

FSS public position on 'Use by' and 'Best before' dates

1 Purpose of the paper

1.1 Following food manufacturers and retailers making changes to the way certain prepacked foods are labelled, this paper is to update the Board and seek agreement for a public statement on date labelling.

1.2 The Board is asked to:

- **note this paper and the general direction of travel for industry, and;**
- **provide a view on the proposed statement at Annex A**

2 Strategic aims

2.1 This work supports FSS Strategic Outcome 1 – Food is Safe and Authentic; and; 3 – Responsible Food Businesses are enabled to thrive.

3 Background

3.1 Media reports have featured articles about various retailers' moving to remove best before dates from prepacked fresh fruit and vegetables. In 2018, Tesco announced plans to remove best before dates from almost 70 fruit and vegetable products in an effort to reduce the amount of usable food being thrown away. More recently, several other retail businesses, including Aldi, Morrisons and Marks and Spencer have announced plans to make the same changes aimed at reducing food waste because consumers may throw out food after the best before date when it is still in good condition and safe to eat.

3.2 There have been other reports about businesses such as Arla Dairies and also Morrisons reviewing the date marking of dairy products and switching from use by to best before dates, where it is safe to do so. Again, with the aim of helping consumers to make better use of food and avoid waste.

3.3 The results of the food safety focussed wave of the FSS consumer tracker in December 2021 reported that 39% of consumers were concerned about understanding the difference between date labels, such as best-before and use by dates. Additionally, 21% of consumers surveyed incorrectly said the best before date was the best indicator of whether food is safe to eat. FSS has since undertaken a review of the information on the website with regards to date labelling to ensure that there is clarity on the different date labels and to emphasise the importance of adhering to use by dates.

- 3.4 Food businesses are responsible for ensuring food safety and need to be able to demonstrate to enforcement officers they are meeting their obligations, especially if setting up a new production process or making changes to an existing system. This is particularly important where businesses have moved away from applying use by dates in favour of best before dates.
- 3.5 Food Labelling Requirements - Under the Food Information to Consumers (FIC) regulation,¹ food businesses have the responsibility to ensure that the correct type of date mark is applied to prepacked food. These are:
- a “use by” date, which concerns food safety and food marked with this date may be consumed up until and on the date on the label but not after. This is because, under food law, after this date has passed it is considered unsafe to eat. Additionally, food products with this date displayed may include storage conditions, for example by keeping it in a fridge or under a particular temperature.
 - a “best before” date (sometimes referred to as a “Best Before End” (BBE) date), which concerns food quality and not food safety.² While the food may be safe to eat after this date has passed, it may not be at its best in terms of quality, i.e. it may lose flavour, be discoloured or have a different texture. These types of dates are most often found on frozen foods, tinned foods and dried foods. Again, in order to preserve the food correctly there may be storage instructions on the label, this may include to keep it under a particular temperature, where to store it such as in an airtight container.
- 3.6 While most prepacked foods require either a use by or a best before date, there are certain exemptions from date marking under the FIC regulation:
- fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated; However, this does not apply to sprouting seeds and similar products such as bean sprouts,
 - wines, liqueur wines, sparkling wines, aromatised wines, and similar products obtained from fruit other than grapes, and certain other beverages obtained from grapes or grape musts,
 - beverages containing 10 % or more by volume of alcohol,

¹ <https://www.legislation.gov.uk/eur/2011/1169/article/24>

² Under the specific egg marketing rules, prepacked eggs carry best before dates. However, this shows the recommended latest day by which the eggs should be used.

- bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture,
- vinegar,
- cooking salt,
- solid sugar,
- confectionery products consisting almost solely of flavoured and/or coloured sugars,
- chewing gums and similar chewing products.

4 Discussion

- 4.1 The announcements by the retailers in scrapping best before dates, focus on foods which did not legally require a date mark in the first place, such as fruit in nets or bagged potatoes. By not putting a best before date on these products, the retailers' aim is for consumers to check the condition of the food rather than automatically throw out food which is still safe and good to eat, just because it is after the date shown on the label. There has also been a general move to reduce the different types of date marks on food to avoid consumer confusion e.g., phasing out 'sell by' and 'display until' dates. However, retailers will still have their own stock control and coding systems to ensure the freshness of products, so we would expect that consumers will be able to ask retailers about the shelf life of products which no longer carry date marks.
- 4.2 In the last few years, some sectors of the food industry have moved away from applying use by dates in favour of best before dates, such as milk and other dairy products. This has been possible where businesses have reviewed their food safety management systems and put in place controls that they have demonstrated eliminate the growth of pathogens during production and they have monitored this remains the case. In turn, this means that products that have previously been likely to become unsafe after a short time and have required the application of a use by date, can now safely be given a much longer shelf life for which a best before date is appropriate.

Guidance and advice

- 4.3 FSS along with FSA worked with the Waste and Resources Action Programme (WRAP) in conjunction with Zero Waste Scotland (ZWS) to develop guidance on date mark labelling [Food date labelling | WRAP](#). This includes decision tree guides on the steps businesses would need to consider when reviewing their food safety management systems with a view to switching to best before dates.
- 4.4 In February 2022, WRAP published [research](#) which looks at uncut fruit and vegetables and has encouraged retailers and food producers to look again at date marking, particularly the use of best before dates. The research findings also

recommend selling food loose and to provide best practice guidance to consumers on storing food.

- 4.5 In addition, FSS, FSA and UK Hospitality together with industry representatives have carried out a review of the Industry Guide to Good Hygiene Practice: Catering Guide, [which is due to be] published on 29 November 2022. This Guide now includes a section on Surplus Food/Donating Left Over Food to Charity and positively encourages catering businesses to consider inclusion of this waste avoidance strategy in their food safety management system. [add link when available]
- 4.6 In September 2022, FSS carried out a [cost of living omnibus survey](#) which asked consumers about changes in their behaviour regarding buying and using food since April 2022. Key points include a 29% increase in adults consuming food after its use by date with almost a third of those surveyed saying they have consumed food after its best before date more often. With regard to food waste, 40% reported wasting less than before. While the figures for best before dates and food waste show less food is being thrown away, the level of food being consumed beyond its use by date highlights a marked increase in the risk of consumers falling ill.

5 Identification of risks and issues

- 5.1 Under the (FIC) Regulation, most prepacked food requires a date mark although it is up to food businesses to determine whether a use by or best before date is appropriate. The Regulation makes clear that food sold beyond its use by date is automatically a breach of food safety requirements (rather than food information requirements) for which higher penalties are available in the General Food Regulations 2004. The policy intention when the FIC Regulation was introduced was that businesses should not apply use by dates to their products on a 'just in case' basis but only where they are likely to become a safety risk within a short time. Thereby encouraging businesses to consider best before dates as much as possible where a date mark is needed. There is likely to have been a general assumption by businesses that all types of prepacked food needed a date mark. However, in recent years, campaigns by WRAP and ZWS to reduce food waste have emphasised the exemptions from date marking. In turn, this has led to businesses reviewing their use of date marks, including whether or not certain foods do have such short shelf lives that a use by date is necessary.
- 5.2 In making changes to date marking, it is not necessary to seek approval from FSS although we would expect businesses to update their food safety management plans to demonstrate that they are meeting their obligations under food law and work with their enforcement officers as appropriate.

- 5.3 From the FSS consumer tracker survey we are aware that 39% of those surveyed expressed concern about understanding the difference between use by and best before dates. Where businesses are making changes, we would expect them to inform consumers why they are happening and how to find out more details. For example, making it easy to ask about the shelf life of fresh produce which no longer carries a best before date.
- 5.4 We recognise that consumers will need to use their own judgement in how long to keep foods beyond their best before date or bagged fruit and vegetables which previously carried a best before date. We also recognise that some foods may reach a stage where they are no longer at their best regarding eating quality but have not deteriorated to a point at which they become unsafe. Having appropriate storage instructions on the label or advice in store will help consumers make the best use of food and avoid waste. For foods with a use by date, we do not recommend sniffing them to check if they are still safe to eat. This is because the human nose cannot smell the bacteria that cause food poisoning. Therefore, we advise consumers to read the label, follow any storage instructions and adhere to use by dates when present. As noted in para 4.7 there is a trend emerging that consumers are more likely to consume food products after the expiry of the use by date due to the cost of living crisis.

6 Equality Impact Assessment and Fairer Scotland Duty

- 6.1 This topic relates to industry developments within an existing policy area and is relevant to all consumers. It does not raise issues or create disadvantages for any specific population groups and an Equality Impact Assessment has not been carried out.

7 Conclusion/Recommendations

- 7.1 The Board is asked to:
- **note this paper and the general direction of travel for industry, and;**
 - **provide a view on the proposed statement at Annex A**

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Annex A

FSS statement on use by and best before dates

Food Standards Scotland (FSS) notes the changes adopted by several food manufacturers and retailers, namely removing date marks from prepacked fruit and vegetables and also replacing use by dates with best before dates for certain foods.

FSS supports initiatives which help consumers make the best use of food and reduce food waste, such as redistribution arrangements, provided they do not compromise on food safety or reduce the level of information available to consumers.

Where businesses are considering making changes to date labelling, we recommend that they consult the guidance produced by the Waste and Resources Action Programme (WRAP)³, ⁴ and Zero Waste Scotland (ZWS)⁵ and ensure they update their food safety management systems to reflect any new or amended process steps. They should also discuss their plans with their local authority enforcement officers.

It is also important that businesses provide adequate information to consumers. Easy to access information on the shelf life of fruit and vegetables and highlighting as appropriate, any products which previously carried use by dates, such as milk and fruit juices, and now have best before dates will give consumers more time in which to make use of food and in turn reduce waste.

For advice to consumers on date labelling along with tips on reducing food waste please see: [Food Date Labelling | Food Standards Scotland](#)

³ [Label better, less waste: Food date labelling guidance | WRAP](#)

⁴ [Reducing household food waste and plastic packaging | WRAP](#)

⁵ [Clearer date label guidance could cut food waste | Zero Waste Scotland](#)