rectify and asked for assurances
- ii) Inconsistent threshold of what triggers further investigation
- iii) Some authorities adopt a very rigid approach and will seemingly always investigate out of date food. Others are much more relaxed and are confident they can allow the store to investigate and take any necessary Next Steps. It is to be hoped that this will be more common now that we have statutory advice from our Primary Authority to the effect that our systems are sound and they will not support any action that seeks to criticise corporate process.

PLEASE NOW CONTINUE TO Q23a

PLEASE ANSWER IF ONE OR MORE MATTERS RAISED AT Q20:

Q23a In the past 3 years, on how many occasions has your business been subject to prosecution because of date coding issues?	PLEASE CROSS ONE BOX ONLY	%
None (PLEASE CROSS BOX)	3	60%
One or more (PLEASE WRITE IN NUMBER. IF YOU DON'T KNOW PLEASE WRITE IN DK)	2 (8, 13)	40%

PLEASE ANSWER IF 'ONE OR MORE' AT Q23a:

Q23b How many of these occasions has the business been found guilty, not guilty or the case been withdrawn?	PLEASE WRITE IN NUMBERS BELOW. IF YOU DON'T KNOW PLEASE WRITE IN DK
Guilty	i) 4 ii) 5
Not guilty	
Case withdrawn	i) 4 ii) 5
PLEASE NOW CONTINUE TO Q24a	

Q24a Have any of these occasions led to the microbiological testing of products?	PLEASE CROSS ONE BOX ONLY	%
Yes	1	50%
No	1	50%
Don't know	-	-

PLEASE ANSWER IF 'YES' AT Q24a:

Q24b Were any of these products found to be unsatisfactory?	PLEASE CROSS ONE BOX ONLY	%
Yes	-	-
No	1	100%
Don't know	-	-
PLEASE NOW CONTINUE TO Q25		

TO BE ANSWERED BY ALL:

Q25 Which of the following statements apply to your customers in relation to products with 'use by' dates?	PLEASE CROSS ALL THAT APPLY TO YOU	%
Our customers will complain about products either they have noticed on the shop floor or purchased that are past their 'use by' date	5	100%
Our customers will happily purchase products close to their 'use by' date for a discounted price	3	60%
Our customers will not notice whether products are past their 'use by' date or not	-	-
None of these	-	-

Q26a Do you feel that the current legislation relating to enforcement of date coding matters is appropriate?	PLEASE CROSS ONE BOX ONLY	%
Yes	2	40%
No	2	40%
Don't know	-	-
No answer	1	20%

PLEASE ANSWER IF 'NO' AT Q26a:

Q26b

Why do you feel that the current legislation is not appropriate?

PLEASE WRITE IN BELOW

- i) Date marking is a labelling issue; the date is put there for the customer's benefit as well as to aid rotation. The EU Directive did not foresee a criminal offence being created for displaying food past its Use By date – this is a clear example of “gold-plating” by the UK Government. The legislation creates an emotive issue which is misplaced (see below) and results in lengthy, complex investigations that are not in the public interest nor do they provide any benefit to consumers.
- ii) Strict Liability Offence. TSO/EHO do not consider public interest or food safety implications. Needs offence linked into 1) Item found OOC and 2) proof that product was harmful or not of quality demanded

PLEASE NOW GO TO Q27

TO BE ANSWERED BY ALL:

Q27

Please use the space below if you wish to make any other comments about this issue, or to expand on any of the responses that you have given.

- i) The vast majority of foods that carry a Use By date have the date based on quality issues, not safety. This includes even the very short life foods such as sandwiches. Also, there are a large number of raw foods (e.g. meat and fish) that are Use By dated but will be cooked before consumption. The notion that a food is unsafe if past its Use By date is misguided because these dates are not being used as envisaged by the EU Directive. To say that consumers' health is at risk due to products being on sale past their Use By date is, in almost all cases, incorrect.
- ii) We believe that the interpretation of LA's has developed a practicable and sensible approach on out of date food items. LA will warn us of out of date foods found before taking formal action. However, the Food Labelling Regulations create an absolute offence for an issue that is not based upon the actual food being unfit. In our experience the LA do not carry out any microbiological testing on food found to be past the use by date. Therefore, there is no scientific evidence that the food is unfit for human consumption and as such consideration should be given to increasing the shelf life of these products or remove the absolute offence from the regulations.
- iii) Most firms take Best-Before products off sale the day before the 'best-before', yet this type of product is not deemed harmful if eaten past the 'best-before' date. Most firms take Use-By products off sale on the day of the 'use-by', yet this type of product is deemed as harmful if eaten past the 'use-by' date. These two statements do not align themselves particularly well. Compound this methodology with 'display until' or a product with just a date and nothing else, or a 'best-before end' and retail staff become totally confused, especially the part-time staff who don't work very often. To simplify matters, it would be better to have one policy for all removal dates, i.e. whether:

Best-Before
Use-By
Display-Until

Everyone should remove on the day of the code so one rule applies to all.