

Better Regulation of 'Use by' Date Labelled Foods



Better Regulation of 'Use By' Date Labelled Foods

Better Regulation of 'Use By' Date Labelled Foods:

LBRO RESPONSE

LBRO welcomes the work of the independent business group who have produced the report *Better Regulation of 'Use By' Date Coded Foods: A Business View*. Their emphasis on the need to reduce food waste whilst maintaining consumer protection is absolutely right, particularly at a time when sustainable growth is a key public challenge and food safety remains of paramount importance in light of the recent E-coli outbreak in Europe.

Industry, by producing this report for LBRO, has shown its ability to bring a unique and valuable perspective to a complex regulatory issue. LBRO has brought this thorough and wide ranging report to the attention of government, and the Food Standards Agency and the food policy team in Defra have indicated a willingness to engage with the key points made, in partnership with the industry.

The report highlights the cost for consumers and food businesses from the waste that results from products having to be thrown away once their 'use by' date is expired, costing in the order of £600 million per year. The report also demonstrates that the present 'use by' date labelling regime leads to confusion for food businesses. Combined with the risk that the proliferation of 'use by' dated products increases risks for consumers by diluting key food safety messages, this report raises real challenges.

The recommendations in the report helpfully identify the role that the industry needs to play, alongside government and enforcement authorities. In light of the interplay of commercial drivers, legal requirement and supply chain issues, ownership of the key challenges by the food industry is to be welcomed. The report proposes a strong role for businesses in relation to ensuring 'use by' dates are set on the basis of the safety criteria laid down in the regulation, and in the development of sector-specific guidance. When 'use by' dates are set strictly at the safety date in order to avoid microbiologically safe products being thrown away there is less waste and safer food.

The report calls for a fundamental change in the approach to the legislative controls over date labelling for food safety purposes. However to achieve this the report's findings must be used quickly to influence the ongoing debate in the EU about the new Food Information for Consumers Regulation, which is likely to conclude soon.

The industry also uses this report to call for better targeted and more proportionate enforcement practice. If food safety is the overall aim, then an enforcement approach which looks solely at whether food is on sale past the 'use by' date and not at the hazard created by the food, is seen to be a 'tick box' type approach rather than genuinely risk-based. The suggestion is that local authorities should routinely analyse technical non-compliance within the wider context of the food safety risk posed by the products that are past their 'use by' date and engage with businesses over the approach they have adopted and it is reasonable that primary authority is cited as a way to facilitate these conversations for businesses trading across local authority boundaries.

Within the call for greater involvement from enforcement authorities in advising and challenging businesses on the selection of 'use by' and 'best before', the report also recognises the need this creates for more consistent knowledge and understanding of food safety risks amongst the regulatory professionals involved. Against a backdrop of reducing resources for local authorities it is important that the skills are in place to ensure the most effective use of resources on both sides. We would commend our work with the Chartered Institute of Environmental Health, the Trading Standards Institute and national regulators in developing the Common Competency Framework for Regulators as a way forward here in order to ensure that regulators are effectively equipped to provide a targeted and proportionate approach to non-compliance.

Better Regulation of 'Use By' Date Labelled Foods

Finally, while making clear recommendations for businesses, government and enforcement authorities, the report notes that consumer understanding of 'use by' dates is mixed. The businesses preparing the report conclude that meeting the challenge of selling safe food is of paramount importance but consumer awareness of how to keep food safe once it is in the home is also crucial. Meeting the challenges of ensuring food safety, whilst reducing food waste, requires a dialogue about common goals between consumers, businesses, enforcement authorities and policy officials.

In conclusion, LBRO welcomes this report and thanks the authors, and particularly Harold Gay the Chair of the group, for their work in its preparation. This report creates an opportunity to explore how we can all work together to solve the problems identified. Success in this area will reduce waste, improve food safety and reduce burdens on business. We will therefore promote this report with government and seek to ensure effective engagement across the sector on its recommendations.



Clive Grace,
Chair,
LBRO



Graham Russell,
Chief Executive,
LBRO

4th July 2011

Better Regulation of 'Use By' Date Labelled Foods:

A BUSINESS VIEW

Prepared by members of the Business Reference Panel in response to a request from the Local Better Regulation Office for an independent and evidence based review of the regulation and enforcement of 'use by' date labelling.

This report makes recommendations to reduce business costs and food waste without compromising food safety by:

- **Ensuring correct use of 'use by' dates**
 - **Improving the regulatory regime**
 - **Providing clearer guidance for food business operators, enforcers and consumers**
-

Foreword

To the Board, LBRO

In response to your request that the Business Reference Panel should provide more detailed views on the regulation and enforcement practices governing 'use by' date labelled products, I am pleased to enclose the report and recommendations of the review group.

What started as a seemingly simple topic for the review group to consider is in fact multi-layered and complex. There are a variety of factors at play in the manufacturing and retailing sectors and in enforcement practices that exceed what is necessary to achieve food safety.

There is an enviable record of food safety in the UK and the review group took its starting point from the absolute need to maintain a high level of consumer protection. The key finding of the group is that there are currently many products marked with a 'use by' date where this need not be the case, diluting the value of the information provided for consumers and resulting on occasions in enforcement action being taken against the sale of products that are not unsafe.

The review group's concerns about enforcement flow from the tools that enforcers have been provided with. The law does not require them to prove that food past its 'use by' date is unsafe – merely that the date has passed. Given the limited resources available, it is therefore not surprising that enforcement authorities make little or no effort to consider whether or not the food is actually unsafe. The best authorities investigate thoroughly and follow the enforcement codes, look at the business systems and consider the actual risks posed by the food before prosecuting. However some do not and that results in prosecutions which are disproportionate.

In the UK we appear to have gold plated the EU requirements, using a breach of labelling requirement as a proxy for safety. This is not desirable and consideration should be given to putting the focus on the risk it is seeking to control either by changing the law or by ensuring that enforcers only take action if there is something that poses a risk to consumers.

Consumer understanding and behaviour also appears to be mixed with some buying food with long dates and throwing it away at the moment the date is passed, to others showing a total disregard of date labels. There is a clear need for consumer education to ensure safe use of food and minimise waste.

On behalf of the review group I urge LBRO to follow up our recommendations with the relevant enforcement bodies and government departments. We also ask the food industry to consider our recommendations.

I take this opportunity to thank: the members of the review group who have given so freely of their time, expertise and experience, those representatives of government departments, agencies and enforcers who met with us to share their perspectives, and those employees of LBRO who have provided technical input.



Harold Gay,
Independent Chair

4th July 2011

Table of Contents

Foreword	4
Executive Summary and Recommendations	6
1. The Use and Setting of 'Use By' Dates	10
2. Business Compliance and Enforcement	14
3. Protecting the Consumer	19
Annexes	
A. Members of the review group	21
B. Summary of relevant legislation	22
C. Implementation in EU member states	26
D. Contributors to the review	30
E. Sources of information	31

The 'Use By' Date Survey Report prepared by IFF Research is available via the LBRO website.

Executive Summary and Recommendations

In late 2009 the Local Better Regulation Office¹ established a Business Reference Panel comprising representatives of those UK trade associations with an interest in the regulations enforced by local authorities. A number of the representatives raised concerns about the enforcement of 'use by' date labels in the UK.

LBRO invited the trade associations and businesses involved to undertake a review and prepare an independent, evidence-based report for LBRO setting out their concerns and potential solutions.

The review group is comprised of representatives from retail and manufacturing drawing its members from the British Retail Consortium, Association of Convenience Stores and National Federation of Retail Newsagents as well as the British Meat Processors Association and the Provision Trade Federation. The list of review group members is at Annex A.

The review group took evidence from a wide range of bodies including the main government departments and professional bodies with an interest in the topic. The contributors to the review and the industry bodies that commented on the draft report are listed at Annex D. The review group also considered documentation and surveyed the experiences of members of the organisations involved. The results are given in the 'Use by' Date Survey Report prepared by IFF Research, available via the LBRO website. The group has reviewed the issue from as many angles as possible; however more detailed aspects such as 'display until' labelling were beyond the scope of this exercise. This report is therefore intended to provide a starting point for further debate.

This report summarises the review group's findings, recommends a number of ways in which they could be resolved and indicates to LBRO how they might be taken forward.

Summary

The use and setting of 'use by' dates

The aim of date labelling is to help consumers make informed choices so that they eat food at its best and while it remains safe to do so.

The EU Food Labelling Directive 2000/13 EC Article 10 provides for a 'use by' date to be applied "in the case of foodstuffs which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health." The UK Food Labelling Regulations 1996, using almost identical wording to require a 'use by' date in Regulation 2, make it a criminal offence to sell, or offer to sell, food after its 'use by' date has expired. However, it is noteworthy that the EU Food Labelling Directive does not require EU Member States to impose such a prohibition.

The regulatory regime of 'use by' dates is focused on tackling food safety risks via food labelling. The review group contends that the UK offences of selling or offering to sell beyond the 'use by' date under the Food Labelling Regulations are unnecessary when the Food Safety Act 1990 (as amended by the General Food Regulations 2004) also makes it an offence to sell (or offer for sale) food which does not comply with food safety requirements or is not 'of the nature, substance or quality demanded' by the consumer.

¹ The Local Better Regulation Office (LBRO) is currently a non-departmental public body accountable to the Department of Business Innovation and Skills through the Better Regulation Executive. As part of the Government's review of arms-length bodies, BIS is consulting on proposals to transfer the functions of LBRO to an independent body within government. For more information on LBRO visit www.lbro.org.uk.

Furthermore many EU member states do not classify the 'sale' of expired use-by date foods as labelling offences – trusting consumers to manage their risk by facilitating mandatory duration date labelling.

Whilst revised guidance to be published by DEFRA², to which the review group has made input, will assist the food industry in the practicalities of selecting which date mark to use, it is as yet untested and the onus remains with the food industry to interpret the requirements for a 'use by' date.

In practice once a food producer has determined what the appropriate durability indication is for their food they are also under an obligation to ensure that the food is 'of the nature, substance, or quality demanded'. Deterioration in quality often precedes deterioration in safety, for example with various meat products or dips like hummus or coleslaw. Therefore, for some foods, expiry of the date label does not mean that the food immediately becomes unsafe. Where the food is of a type that supports rapid growth of pathogens, the durability vis-a-vis quality and safety dates are more likely to converge. The issue is further compounded by 'use by' being applied to foods for which it may be inappropriate e.g. many yogurts.

Business compliance and enforcement

Retailers and wholesalers invest heavily in compliance checks to ensure that products past the 'use by' label are not offered for sale. It is estimated that these checks cost in the region of £110 million per annum. This excludes the cost of food which has to be thrown away. The checking of date labels is complicated by the lack of uniformity of size, font and location on pack which extend the time it takes to complete checks. It is clear, given that a large retailer can sell in the order of 50,000 individual products with 'use by' dates in one store, 100 per cent compliance is unlikely to ever be achieved. If there were fewer products with a 'use by' date then this challenge would be less, and enforcement activities could be better targeted.

Whilst the regulations relating to 'use by' dates are restricted to microbiological safety, the setting of 'use by' dates is subject to considerations of quality as well as safety. Evidence was presented to the group that the enforcement of 'use by' dates is disproportionate where there was no microbiological evidence of a food safety risk. Enforcement escalations are sometimes justified on the presumption of a safety breach with no evidence having been adduced that the food was indeed unsafe. Due to the practicalities of setting 'use by' dates, the presumption of a safety breach in respect of certain foodstuffs may be flawed, and may therefore provide an unwarranted 'public interest' justification to formal enforcement, in such cases.

The group has concluded that the apparently black and white nature of the law in the UK and the food producers' wish to safeguard their reputation for supplying food of high quality are driving the UK food industry to take a highly risk averse approach in this regulatory area. This results in large numbers of products with 'use by' dates, which retailers and the supply chain must check, and an enforcement approach that, for the larger businesses, often focuses on a relatively minor percentage of non-compliance which poses little or no microbiological safety risk.

The use of a food labelling offence to resolve a perceived food safety issue means that this regulatory regime is mis-targeted.

² Guidance to the application of date marks to food, Department for Environment Food and Rural Affairs and Food Standards Agency, unpublished – due for publication in Summer 2011.

Enforcement of the Food Labelling Regulations is typically carried out by the trading standards departments of local authorities as food labelling is seen as a consumer information issue rather than a food safety issue, which falls within the expertise of environmental health officers. There would be value in pulling together the training of enforcement officers across the trading standards and environmental health professions so that all enforcement officers are equipped to make an assessment of risk in this area before proceeding to prosecute.

Protecting the consumer

Finally, the review group looked at survey evidence of how consumers use 'use by' dates. Research indicates that greater education for consumers on their food practices within the home could help to prevent food borne illnesses.

The recommendations below are intended to improve the system of 'best before' and 'use by' durability labelling. However the review group would ultimately like to see a change to the legislation, specifically removal of the criminal offence, and urges that this report is used to inform the debates happening currently at EU level on this point.

The recommendations are made for LBRO to consider as a whole, although an indication is given of which stakeholder group is best placed to take action.

Recommendations

Use and determination of 'use by' dates

- 1) Industry ensures that the 'use by' date is only used and set where food, is from a microbiological point of view, highly perishable and in consequence likely after a short period to constitute an immediate danger to human health.
- 2) The Government and the Industry jointly develop product-specific guidance to complement the revised DEFRA guidance on the application of durability dates to food.³
- 3) The Government provides training and guidance to enforcement officers based on the DEFRA and sectoral guides to ensure they are competent to advise on and challenge choice of date marks to be applied.

Updating the regulatory regime

- 4) The Government removes the current offence for selling items past their 'use by' date and ensures that the position is not replicated in any future EU regulation.⁴
- 5) Enforcement authorities prosecute only where genuine safety risks exist from products being sold past their 'use by' date and ensure their officers are adequately trained to assess those risks.
- 6) Enforcement authorities talk to primary authorities at an early stage where non-compliance is suspected.

³ The group notes that the dairy sector has already started to consider this.

⁴ Sufficient consumer protection from the sale of unsafe food is provided by the General Food Regulations – Food Safety Act 1990 as amended by the General Food Regulations 2004 which implement the General Food Law Regulations 178/2002/EC.

- 7) Primary authorities review businesses date control processes and their implementation.⁵

Guidance for consumers

- 8) The Government and Industry educate consumers on the importance of the 'use by' date and food practices within the home.⁶

⁵ This could form the basis of a nationally co-ordinated inspection strategy to be set out through an inspection plan.

⁶ The continual change in food risks means there is an ongoing need to keep consumers informed of the risks posed by food.

1. The Use and Setting of 'Use By' Dates

The purpose of 'use by' dates

The aim of date labelling is to help consumers make informed choices so that they eat food while it remains safe to do so and when at its best. The current legal requirements for date labels flow from EU law⁷, implemented in Great Britain by the Food Labelling Regulations 1996, which require most pre-packed food to be marked with the appropriate durability indication of either:

- 'Use by' – relating to the safety of the food and is the required label for food which, from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health.
- 'Best before' – which is the default minimum durability declaration for most foods and understood to relate to its quality.

The 'use by' date is intended to highlight foods that pose a greater risk from food borne illnesses.

The legal position

In the UK it is a criminal offence to offer to sell or sell any food after its 'use by' date, although this is not the case elsewhere within the EU. The UK legal requirement is therefore aimed at protecting consumers by: making industry responsible for identifying whether the food they produce should be labelled 'use-by'; then informing consumers, so that they may manage their risk; and thirdly, preventing expired 'use-by' products from being sold.

It is not an offence to sell food after its 'best before' date as long as the food complies with the Food Safety Act 1990⁸. The Food Safety Act gives the courts powers to impose high fines for food safety offences. The EU Food Labelling Directive is intended to provide a simple easy to understand 'use by' instruction for highly perishable food. However its implementation into UK law by the Food Labelling Regulations 1996 which create an offence of selling a product after the 'use by' date has provided an additional requirement which is unnecessary since the consumer is already protected by the Food Safety Act 1990⁹.

Guidance

The EU and UK legislation requires the application of a 'use by' date to 'a food which, from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health'. To date there has been no explanatory guidance from Government, Industry or expert microbiologists as to what the component terms within the criteria mean in this context. Whilst the revised guidance that is soon to be published by DEFRA starts to address this¹⁰ it is as yet untested and the onus is on the food industry to interpret the requirements for a 'use by' date.

⁷ Directive 2000/13/EC.

⁸ The Food Safety Act 1990 and the General Food Regulations 2004 make it an offence for a person to sell or supply food which does not meet food safety requirements, or which is not of the nature, substance or quality demanded by the consumer.

⁹ As amended by the UK General Food Regulations 2004 and the EU General Food Law Regulation 178/2002/EC.

¹⁰ Guidance to the application of date marks to food, Department for Environment Food and Rural Affairs and Food Standards Agency, unpublished – due for publication in Summer 2011.

Ubiquity of 'use by' date markings and implications of this

The products where 'use by' dates are usually applied include raw, cured and cooked meat and fish, dairy, ready meals, prepared salads, sandwiches and sandwich fillers. These products tend to be those that need to be chilled in order to maintain their quality and safety. Large retailers can have around 3,500 'use by' dated product lines in store, which can equate to around 50,000¹¹ individual items with a use by date for sale in a large supermarket at any one time.

There appears to be some inconsistency in how 'use by' dates are applied. A recent report by Waste Resources Action Programme (WRAP) found that 75 per cent of yogurt lines were marked with a 'use by' date and 25 per cent with a 'best before' date.¹² In conversations with retail food technologists, it was explained that some products like yogurts, fruit juices and hard cheeses do not necessarily constitute food safety risks but simply spoil and therefore may not need to have a 'use by' date applied at all.

The prevalence of 'use by' dates in current practice, and lack of consistency in location on pack, font and size, makes it more difficult to check date labelling within the distribution chain and considerable costs are incurred in attempting to ensure that items beyond their 'use by' date are not offered for sale. This is discussed further in chapter 2.

Complexity of setting 'use by' dates in practice

A number of factors are involved in the decision to set a 'use by' date, which is sometimes required by the manufacturer, or by the brand owner or by the retailer. Whilst industry guidance is in place to determine shelf life¹³, the following all influence the final decision of whether a 'use by' date applies and what the date should be:

- Manufacturing process
- Handling and storage within the supply chain
- Microbiological risks
- Composition including food additives
- Quality
- Brand reputation.

Retail food technologists explained that a considerable amount of testing and data gathering takes place to determine a food product's maximum safe life. The maximum safe shelf life will take account of potential for sub-optimum storage at any stage of the distribution chain, including by the consumer, and in addition will usually include a 'safety margin' of several days. Where quality will deteriorate before this maximum safe life, the 'use by' date will be brought forward. This means that the 'use by' date may, in practice, be set to reflect a product's optimum quality rather than its microbiological safety. In some product categories, such as pâté or longer life cooked meats, the product will retain its quality right up until its safety date. In other products, however, the quality date may be well before the safety date, for example various meat products or dips like hummus or coleslaw¹⁴.

¹¹ This is based on an assumption of each product line having 15 individual packs on shelf.

¹² Helping consumers reduce food waste – a retail survey, WRAP May 2010.

¹³ For example: Evaluation of product shelf-life for chilled foods, Campden BRI, 2004; Shelf life of ready to eat food in relation to *L.monocytogenes* – Guidance for food business operators, Chilled Food Association, British Retail Consortium, Food Standards Agency, 2010.

¹⁴ It is important to note that these are generalisations. The difference between quality and safety dates will depend on the individual product.

In the survey of manufacturers, microbiological safety was given as the primary reason for applying a 'use by' date, especially for meat products, which appears a correct interpretation of both the EU and UK requirements.¹⁵ Manufacturers of dairy products were less conclusive, however, in their reasons for applying 'use by' dates, with retailer specification and product quality being cited as primary factors.

The choice of 'use by' as opposed to 'best before' is not an exact science, and given the desire to protect quality and reputation, avoid product recalls, as well as to ensure that food is safe to eat, the industry tends to take a risk-averse approach applying 'use by' dates even where the microbiological food risk is low. The approach of the food industry is to apply a 'use by' date to any product that could, in theory, become unsafe.

Food waste

Across the surveys of manufacturers, wholesalers and retailers, the main industry criticism of 'use by' dates is the level of waste and the resulting costs which they generate. The value of markdowns from one large, national retailer was estimated to be in the region of £230 million in 2010¹⁶ and the total value of food waste from the retail sector is estimated to be £600 million a year¹⁷. In the same surveys, there was a belief within the industry that 'use by' dates are linked to product quality rather than product safety, and there was also a belief that many products do not require a 'use by' date as they are of low microbiological risk. This was reiterated in expert opinions given to the review group. The recent review of waste conducted by the Government¹⁸ committed to looking at ways to reduce food waste. Given the evidence that 'use by' dates are not always related to food safety, some of the 380,000 tonnes of food which is currently thrown away because it has passed its 'use by' date¹⁹ could be prevented by better application of the date labelling rules.

Improving the setting of 'use by' dates

Whilst there is a degree of consensus in the surveys that 'use by' dates are clear and easy to understand, there are problems in how they are applied. In practice 'use by' dates are often applied to meet the obligations under the Food Safety Act 1990 in respect of 'nature, substance and quality,' as well as the obligations of the Food Labelling Regulations 1996. As a consequence 'use by' dates are sometimes applied to incorrect products²⁰. This creates a situation where a large number of products then have to be checked in order to avoid criminal prosecution, whereas such products would, if sold after their 'use by' date, constitute no immediate danger to human health.

The two professions who enforce practice in this area are Trading Standards and Environmental Health. They appear currently not to consider it to be their role to routinely advise businesses as to whether to apply a 'best before' or 'use by' date to food, taking the view that such decisions should be made by specialist food technologists and microbiologists.

¹⁵ 'Use By' Date Survey Report, IFF Research, March 2011.

¹⁶ As reported by a major retailer. See 'Use By' Date Survey Report, IFF Research, March 2011.

¹⁷ Calculated using data from: Waste Arising in the Supply of Food and Drink to UK Households, WRAP, March 2010. Total amount of food waste from the retail sector in 2008: 361,800 tonnes; cost of waste from retail sector £1676 per tonne; therefore total value of food retail waste for 2008 estimated at £606,376,800. This is in line with estimates provided by two major retailers on the review group.

¹⁸ Government Review of Waste Policy in England, Defra, June 2011.

¹⁹ Waste Arising in the Supply of Food and Drink to UK Households, WRAP, March 2010.

²⁰ Retail food technologists explained that some hard cheeses in practice do not become unsafe (although can still pose a theoretical risk), fruit juices and yogurts if appropriately acidic will also remain safe, and consideration could be given to moving these types of products into 'best before' date marking.

The review group considered that environmental health practitioners and public analysts could, subject to appropriate training and experience, usefully direct businesses to reconsider the date labelling system adopted. This could provide a useful impetus to help change industry practice. Reducing the number of products subject to 'use by' date labelling would in the view of the group make its purpose as an indication of safety more apparent and credible to consumers, lower the compliance costs incurred, reduce food waste and enable enforcement activities to be targeted against immediate dangers to human health, rather than theoretical risks.

Recommendations

Use and determination of 'use by' dates

- 1) Industry ensures that the 'use by' date is only used and set where food, is from a microbiological point of view, highly perishable and in consequence likely after a short period to constitute an immediate danger to human health.
- 2) The Government and the Industry jointly develop product-specific guidance to complement the revised DEFRA guidance on the application of durability dates to food.²¹
- 3) The Government provides training and guidance to enforcement officers based on the DEFRA and sectoral guides to ensure they are competent to advise on and challenge choice of date marks to be applied.

²¹ The group notes that the dairy sector has already started to consider this.

2. Business Compliance and Enforcement

Business practices to ensure compliance

Overview

Businesses in the food supply chain devote very considerable attention to stock rotation and date labelling control in order to ensure that products are not sold after their 'use by' dates. A large supermarket can have about 3,500 product lines with 'use by' dates on retail display at any one time, equating to around 50,000 individual items. The challenge of monitoring these products is greater for the larger businesses. However smaller retailers also have to be vigilant in monitoring their stock even though this may cost less in absolute terms. An indicative cost for the retail sector overall per annum is £110 million, comprising stock rotation, due diligence checks, internal and external auditing²². This excludes the costs of food waste.

Types of checks

Given the central distribution systems operated by the major retail chains, very little stock is held in 'backup' storage within the retail outlets. Automatic ordering systems ensure daily and often more frequent delivery of stock. Smaller stores, due to lower sales volumes, will often receive less frequent deliveries or will themselves collect stock from wholesale premises and are likely to carry larger backup stocks.

In a large retail setting, fresh food items are rotated on a 'first in first out' basis with new stock being kept to the back of the shelf in order to ensure that the older stock sells first. Customers, however, will tend to sort through stock to find products with the longest 'use by' dates. For this reason regular checking and re-rotation of stock on the shelves is required to ensure sale within the 'use by' date. Checks are also required to identify items nearing the end of their marked shelf life to ensure that action is taken to promote their sale and minimise waste. All of the checks made for stock rotation and to identify short life stock will be recorded and the same level of checking is applied to chilled stock whether it is labelled with a 'use by' or 'best before' date.

The operation of correct rotation involves a detailed training requirement and continuing supervision to maintain management control. There will often be external inspections of records and shop floor standards by regional, head office or independent third party audit.

The checking of date labelling is complicated by the lack of uniformity of size, font and location on pack which can add to the time it takes to complete the checks. Taking into account the scale of the challenge, 100 per cent compliance is unlikely to be consistently achieved.

Retailers find that customers do check date labelling as they shop, often looking for the longest shelf lives and will draw it to the attention of staff if expired food is identified and will even ask for reductions on stock as it nears its date expiry.

²² See 'Use By' Date Survey Report, IFF Research, March 2011.

Enforcement of date labelling

Background

In the two tier council areas of England and Wales, enforcement of 'use by' dates is carried out by county council trading standards officers, who do not receive specific training in relation to food safety risks. In areas with unitary councils where trading standards and environmental health matters are the responsibility of a single council this enforcement still tends to be carried out by trading standards officers.

In discussion with Local Government Regulation (LGR), the group were told that inspections of date labelling in retail premises take place either as programmed routine inspections or as a follow-up to complaints. The majority of date label checks however are the result of programmed inspections (around 60 per cent)²³. The group also learned that where trading standards officers undertake programmed inspections in relation to date labelling this is usually done in line with the Food Standards Agency Food Standards Inspection Rating Scheme.

In terms of overall priorities, in a 2007 survey about 50 per cent of local authorities said that date labelling was a low priority in relation to other regulatory areas whilst another 40 per cent said it was a medium priority²⁴. It was explained to the review group by a representative from the Chartered Institute of Environmental Health that when environmental health officers are responsible for date labelling enforcement, checks are normally only undertaken as part of other enforcement activities within premises. Other experts echoed the view that date labelling should be seen as of a lower priority within the wider context of food safety risks. In contrast, a representative from the Trading Standards Institute explained that trading standards officers would presume that food has been correctly labelled with a 'use by' date and therefore consider that any food beyond its 'use by' date constitutes an immediate danger to public health and thus represents a serious breach of food safety. Whilst this is an understandable misconception of safety given the way the legislation is drafted, this is an unsuitable approach for several reasons:

- There may be divergence between the declared 'use by' date, and the point in time the food becomes unsafe, due to the tension with other legal requirements to ensure satisfactory quality;
- For mislabelled products, which should carry a best before date, there is no danger (the offence is in the mislabelling);
- The 'use-by' date operates as a warning to consumers not to use the food.

Enforcement approaches

A report by LGR gives an indication of enforcement practice in this area. It was completed in response to complaints from industry about the enforcement of expired 'use by' date food and found that from their sample of local authorities no prosecutions were taken for the first offence and that Home Authority liaison took place. The review group noted that experiences of other parties such as businesses, national regulators and microbiological experts were not considered in the LGR report.

²³ Report on Local Authority Enforcement of Food Labelling Use by Date Contraventions, LACORS and ACTSO, December 2009. Note LACORS was renamed LGR, references to the LGR report refer to this document.

²⁴ National Enforcement Priorities for Local Authority Regulatory Services, Supplementary Volume, Peter Rogers March 2007.

According to the LGR report most local authorities applied their general food law enforcement policy when considering enforcement of expired 'use by' dates. However, 15 per cent of those surveyed had a specific 'use by' date enforcement policy²⁵. Several of these 'use by' date enforcement policies included references to simple formulae based on multiplication of the number of days out of date and the number of products to decide whether to take criminal proceedings, but did not consider the type of product or the safety risks posed. For example, several local authorities use the contravention of a '20 day rule' as part of their decision making process, so that if you multiply the number of products past their 'use by' date by the number of days out of date and the result is more than 20, the enforcement decision is escalated to the next step. The group was advised that principles in the Enforcement Concordat and Regulators Compliance Code should be applied before legal proceedings are entered into.

Over the last three years there have been 109 reported prosecutions taken for expired 'use by' date foods with fines totalling £268,955²⁶. In terms of costs to businesses however, this figure does not reflect the full costs, including of those cases that do not get to court, that are subsequently withdrawn or where the food business is found not guilty, but which still require legal advice and staff time to deal with. One of the review group members estimates that it can cost between £5,000 and £100,000 to defend a prosecution and around £1,000 to deal with processes that don't reach court. The above costs are in addition to public money spent on local authority and court costs.

Food safety risk

The presumption of many enforcing officers that food products beyond their 'use by' date constitute an immediate danger to public health stems from the assumption that the regulations have been correctly applied when labelling the products with a 'use by' date. Given the resource constraints within local authorities, regulators sometimes take a black and white approach to this issue²⁷.

Legal advisors to the review group stated that in practice inconsistent approaches to food safety risk were adopted by enforcement officials. Microbiological evidence establishing whether there was food safety risk was not gathered during investigation but an allegation of a food safety risk was often presented at court as the reason for bringing a prosecution²⁸. The review group learned from the Association of Public Analysts that its members were routinely consulted to analyse products marked with 'best before' dates and pass opinions as to their fitness, nature, substance and quality; however, they were rarely consulted on 'use by' date products.

Proportionality and targeting

Investigations can be triggered by a small number of products with expired 'use by' dates. This gives an indication of how high the bar is for the performance expected from the retail operator. For example, ten items found with expired 'use by' dates out of a stock of 10,000 items would require a due diligence level of 99.9 per cent. The review group considered that enforcement officials did not appreciate the scale of retailers' compliance checks and that as a result enforcement action was often disproportionate or not targeted.

²⁵ 17 local authorities. Report on Local Authority Enforcement of Food Labelling Use by Date Contraventions, LACORS and ACTSO, December 2009.

²⁶ Data provided by Office of Fair Trading from data held on OFT Central Register of Convictions.

²⁷ Not all prosecutions are brought in this manner however. For example where there is a major failure of retailer stock control systems, this could also result in prosecution.

²⁸ Lawyers on the review group cited specific examples of this type of practice and others where enforcement officials were unwilling to listen to expert views that out of code food represented little or no safety risk.

From the review group's perspective, the approach adopted by some local authorities is one of 'ticking boxes'. This is exemplified in the simplistic formulae within the 'use by' date enforcement policies in the LGR report and also by the lack of microbiological food safety evidence, yet reliance at Court on the supposed food safety risks when the retailer is the subject of a criminal prosecution. Such a 'tick box' approach pays no regard to the nature of products with an expired 'use by' date and whether they do, in reality, present any food safety risk. The group questions whether the use of such simplistic formulae is the result of resource constraints or a lack of skills.

Investigations

The review group believes that the application of the requirements of the Police and Criminal Evidence Act 1984 (PACE) inhibits productive conversations from taking place at an early stage in investigations. If informal meetings failed to resolve the matter, the enforcing authority is still entitled to rely on evidence derived from subsequent admissions complying with the requirements of PACE. The review group considered that the use of informal preliminary meetings should be recommended to enforcement authorities by the Local Better Regulation Office before formal enforcement is undertaken in compliance with PACE.

Necessity, EU Law and gold plating

In essence, enforcement officers sometimes take an overly simplistic approach to the sale, or offer for sale, of products past their 'use by' date when there is no microbiological evidence of a food safety risk. The group questions the utility of this regulatory regime that confuses a food labelling issue with food safety. It results in enforcement actions that are not risk-based, not proportionate and not targeted such that food products with expired 'use by' dates are the subject of prosecution despite there being no evidence of any risk to food safety. The apparently simple nature of the offence encourages enforcement officers to believe that they do not have to obtain any evidence that a food safety risk exists. In this sense, the Food Labelling Regulations are used to prosecute retailers of food with an expired 'use by' date despite there being no microbiological evidence of a food safety risk. Yet, in the review group's experience 'use by' date prosecutions are often brought to Court on the basis of a public safety risk.

It first became an offence in the UK to display an item beyond its 'use by' date in 1991²⁹. Before then the general food law offence for selling or possession for sale of food not fit for human consumption or not of the nature, substance or quality demanded by the purchaser applied. 'Best before' dates continue to operate on this basis. At the time that this change was made in the UK, purporting to implement the requirements of an amendment to the EU Food Labelling Directive³⁰, other member states did not follow suit and did not implement offences for this particular aspect of labelling policy³¹. Creating an offence is a very clear example of 'gold plating' that fails to take account of recommended principles that enforcement activity should be targeted at risk-based breaches. The review group notes the current government's commitment to identify and end the gold plating of EU requirements³².

²⁹ By virtue of the Food Labelling (Amendment) Regulations 1990.

³⁰ Directive 1979/112/EEC as amended by the addition of Article 9a by Directive 1989/395/EC was consolidated by Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000.

³¹ Annex C sets out the implementation of EU date labelling requirements in seven EU member states.

³² The Coalition: Our Programme for Government, HM Government, March 2010.

During the completion of its work the review group has become aware of amendments proposed by the European Commission in Brussels to a proposed Food Information for Consumers Regulation³³ to supersede current EU Food Labelling requirements. The proposed amendment would seek to deem any product beyond its 'use by' date to be in contravention of Food Safety requirements of the General Food Law Regulation i.e. to be automatically deemed unfit for human consumption. Given the issues experienced with inappropriate 'tick box' enforcement without proper regard to the risks of food safety or the public interest, the review group would be extremely concerned should the UK Government or indeed other member states support such a position.

Other regulatory controls

The Primary Authority scheme provided under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 was widely cited by the contributors to the review group as having the potential to improve understanding by local authorities and to provide a means for agreeing the adequacy of control systems that retail businesses have in place. The review group approved of the potential for primary authorities to issue guidance to businesses in such partnerships which would bind other enforcing authorities. The review group recognised the potential for 'use by' date control procedures to be included in inspection plans which would be taken into account by authorities considering inspections. The review group considered that it would be beneficial for other authorities to be prohibited from acting outside of agreed inspection plans.

Recommendations

Updating the regulatory regime

- 4) The Government removes the current offence for selling items past their 'use by' date and ensures that the position is not replicated in any future EU regulation.³⁴
- 5) Enforcement authorities prosecute only where genuine safety risks exist from products being sold past their 'use by' date and ensure their officers are adequately trained to assess those risks.
- 6) Enforcement authorities talk to primary authorities at an early stage where non-compliance is suspected.
- 7) Primary authorities review businesses date control processes and their implementation.³⁵

³³ See http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed_legislation_en.htm

³⁴ Sufficient consumer protection from the sale of unsafe food is provided by the General Food Regulations – Food Safety Act 1990 as amended by the General Food Regulations 2004 which implement the General Food Law Regulations 178/2002/EC.

³⁵ This could form the basis of a nationally co-ordinated inspection strategy to be set out through an inspection plan.

3. Protecting the consumer

Sources of food borne illnesses

The review group heard from a representative from the Health Protection Agency (HPA) and from microbiological experts with regard to the causes of food borne illness.

The main causes of food borne illness are listeria, salmonella, campylobacter, clostridium and E.coli³⁶. However 'use by' dates are only relevant to the first three, as shelf life can only protect consumers against food borne illnesses in instances where the pathogen that causes the illness can multiply in the food over time³⁷. From the recorded cases of food poisoning, the evidence suggests that the risks to health come from the storage, preparation and cooking of food – i.e. food not being properly chilled, being prepared in an unhygienic way, inadequate segregation of raw and cooked food, or food not adequately cooked. There does not appear to be any specific evidence of incidents of food borne illness resulting from the consumption of food with an expired 'use by' date or of unwitting consumption of food after the expiry of its 'use by' date.

With the application of Hazard Analysis and Critical Control Point (HACCP)³⁸ techniques most microbiological hazard organisms are properly dealt with in the production environment so that they are either eliminated or reduced to negligible levels. Listeria is an example of an organism that if it is not present during the production process becomes less relevant to storage and shelf life once the food has been packed. Several expert microbiologists were of the opinion that due to the high hygiene standards in food production, a lot of food prepared in a HACCP-compliant environment would deteriorate in quality to the point that it would not be palatable to eat before there was an increase in the level of food safety risk³⁹.

Consumer information and empowerment

The retailers on the group stated that in their experience many consumers will check 'use by' date labelling as they purchase food, reiterating findings of Food Standards Agency research that 'use by' and 'best before' dates are seen as good indicators of freshness, shelf-life and general food safety by customers when purchasing food⁴⁰. In store, it appears that customers are aware of 'use by' date labelling and will make their purchasing decisions based on them, as was the intention of the EU Food Labelling Directive.

However, there is evidence that once in the home 'best before' and 'use by' are frequently confused terms. WRAP research indicates that for a yogurt marked with a 'use by' date 53 per cent of consumers would still eat the product beyond the marked date if it 'looked and smelt OK' and for cheddar cheese marked with a 'use by' date 69 per cent of consumers claim that they would still eat it.⁴¹

³⁶ Adak, et al., 2002. Trends in indigenous foodborne disease and deaths, England and Wales: 1992 to 2000. Gut 51, 832-841. As described to the review group by the HPA representative.

³⁷ Pathogens which cause foodborne illness but do not increase in concentration in food over time must be controlled for using hygienic practices to ensure that the pathogen does not contaminate the food at any stage.

³⁸ HACCP is internationally recognized as the system of choice for food safety management. Further details available via the Food Standards Agency website www.food.gov.uk

³⁹ There are differences however in how this applies to ready to eat foods, those sold for consumption with or without the need for reheating (as opposed to cooking) and food such as raw meat.

⁴⁰ See for example Public Attitudes Towards and Use of, General Food Labelling, Oxford Evidentia for the Food Standards Agency, January 2010.

⁴¹ See Qualitative Research to Explore Peoples' Use of Food Labelling Information, Ipsos Mori and FSA Social Science Research Unit FSA research report and Helping Consumers Reduce Food Waste – a Retail Survey, WRAP, May 2010.

Arguably, neither hard cheese, nor yogurt should be labelled 'use by'. It may be that consumers are identifying these foods as safe if there is no sensory deterioration (i.e. visible degradation, taints, off odours or tastes), or because they know that these are not highly perishable from a microbiological perspective. The key point is that a 'use by' date should only be applied when all of the criteria in the legislation are met concurrently and are supported by the necessary scientific evidence. It is important to avoid diluting the 'use by' message to consumers.

Clarity of information for consumers

The Food Labelling Regulations 1996 do not stipulate the size or form of markings to be applied to food packaging. The Food Standards Agency issued guidance on the clarity of labelling for food business operators that date labels should be a minimum of font size 8 to enable the visually impaired and the elderly to read the information⁴². However adoption of this by food manufacturers' is variable. Whilst the reluctance to update date printing technology is understandable, easier to read labels will provide benefits to both the consumer and business by making date checking easier. The forthcoming EU wide Food Information Regulation is likely to prescribe a minimum font size for mandatory information which includes durability marking.

Protecting consumers

These findings do not give cause for complacency in the use of 'use by' dates. However they do point to the conclusion that greater education of consumers on their food practices within the home could go part of the way to reducing the incidence of food borne illnesses. The food industry can help respond to this by only applying 'use by' dates where strictly necessary so that the message that 'use by' dates are related to safety is not diluted. It can also help if food labels can be read easily by the visually impaired and the elderly.

Recommendations

Guidance for consumers

- 8) The Government and Industry educate consumers on the importance of the 'use by' date and food practices within the home.⁴³

⁴² See Clear Food Labelling, Food Standards Agency 2008.

⁴³ The continual change in food risks means there is an ongoing need to keep consumers informed of the risks posed by food.

Annex A: Members of the Review Group

Chair

Mr Harold Gay. Former Chair of the CBI Consumer Affairs Panel. Ex- Alliance Boots Legal team. Member of the Trading Standards Institute.

Representative bodies

Provision Trade Federation
British Meat Processors Association
British Retail Consortium
Association of Convenience Stores
National Federation of Retail Newsagents

Individual businesses

ASDA Stores Ltd
The Co-operative Group Ltd
Sainsbury's Supermarkets Ltd
Tesco Stores Ltd
Müller Dairy (UK) Ltd
Waitrose Ltd

The review has also been supported (on a without cost basis) by:

Food Lawyers:

Mr Andrew Litchfield, Partner, Wragge and Co LLP
Mr David Hetherington, Margetts and Ritchie Solicitors
Ms Hilary Ross, Partner, Bond Pearce LLP

Food Safety Experts:

Dr Slim Dinsdale: Food Safety Experts
Mr John Clague: Waitrose

Annex B Summary of relevant legislation

Council Directive 2000/13 EC

Whereas –

- (6) The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.
- (8) Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.

Article 10

1. In the case of foodstuffs which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the 'use by' date.
2. The date shall be preceded by the words:
 - in English: 'use by',These words shall be accompanied by:
 - either the date itself, or
 - a reference to where the date is given on the labelling.These particulars shall be followed by a description of the storage conditions which must be observed.
3. The date shall consist of the day, the month and, possibly, the year, in that order and in uncoded form.
4. In some cases it may be decided by the procedure laid down in Article 20(2) whether the conditions laid down in paragraph 1 are fulfilled.

Food Labelling (Amendment) Regulations SI 1990/2448

Amendment of the principal Regulations (SI 1984/1305, as amended)

11. At the end of regulation 40(e) the word "or" shall be inserted and immediately following regulation 40(e) there shall be inserted the following paragraphs—
 - (f) sells any food after the date shown in a "use by" date relating to it, or
 - (g) being a person other than whichever of the manufacturer, packer or seller established within the European Economic Community was originally responsible for so marking the food, alters the indication of minimum durability or, as the case may be, the "use by" date relating to that food.

Amendment of the principal Regulations (SI 1984/1305, as amended)

12. For regulation 41 there shall be substituted the following regulation—

Enforcement

41. (1) Subject to paragraph (2) below, each food authority shall enforce and execute these Regulations in its area.

(2) Each port health authority shall enforce and execute these Regulations in its district in relation to imported food.

(3) For the purposes of this regulation “food authority” shall mean—

(a) for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London;

(b) as respects a non-metropolitan district, in relation to regulation 40(f) only, and in addition to any other food authority, severally, the council of that district.

Transitional provision

15 (2) It shall not be an offence under the principal Regulations to sell before 1st April 1991 any food which is not marked or labelled with the appropriate durability indication referred to in regulation 6(c) in circumstances where that food is marked or labelled in accordance with what would have been the requirements of regulation 21 had these Regulations not come into force.

Food Labelling Regulations 1996 (SI 1996/1499)

Regulation 2

“appropriate durability indication” means—

(a) in the case of a food other than one specified in sub-paragraph (b) of this definition, an indication of minimum durability, and

(b) in the case of a food which, from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health, a “use by” date;

“sell” includes offer or expose for sale and have in possession for sale, and “sale” and “sold” shall be construed accordingly

Regulation 5

“... all food to which this Part of these Regulations applies shall be marked or labelled with—

(c) the appropriate durability indication;

Regulation 21

Form of indication of “use by” date

- (1) Where a “use by” date is required in respect of a food it shall be indicated by the words “use by” followed by—
 - (a) the date up to and including which the food, if properly stored, is recommended for use, and
 - (b) any storage conditions which need to be observed.
- (2) The “use by” date shall be expressed in terms either of a day and month (in that order) or of a day, a month and a year (in that order).
- (3) Either—
 - (a) the date up to and including which a food required to bear a “use by” date is recommended for use, or
 - (b) that date and any storage conditions which need to be observed,may appear separately from the words “use by”, provided that those words are followed by a reference to the place where the date (or the date and the storage conditions) appears (or appear).

Regulation 44

Offences and penalties

- (1) If any person—
 - (d) sells any food after the date shown in a “use by” date relating to it, or
 - (e) being a person other than whichever of—
 - (i) the manufacturer,
 - (ii) the packer, or
 - (iii) the seller established within the European Community,was originally responsible for so marking the food, removes or alters the appropriate durability indication relating to that food, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(Lawyers to the review group were of the opinion that each element of the Regulation 2 description of a 'Use by' date may need to be established to prove an offence under this regulation i.e. highly perishable, short period and immediate danger – but this has not, as yet, been tested in court.)

Food Safety Act 1990

Section 8

Selling food not complying with food safety requirements (England, Wales and Scotland)

- (2) For the purposes of this Part food fails to comply with food safety requirements if it is unsafe within the meaning of Article 14 of Regulation **(EC) No. 178/2002** and references to food safety requirements or to food complying with such requirements shall be construed accordingly.

Section 14

Selling food not of the nature or substance or quality demanded (England, Wales and Scotland)

- (1) Any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser shall be guilty of an offence.
- (2) In subsection (1) above the reference to sale shall be construed as a reference to sale for human consumption; and in proceedings under that subsection it shall not be a defence that the purchaser was not prejudiced because he bought for analysis or examination.

Section 21

Defence of due diligence (England, Wales and Scotland)

- (1) In any proceedings for an offence ... it shall... be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

The General Food Law Regulation (EC) 178/2002 Article 14

Food safety requirements

1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.
3. In determining whether any food is unsafe, regard shall be had:
 - (a) to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
 - (b) to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.

Annex C: Implementation in EU member states

Implementation of Date Coding Requirements in other EU Countries			
Country	Legislation	Description	Penalties
France	Article R 112-9	<p>Expiration coding is divided into DLC (date limited de consommation) and DLUO (Date Limited d'utilisation optimale). Day/Month/Year are used after the relevant words</p> <p>Non perishable products – DLUO must appear on the label using words 'to be consumed before end of...'</p> <p>Perishable Products – DLC must appear on label using words 'to be consumed before...'</p> <p>For extremely perishable products the DLC must appear on the label as 'to be consumed up to...' or 'to be consumed no later than...'</p>	
Germany	<p>Basic regulations of German food law are laid down in 61 articles of the Lebensmittel-und Bedarfsgegenstaendegesetz (LMBG). In 2005 Germany developed a central Food and Feed Law Book.</p>	<p>German Food Law is a federal law whose enforcement is the responsibility of the federal states (German Laender). This implies that on occasion, a minor infraction to the food law may be tolerated in one state but not in another. However, major violations are prosecuted in all federal states.</p> <p>Uncoded minimum shelf-life date</p> <p>(Interpreted as the date until which the product maintains its maximum level of quality under proper storage conditions). The words to be used are "Mindestens haltbar bis ..." Determination of the minimum shelf-life lies entirely in the hands of the manufacturer or importer. Declaration of minimum shelf-life is not necessary for fresh fruits and vegetables, alcoholic beverages of more than alc. 10%, portioned ice cream, table salt, crystal sugar, flavoured and/or coloured sugar candies, chewing gum, wine-like beverages.</p> <p>If the product for microbiological reasons may cause a health threat after a certain storage period, it has to carry an uncoded latest consumption date using the words "verbrauchen bis ..."</p>	<p>The penalties are in art. 58 of the LFGB. The statute translates roughly as the statute on food, nutrition and feed stuffs (i.e. for animals). The penalties in Art 58 are for breaching the rules of Art 5 - which refers to an array of statutes.</p> <p>Art 58 lists all the statutory instruments under the heading ' he who breaches the following provisions will be subject to imprisonment of up to three years or a fine'.. but then it could be worse, if you for example endanger the health of many people.</p>

Netherlands	Warenwetbesluit Etikettering van Levensmiddelen, art 16 and art 17	<i>For a shelf-life up to 3 month after the date of production</i>	Tenminste houdbaar tot (best before) Day, month, (Year)	
		<i>For a shelf-life between 3 and 18 months</i>	Tenminste houdbaar tot einde (best before end) Month, year	
		<i>For a shelf-life longer than 18 months</i>	Tenminste houdbaar tot einde (best before end) Year	
		<i>For highly perishable foodstuffs</i>	Te gebruiken tot (use by) Day, month (Year) In addition to the date, the instructions for storage have to be mentioned as well.	
Poland		Poland strictly enforces the EU date format requirement of dd/mm/year, The dates must be stated as best before. For very perishable foods, the last day of consumption must be marked on the label. Storage and use instructions must also appear on the label as necessary. For example, storage instructions would be required on the label of a product that appeared to need refrigeration but, in fact, did not.		
Italy	Legal Decree 2003/181	Provides guidance on the detailed information that must be displayed on labels		

Belgium-Luxembourg	Koninklijk besluit betreffende de eikettering van voorverpakte voedingsmiddelen, art 6 and art 7	If the date is influenced by the method of storage, the prescribed way of storage has to be mentioned on the label. The statements to be used are the following:		
		<i>For a shelf-life up to 3 months after the date of production</i>	Tenminste houdbaar tot/ A consommer de preference avant le (best before) Day, Month, (Year)	
		<i>For a shelf-life between 3 and 18 months</i>	Tenminste houdbaar tot einde/ A consommer de preference avant fin (best before end) Month, year	
		<i>For a shelf-life longer than 18 months</i>	Tenminste houdbaar tot einde/ A consommer de preference avant fin (best before end) Year	
		<i>For Highly perishable foodstuffs</i>	Te gebruiken tot/ A consommer jusqu'au (use by) Day, month, (Year) In addition to the date, the instructions for storage have to be mentioned as well.	

<p>Ireland</p>	<p>European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 2002 (SI No 483 of 2002)</p>	<p>The date declared depends whether the product has a short shelf-life or a long shelf-life:</p> <ul style="list-style-type: none"> • foods that will not keep for more than three months, an indication of the day and month is sufficient, e.g. 'Best-before: 23rd January'. • foods that will keep for more than three months but not more than 18 months, an indication of the month and year is sufficient, e.g. 'Best-before end: March2007' and • foods that will keep for more than 18 months, an indication of the year is sufficient, e.g. 'Best-before'end: 2008'. <p>The date of minimum durability of a product depends on a number of variables - its composition, processing method, packaging, storage temperature, handling etc. The decision whether a 'best-before' or 'use-by' date is required and what that date is should be the responsibility of those labelling the product, usually the manufacturer or packer, as they are in the best position to assess the properties of the food in question. "Guidance Note 18: Determination of Product Shelf-Life" produced by the FSAI should be consulted for further information. There is no legal requirement against packaged foodstuffs being offered for sale on or after their 'best-before' date provided that the foodstuff still is in a fully acceptable condition (an exception to this is fresh eggs which must be delivered to the consumer within a maximum time limit of 21 days of laying i.e. at least seven days before their 'bestbefore' date). However, if out of date stock is to be sold to the consumer, it is strongly advisable to indicate that the foodstuffs are past their 'best-before' date. This may assist in ensuring that the consumer is not misled as to the true nature of the product which is an offence.</p>	
-----------------------	---	--	--

Annex D: Contributors to the review

The following organizations met with the full review group:

Department for Environment, Food and Rural Affairs
Food Standards Agency
Health Protection Agency
Trading Standards Institute
Chartered Institute of Environmental Health
Local Government Regulation
Waste Resources Action Programme
Association of Public Analysts

The review group expresses its thanks to the individuals concerned for giving so generously of their time and experience.

The review group is grateful to the following individuals and organisations that provided comments on the draft report:

Chilled Food Association
Food and Drink Federation
Mr Neville Craddock, Independent Food Law Consultant with many years experience in the food manufacturing industry

Annex E: Sources of information

Evidence was gathered to inform this report over the six month period January – June 2010. The sources of information used were a business survey commissioned by LBRO, evidence from the group members, evidence submitted to the group and published sources of information. These sources of information are described briefly below:

Business Survey

LBRO commissioned a survey of business to assist with understanding the issues relating to ‘use by’ dates and to provide evidence to inform the review group’s work. This research was conducted by IFF Research on behalf of LBRO between January and March 2011.

The main method of data collection was a self-completion questionnaire which was sent out to members of the review group as well as business members of the following trade associations:

Association of Convenience Stores, Provision Trade Federation, Food and Drink Federation, British Meat Processors Association, Federation of Wholesalers and Distributors, National Federation of Retail Newsagents.

The business sample was not designed to be a representative sample of all UK businesses, but instead aimed to get the range of views from those businesses that operate in the chilled food retail chain and therefore have an interest in use by date issues. 26 businesses responded to the survey made up of 17 manufacturers, 5 retailers and 4 wholesalers. In addition to the self-completion questionnaires, 3 in depth interviews were conducted, one with a small retailer, one with a large retailer and one with a wholesaler. Evidence from this research has been used throughout this report and is cited as *‘Use By’ Date Survey Report, IFF Research, March 2011*. The full report is available at www.lbro.org.uk.

Evidence submitted by group members

The review group met on five occasions over the period December 2010 to June 2011. During these meetings the review group members provided evidence of their experiences of issues surrounding ‘use by’ dates. This included evidence from individual businesses as well as evidence from representatives of trade associations, lawyers and food safety experts.

In addition to evidence from the group members during meetings, some additional follow up work was carried out:

- LBRO interviewed microbiologists from two of the major supermarket chains to gather information relating to the process of setting ‘use by’ dates. These interviews were carried out by telephone in May 2011.
- Several of the individual businesses on the review group submitted data about their business to inform the report, including the number of use by dated products, the amount and cost of food waste and the costs of enforcement action
- Annex C was drawn up by the legal experts advising the group

Evidence heard by the review group

As part of its task to gather evidence, the review group heard evidence at their meetings from representatives of the organisations listed in Annex D. Representatives were invited to attend a session of a review group meeting and give a presentation on their views on use by date issues relevant to them. The group then had an opportunity to ask the representatives questions.

Published sources

The following published sources were used in preparing this report:

Enforcement Concordat – Cabinet Office, March 2008

Evaluation of product shelf-life for chilled foods, Campden BRI, 2004

Regulators Compliance Code – Statutory Code of Practice for Regulators, Department for Business, Enterprise and Regulatory Reform, December 2007

Date Coding of Retail Packaging, ECR UK, December 2006. Available from www.igd.com

Shelf life of ready to eat food in relation to L.monocytogenes – Guidance for food business operators, Chilled Food Association, British Retail Consortium, Food Standards Agency, 2010

Government Review of Waste Policy in England, Defra, June 2011

Guidance to the application of date marks to food, Defra, UNPUBLISHED, due for publication in summer 2011

Qualitative Research to Explore Peoples' Use of Food Labelling Information, Ipsos Mori and FSA Social Science Research Unit FSA research report, January 2010

Public Attitudes Towards and Use of, General Food Labelling, Oxford Evidentia for the Food Standards Agency, January 2010

Clear Food Labelling, Food Standards Agency 2008

Use by date Guidance Notes, Food Standards Agency 2003

Report on Local Authority Enforcement of Food Labelling Use by Date Contraventions, LACORS and ACTSO, December 2009

National Enforcement Priorities for Local Authority Regulatory Services, Supplementary Volume, Peter Rogers March 2007

Helping Consumers Reduce Food Waste – a Retail Survey, WRAP, May 2010

Waste Arising in the Supply of Food and Drink to UK households, WRAP, March 2010

EC Proposal for a Regulation on the Provision of Food Information to Customers – see http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed_legislation_en.htm