

Consultation on the national provisions in the Food Labelling Regulations 1996 regarding reserved descriptions for alcohol, cheese and cream

Consultation Summary Page

Date consultation launched:	Closing date for responses:
23 October 2018	20 November 2018

Who will this consultation be of most interest to?

The alcohol and dairy industries, retailers, healthcare professionals, local authority enforcement officers, consumer groups and the general public. The consultation will also be of interest to manufacturers using ingredients with certain compositional standards in order to produce a desired outcome. For example, chocolate producers that use different types of cream to manufacture chocolate products.

What is the subject of this consultation?

A sunset clause in the Food Information (Scotland) Regulations 2014 (as amended) provides for the continued use of the low alcohol descriptors and compositional requirements for cheese and cream as contained in regulations 42 and 43 and Schedule 8 of the Food Labelling Regulations (FLR) 1996 (as amended). The sunset clause is due to expire on 13 December 2018.

What is the purpose of this consultation?

To assess the current understanding and possible continued use of the descriptive terms 'low alcohol', 'non-alcoholic', 'alcohol-free' and 'dealcoholised'. Food Standards Scotland would also like to assess the level of understanding of the compositional requirements currently in place regarding the maximum water and milk fat content of various cheeses and the milk fat content of various types of cream. The purpose of the consultation is to provide stakeholders with an opportunity to comment on whether or not the various definitions and compositional requirements should be set out in new National Regulations or would industry and consumers be content for these to be defined in best practice guidance?

Responses to this consultation should be sent to:

Name: 38(1)b
38(1)b
Food Standards Scotland
Tel: 38(1)b
E-mail address: 38(1)b@fss.scot

Postal address:
Food Standards Scotland
Pilgrim House
Old Ford Road
Aberdeen AB11 5RL

Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?

Yes

No See Annex A paragraph 14.

Consultation on the national provisions in the Food Labelling Regulations 1996 regarding reserved descriptions for alcohol, cheese and cream

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) would welcome your comments on this consultation regarding national provisions as laid out in the Food Labelling Regulations 1996 (FLR) which are due to expire in December 2018.

Introduction

1. A sunset clause in Part 2 of Schedule 4 to the Food Information (Scotland) Regulations 2014 (as amended) provides for the continued use of the national provisions for low alcohol descriptors and compositional standards for traditional UK cheeses and creams contained in the FLR. These remaining national provisions are due to be revoked on 13 December 2018.

Regulations 42 and 43 of the FLR operate in conjunction with Schedule 8 of the Regulations. They outline the descriptions laid down in Schedule 8 that must only be used when they are in accordance with the appropriate conditions set out.

FSS is consulting on how best to continue with these national provisions so that consumers can make informed choices when purchasing such products.

Proposals

2. The options being considered are:

Option 1 – To continue with the set of low alcohol descriptors of 1.2% ABV, and below, and compositional standards for cheese and cream, as laid out in Schedule 8 of FLR, beyond December 2018 through guidance rather than legislation.

Option 2 – To continue with the set of low alcohol descriptors of 1.2% ABV, and below, and compositional standards for cheese and cream, as laid out in Schedule 8 of FLR, through legislation by an amendment to the Food Information (Scotland) Regulations 2014.

Option 3 – Do nothing. Allow the set of low alcohol descriptors and compositional standards for cheese and cream to fall.

Option 4 – Extend the Sunset Clause to allow industry to discuss further.

Key proposal(s):

- To consult on how best to proceed with the national provisions currently laid out in Schedule 8 of the Food Labelling Regulations 1996.

Impact on Businesses and Enforcement Authorities

We anticipate the impact on businesses and enforcement authorities to be minimal. This consultation will be sent to a wide range of trade bodies and enforcement authorities in order to identify any impacts to businesses operating in Scotland.

Industry

It is unlikely that there will be any impact on the day to day operations as the rules are not expected to change as a result of the proposals. If it was decided that the low alcohol descriptors and cheese and cream compositional standards would be retained through guidance rather than a legislative approach, then we estimate that the reading and understanding of the guidance would take approximately 20 minutes of a production manager's time with a further 20 minutes for dissemination to key staff within each firm (a total of 40 minutes) at £20.05 per affected business in Scotland. This figure is calculated by firstly taking the 2017 Provisional ASHE (Annual Survey of Hours and Earnings)¹ figure for "Scotland production managers and directors in manufacturing" £23.14 (median value) and uprating it by 30% to account for overheads, giving an hourly wage rate of £30.08.

In the event of any changes being introduced as a result of this consultation, there would be no expectation to discard current stocks of labels. Any changes which may be required, for cheese and cream or alcoholic drinks can be carried out at the next label reprint, where it could coincide with the business carrying out a label redesign or amendment to the labelling information.

Enforcement

If relying on guidance rather than specific legislation were adopted, then Local Authorities would need to become familiar with it, although as discussed above, the rules are not anticipated to change as a result of the proposals. There are 210 enforcement officers throughout the 32 local authorities in Scotland and it is our estimation that it would take one Environmental Health Officer 20 minutes to read the guidance. The hourly pay rate for Qualified Environmental Health Officers is £15.29², averaging approximately £19.88 per hour once uprated to account for non-wage labour costs and overheads, taken as 30%. The total one-off cost is therefore estimated at approximately £1391.

We estimate that costs will fall to Government to amend legislation and/or produce guidance notes.

If your interest relates only to the national provisions for cheese and cream please proceed directly to Section B of the consultation letter.

1

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15>

2

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15>

Section A – Alcoholic Descriptors

The Use of Low Alcohol Descriptors

The Food Labelling Regulations 1996 set out in law the rules for describing alcoholic drinks containing 1.2% alcohol by volume (ABV) or less. These rules on the use of low alcohol descriptors aim to protect and inform consumers. They are due to expire on 13 December 2018.

FSS and our counterparts in the other countries of the UK are considering how best to continue to communicate information to the public about low alcohol products, so that adults can make informed choices when they purchase drinks, including alcohol. The sale of lower strength drinks, as an option for consumers, helps to encourage responsible drinking.

The FLR conditions for use of four low alcohol descriptors on drinks which would normally be expected to be alcoholic can be summarised as follows:

- Low alcohol – product must be 1.2 % ABV or lower;
- Non-alcoholic – cannot be used in conjunction with a name associated with an alcoholic drink except for communion or sacramental wine;
- Alcohol-free – product must be 0.05 % ABV or lower;
- Dealcoholised – product must be 0.5 % ABV or lower.

This consultation gives an opportunity to provide feedback and comment on how best to continue to communicate these descriptors (through a guidance or legislative approach). It also provides an opportunity to comment on the meaning of the existing descriptors.

Low alcohol descriptors contained in the Food Labelling Regulations 1996

The definitions in the FLR were introduced to protect and inform consumers and provide clarity to the alcohol industry on the labelling of low alcohol drinks. Part 1 of Schedule 8 of the Regulations contains the conditions for the use of terms describing products with reduced, or no alcohol and ensure that product labels are consistent and do not mislead the consumer in relation to their alcohol content. Use of the terms is not compulsory, but, if they are used, the products must meet the conditions set out in the Schedule. The relevant parts of the FLR are due to be revoked on 13 December 2018 by the Food Information (Scotland) Regulations 2014 (as amended) following a 4-year 'sunset' period.

Consumption of low alcohol and non-alcoholic drinks

The popularity and sales of low and non-alcoholic drinks in the UK is on the rise with a 20.5% increase in sales over the 12 months to July 2017³. The market and product range is diversifying: beers, lagers, stouts, wines and even some mixed spirits are available, with some retailers dedicating shop aisles in supermarkets to stock such products. Organisations such as Club Soda (a mindful drinking forum) are helping to educate the public and retailers to promote non-alcoholic alternatives. Figures provided to FSS by NHS Health Scotland have shown that overall Scottish sales of low alcohol and non-alcoholic beers have increased by 14% in the period 2009 – 2016.

Low alcohol products may have fewer calories than regular strength alcoholic drinks and could help reduce calorie intake as part of a healthy diet. The switch to lower and non-alcoholic beverages may have a positive effect in helping achieve public health gains in reducing UK alcohol consumption and help support people to move towards drinking less than 14 units a week as outlined in the UK Chief Medical Officers' low risk drinking guidelines published in 2016⁴.

Since December 2014, the legal drink-drive alcohol limit in Scotland has been lower than in the other countries of the UK. This may be an additional reason to retain the alcohol descriptors for beverages less than 1.2% ABV.

The Advertising Standards Authority

The Advertising Standards Authority (ASA) plays an important role in providing guidance on low alcohol descriptors to protect the public. The ASA is the established means for regulating advertising in all media (including marketers' own websites and social media); the ASA enforces rules authored by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP).

The CAP (non-broadcast) and BCAP (broadcast) Codes include detailed rules relating to the advertising of alcoholic drinks and they define alcoholic (over 0.5%) and low-alcohol (0.5 – 1.2%) drinks according to existing labelling regulations.

The rules prevent irresponsible marketing of alcoholic drinks, for example by preventing depictions of immoderate consumption, and use labelling regulations to define which products will be captured by those rules.

³ [The Grocer online: Moderation on trend as sales of low and no-alcohol beer soars. 24 August 2017.](https://www.thegrocer.co.uk/stores/consumer-trends/moderation-on-trend-as-sales-of-low-and-no-alcohol-beer-soars/556762.article)
<https://www.thegrocer.co.uk/stores/consumer-trends/moderation-on-trend-as-sales-of-low-and-no-alcohol-beer-soars/556762.article>

⁴ The UK Chief Medical Officer's low risk drinking guidelines. 2016.
<https://www.gov.uk/government/publications/alcohol-consumption-advice-on-low-risk-drinking>

The rules include some exceptions for low-alcohol drinks. For example, the rule relating to factual statements and comparisons of alcoholic strength prevents advertisements from implying an alcoholic beverage is to be preferred because of its alcoholic strength – unless it is a low-alcohol drink.

The Codes also include a rule which transposes the Nutrition and Health Claim Regulations 2006 (NHCR)⁵ and prevents advertisements from making nutrition claims for alcoholic drinks, other than those allowed under NHCR, which are "low-alcohol", "reduced alcohol" and "reduced energy".

Soft drinks industry levy

The UK Government introduced a levy on soft drinks on 6 April 2018 to help with their plan to reduce childhood obesity by removing added sugar from soft drinks. This is a new levy that applies to the production and importation of soft drinks containing added sugar.

Drinks with an ABV of up to 1.2% are included in the levy. However, the UK Government will make provisions to exempt certain drinks that fall within this category from the levy if it is an alcohol replacement drink, for example de-alcoholised beer or wine.

HM Revenue and Customs (HMRC) also use the 1.2% ABV as the point below which drinks are exempt from certain alcohol duty.

Introducing guidance for low alcohol descriptors

FSS favour the continued use of low alcohol descriptors, for beverages of 1.2% ABV and below, beyond December 2018. However, this could be done by using guidance rather than legislation. This section provides the rationale for this approach.

FSS is aware that the low alcohol descriptors have been defined in secondary legislation for many years. There may be concerns from the public that in the absence of legislation to control the descriptors, the alcohol industry may create their own descriptors and apply these to a level greater than 1.2% ABV. This is a legitimate concern. However, the absence of legislation does not mean an absence of regulation. This regulatory gap could be filled by producing guidance which we would expect the alcohol industry to follow. To further mitigate this risk, FSS would still expect the relevant enforcement authorities to refer to the new guidance when assessing whether any descriptor was misleading. Where applicable, FSS would also expect the Courts to have regard to the guidance in proceedings before them.

There will continue to be a legal framework around labelling of low and non-alcoholic products. In particular, it will continue to be an offence for labels to be misleading under Section 15(1) of the Food Safety Act 1990. The Nutrition and Health Claims Regulation (EC) No 1924/2006, which is enforced in Scotland by the Nutrition and Health Claims

⁵ Regulation (EC) No 1924/2006

(Scotland) Regulations 2007 (as amended)⁶, also requires nutrition and health claims not to be false, ambiguous or misleading.

Under the requirements of the Food Information to Consumers Regulation (EU) No 1169/2011 (FIC), the alcoholic strength by volume must appear on the labels of all beverages containing more than 1.2% of alcohol. The Food Information (Scotland) Regulations 2014 (as amended) enables local authorities in Scotland to enforce the requirements of FIC.

FSS is now consulting on whether to retain the existing descriptors which apply to alcoholic drinks of 1.2% ABV or below and how to monitor those descriptors.

FSS is therefore interested to get the views of Scottish stakeholders whether they would prefer the terms to be set out industry guidance or in new legislation.

FSS will review and assess the impact of whatever the outcome of the consultation and final decision may be (whether that is in guidance or legislation) after a 5 year period.

Question 1 : Should we introduce guidance or continue with specific legislation to define low alcohol descriptors?

Please provide a reason for your answer.

Current Descriptors for 1.2% ABV and below

Currently, the FLR set out conditions for the use of certain low alcohol descriptors. The Food Information (Scotland) Regulations 2014 (as amended) introduced a sunset clause to revoke the extant sections of the FLR before 13 December 2018.

The four descriptors have been in use for many years and are widely used on low alcoholic drinks. With the rise in demand for, and growth in choice of, low alcoholic drinks, FSS believes there would be advantages in providing continuity to the public and industry by keeping the existing descriptors for products of and below 1.2% ABV. This would provide a degree of certainty as to what low alcohol products are, and prevent confusion following the period at which the current legislation ends.

This consultation is an opportunity to consider if such descriptors still resonate with the public and industry going forward. It provides an opportunity to comment on the four descriptors and provide views. The four are set out in detail in the following sections.

⁶ SSI 2007 No. 383

Low alcohol

Under the FLR, it was understood that low alcoholic products could be described as anything from 0% to 1.2% ABV. The majority of products on the shelves using the low alcohol descriptor tend to be in the range 0.5% to 1.2% ABV.

The following text is set out in the FLR:

The description “low alcohol” or any other word or description which implies that the drink being described is low in alcohol -

Shall not be applied to any alcoholic drink unless—

- a) the drink has an alcoholic strength by volume of not more than 1.2 per cent, and*
- b) an indication of its maximum alcoholic strength in required form 1, 2 or 3.*

[Note: required form 1 is “% vol.”, required form 2 is “alcohol % vol.” and required form 3 is “alc. % vol.” as set out later in the section headed *Alcohol-free*]

FSS would welcome views around the use of this descriptor.

Question 2: Should the existing descriptor for ‘low alcohol’ meaning not more than 1.2 % ABV be retained ? Yes or No

If ‘no’ what would you prefer as an alternative?

Dealcoholised

The following text is set out in the FLR:

The description “dealcoholised” -

Shall not be applied to any drink, unless-

- a) the drink, being an alcoholic drink from which the alcohol has been extracted, has an alcoholic strength by volume of not more than 0.5 per cent, and*
- b) the drink is marked or labelled with -*
 - (i) an indication of its maximum alcoholic strength in required form 1, 2 or 3; or,*
 - (ii) in an appropriate case, with an indication that it contains no alcohol.*

Dealcoholised is a term used when alcohol is produced through the fermentation process and then removed from the final product to contain no more than 0.5% ABV. The descriptor tends to be used more for wines rather than beers and lagers. We understand that from the Department of Health and Social Care research and feedback from some industry representatives that the term “dealcoholised” does not resonate well with the public as a particular descriptor.

With the rise in the low alcohol industry and product appeal to consumers FSS would welcome views as to whether this descriptor should continue and if not, what alternatives may exist.

Question 3: Should the descriptor 'dealcoholised' be retained? Yes or No

If 'no' do you believe another descriptor could be used in its place and if so, what this descriptor should be?

Non-alcoholic

The following text is set out in the FLR:

The description "non-alcoholic" -

Shall not be used in conjunction with a name commonly associated with an alcoholic drink, except in the composite name "non-alcoholic wine" when that composite name is used in accordance with regulation 43.

Regulation 43 of the FLR: The word "wine"

- 1) Subject to the following provisions of this regulation, the word "wine" may be used in a composite name in the labelling or advertising of food for a drink which is not wine within the meaning given in point 1 of Part II of Annex VII to Regulation (EU) No 1308/2013.*
- 2) The word "wine" shall not be used pursuant to paragraph (1) of this regulation as part of a composite name which is likely to cause confusion with wine or table wine within the meaning given in point 1 of Part II of Annex VII to Regulation (EU) No 1308/2013.*
- 3) Each word that forms part of a composite name used pursuant to paragraph (1) of this regulation must appear in lettering of the same type and colour and of such a height that the composite name is clearly distinguishable from other particulars.*
- 4) The composite name "non-alcoholic wine" shall not be used pursuant to paragraph (1) of this regulation, except for a drink derived from unfermented grape juice which is intended exclusively for communion or sacramental use and which is described clearly in its labelling or advertising, as the case may be, as being exclusively for such use.*
- 5) When the word "wine" is used in a composite name for a drink which is derived from fruit other than grapes, that drink shall be obtained by an alcoholic fermentation of that fruit.*

There are a variety of alcohol free or low alcohol drinks made from grapes on the market. It may be the case that the current conditions for the use of the descriptor "non-alcoholic" are too restrictive and may not reflect the innovation in the marketplace in terms of companies producing new alcohol free products made with grapes, along with ranges of other drinks such as alcohol free beers. There are possible overlaps and confusion with this descriptor and the term "alcohol free" which is described in the next section. FSS welcomes views on this descriptor.

Question 4: Do you agree that the term ‘non-alcoholic’ should be permitted to be used otherwise than in connection with sacramental and communion wines? Yes or No.

If ‘no’, please provide a reason why.

Alcohol-free

The following text is set out in the FLR:

The description “alcohol-free” –

Shall not be applied to any alcoholic drink from which the alcohol has been extracted, unless –

- a) the drink has an alcoholic strength by volume of not more than 0.05 per cent, and*
- b) the drink is marked or labelled with –*
 - (i) an indication of its maximum alcoholic strength in a form comprising of the words “not more than” followed by a figure to not more than one decimal place indicating its maximum alcoholic strength and the symbol “% vol.” (required form 1), “alcohol % vol.” (required form 2), or “alc. % vol.” (required form 3), or*
 - (ii) in an appropriate case, with an indication that it contains no alcohol.*

Different countries define “non-alcoholic” or “alcohol-free” differently. For example, in Sweden alcohol free is classed as no more than 0.5% ABV, however in Italy non-alcoholic beer is defined as being equal to or less than 1.2% ABV.

Under section 2 of the Licensing (Scotland) Act 2005⁷, the definition of alcohol does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question. This could be seen as contradictory to advice given that a descriptor for alcohol-free is set at 0.05% ABV.

One option would be to redefine alcohol-free as below 0.5% ABV to encourage the alcohol industry to produce more low alcohol products. However, the low alcohol industry is growing and sales of 0.05% ABV products are increasing in the UK. The Industry has demonstrated that it can produce quality products which meet the current 0.05% alcohol-free definition, without any change to the existing definition.

It is unlikely there will ever be an absolute 0% ABV for these products and in addition to meeting such a target there are every day products on general sale which contain small levels of alcohol naturally such as vinegar and fermented fruit juices. Some of these products are higher than the alcohol-free descriptor set at 0.05 % but they are not required to include the descriptor.

It is important that consumers are aware of the products they are consuming and that descriptors meet public expectations. FSS is mindful that raising the bar to describe

⁷ <http://www.legislation.gov.uk/asp/2005/16/contents>

“alcohol-free” or “non-alcoholic” to a level such as 0.5% ABV may have negative consequences for consumers.

There may be a number of reasons why people choose, or are required, to avoid alcohol and increasing the level at which a product can be defined as “alcohol-free” could cause difficulty for those people. FSS welcomes views on this descriptor.

Question 5: Should the descriptor ‘alcohol free’ be retained and for this to continue at 0.05% ABV? Yes or No.

We welcome your reasoning for your answer and any alternative suggestions.

Question 6: Do you have any further comments?

Key proposal(s):

- **To assess whether to retain the low alcohol descriptors through best practice guidance or further legislation**
- **To amend or remove definitions which no longer have any relevance for the industry or consumers**

Summary of questions asked in Section A of this consultation:

Q1: Should we introduce guidance or continue with legislation to define low alcohol descriptors?

Q2: Should the existing descriptor for ‘**low alcohol**’ meaning not more than 1.2% ABV be retained ?

Q3: Should the descriptor ‘**dealcoholised**’ be retained ?

Q4: Do you agree that the term ‘**non-alcoholic**’ should be permitted to be used otherwise than in connection with sacramental and communion wines?

Q5: Should the descriptor ‘**alcohol free**’ be retained and for this to continue at 0.05% ABV?

Q6: Do you have any further comments?

Additionally, FSS would welcome responses from consumers and the alcohol industry on their preferred option from the four proposals set out in section 2.

All responses to the consultation will be considered and discussed with the UK Department of Health and Social Care, Welsh Government Health and the Food Standards Agency (FSA) (NI) before finalising the policy on the future of low alcohol descriptors.

Section B – Compositional requirements for cheese and cream

Regulation 42 and Parts II and III of Schedule 8 of the FLR make restrictions on the composition of certain types of cheese and cream such that the names appearing in the Regulations must not be used in the labelling of products that do not meet the requirements specified in the Regulations.

Schedule 8 Part II of the Food Labelling Regulations 1996 – Cheese compositional standards

Schedule 8 Part II of the FLR set out the maximum water content permitted for 12 named UK cheeses as listed in Table 1 below. It also includes the amount of milk fat in any of those named cheeses that must be present and expressed as a percentage of the dry matter as being no less than 48 per cent. These Regulations preclude the development of 'low fat' versions of the named cheeses which may be desirable in the drive to cut obesity.

Table 1 – Maximum percentage of water permitted in each variety of cheese

Variety of cheese	Maximum percentage of water
Cheddar ^{8,9}	39
Blue Stilton ¹⁰	42
Derby	42
Leicester	42
Cheshire	44
Dunlop ⁹	44
Gloucester ¹⁰	44
Double Gloucester	44
Caerphilly	46
Wensleydale	46
White Stilton ¹⁰	46
Lancashire	48

Question 1: Do you agree that the compositional requirements for milk fats and water in the named variety of cheeses as outlined in Table 1 be retained in Scottish legislation? Yes or No

We welcome your reasoning for your answer and any alternative suggestions.

Retention of the compositional requirements would ensure that the traditional cheese varieties will continue to be produced in their current form. The same effect may possibly be achieved by using industry best practice guidance.

⁸ Cheddar cheese is covered by a Codex standard which includes compositional requirements.

⁹ Orkney Scottish Island Cheddar and Ayrshire Dunlop are additionally covered by the EU Protected Food Name Scheme. The registered Protected Geographical Indication (PGI) specifications for these cheeses do not overlap the provisions of the FLR.

¹⁰ Are additionally covered by the EU Protected Food Name Scheme. The registered PDO specifications for these cheeses do not overlap the provisions of the FLR.

Question 2: Would you be content for the compositional requirements for the named cheeses to be set out in industry guidance? Yes or No

We welcome your reasoning for your answer and any alternative suggestions.

If no action was taken and the compositional requirements were allowed to fall on 13 December 2018, what effect, if any, would this have on the cheese industry and consumers? Cheese makers could then legally produce lower fat cheeses using the traditional names. This could give more choice on healthier options available to consumers. However, consumers may notice a difference compared with the traditional version due to these compositional changes.

Question 3: If no action was taken and the compositional requirements were allowed to fall on 13 December 2018, what effect would this have on the cheese industry and consumers?

We welcome your reasoning for your answer and any alternative suggestions.

Schedule 8 Part III of the Food Labelling Regulations 1996 – Cream compositional standards

Part III of Schedule 8 of the FLR set out the minimum levels of milk fat that the different named types of cream must contain as set out in Table 2 below. Regulation 42 (3) and (4) provides further details on this requirement.

Table 2 – Minimum percentage of milk fat in creams

Column 1	Column 2
Clotted cream	The cream is clotted and contains not less than 55 per cent milk fat.
Double cream	The cream contains not less than 48 per cent milk fat.
Whipping cream	The cream contains not less than 35 per cent milk fat.
Whipped cream	The cream contains not less than 35 per cent milk fat and has been whipped.
Sterilised cream	The cream is sterilised cream and contains not less than 23 per cent milk fat.
Cream or single cream	The cream is not sterilised cream and contains not less than 18 per cent milk fat.
Sterilised half cream	The cream is sterilised cream and contains not less than 12 per cent milk fat.
Half cream	The cream is not sterilised cream and contains not less than 12 per cent milk fat.

Question 4: Do you agree that the milk fat descriptors for the different types of cream should be retained in Scottish legislation ? Yes or No

We welcome your reasoning for your answer and any alternative suggestions.

As for the cheeses, the milk fat requirements for the various creams could also be retained in industry best practice guidance.

Question 5: Would you be content for the compositional requirements in column 2 for the various creams to be retained in industry guidance? Yes or No

We welcome your reasoning for your answer and any alternative suggestions.

If no action was taken and the milk fat requirements were allowed to fall. What effect, if any, would this have on the cream industry and consumers? Do consumers know how much milk fat is contained in the various named creams on sale? The same products could be manufactured and sold purely on the basis of the amount of milk fat they contain. Consumers could then select their creams based on the milk fat content rather than on the name of the type of cream.

Question 6: If no action was taken and the compositional requirements were allowed to fall on 13 December 2018, what effect would this have on the cream industry and consumers?

We welcome your reasoning for your answer and any alternative suggestions.

Question 7: Would you be content to lose the milk fat compositional requirements for the named cream varieties set out in Table 2 ? Yes or No

We welcome your reasoning for your answer and any alternative suggestions.

Question 8: Do you have any further comments?

Summary of questions asked in Section B of this consultation:

Q1: Do you agree that the compositional requirements for milk fats and water in the named variety of cheeses as outlined in Table 1 be retained in Scottish legislation?

Q2: Would you be content for the compositional requirements for the named cheeses to be set out in industry guidance?

Q3: If no action was taken and the compositional requirements were allowed to fall on 13 December 2018, what effect would this have on the cheese industry and consumers?

Q4: Do you agree that the milk fat descriptors for the different types of cream should be retained in Scottish legislation?

Q5: Would you be content for the compositional requirements in column 2 for the various creams to be retained in industry guidance?

Q6: If no action was taken and the compositional requirements were allowed to fall on 13 December 2018, what effect would this have on the cream industry and consumers?

Q7: Would you be content to lose the milk fat compositional requirements for the named cream varieties set out in Table 2 ?

Q8: Do you have any further comments?

Additionally, FSS would welcome responses from consumers and the dairy industry regarding their preferred option from the four proposals set out in section 2.

All responses to the consultation will be considered before finalising the policy on cheese and cream descriptors.

Consultation Process

A 4 week consultation is being launched to provide interested parties with the opportunity to comment on the consultation.

Following the consultation, we will review the responses received and consider whether the national provisions should be laid out in legislation or guidance. All responses will be considered to decide upon the best way forward for Scotland. We particularly welcome responses and general feedback following the questions asked. For each question please explain your response and provide evidence (where possible) to support your views.

Please send your comments by e-mail or post using the contact details on the front page or via the online questionnaire.

We are particularly keen to hear from Small and Medium Enterprises on any likely impact and would encourage them to comment on all aspects of this consultation.

Responses

This is a shortened 4 week consultation and therefore responses are required by close **20 November 2018**.

Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents). If you are replying by post then please note the address at the bottom of the first page of this document.

We will summarise all comments received and the official response to each will be published on the FSS website within three months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

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Food Standards Scotland

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties

Annex C: Consultation Feedback Questionnaire

Annex D: Data Protection Form

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

GDPR, Publication of personal data and confidentiality of responses

2. The European General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was developed to harmonize data privacy laws across Europe. In accordance with the GDPR, we are required to provide a privacy notice in relation to this public consultation. Food Standards Scotland will be known as the “Controller” of the personal data provided to us. We need to collect this information to allow us to effectively carry out our official duties of policy development and for the purposes of record keeping. In responding to this consultation, you have consented to provide this information to us but are able to withdraw your consent at any time by getting in touch with us.
3. Personal information is stored on servers within the European Union and cloud based services have been procured and assessed against the national cyber security centre cloud security principles. Personal information will not be used for any purpose other than in relation to consultations. Personal information will be stored for as long as necessary to carry out the above functions and for five years from receipt in accordance with our retention policy. No third parties have access to your personal data unless the law allows them to do so.
4. You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner’s Office (ICO). Our Data Protection Officer in the FSS is the Head of Corporate Services who can be contacted at the following email address: [38\(1\)b @fss.scot](mailto:38(1)b@fss.scot).
5. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation as per our retention policy. FSS will not publish anything without your consent. If you have any queries please email: [38\(1\)b @fss.scot](mailto:38(1)b@fss.scot) or return by post to the address given on page 1.
6. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with FSS. However, we will take into account your views when making this decision.
7. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

8. A list of interested parties to whom this letter is being sent appears in Annex B. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
9. Please contact us for alternative versions of the consultation documents in Braille or other languages.
10. Please let us know if you need paper copies of the consultation documents or of anything specified under 'Other relevant documents'.
11. This consultation has been prepared taking account of the Consultation Criteria.
12. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

Criterion 1 — When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 — Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 — Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 — Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 — The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 — Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 — Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

13. Criterion 2 states that *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.* This consultation is not being held for a full 12 weeks in order to seek information from stakeholders on how best to proceed with these national provisions prior to 13 December 2018.
14. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation.
 - a. FSS is required to identify and quantify regulatory burdens to business. Our initial assessment suggests that the proposed use of guidance or regulation, is

likely to have no impact on business if the current descriptors are maintained. The costs will be borne by Government to produce and provide the guidance.

- b. Depending on the consultation outcome however, there may be views expressed to suggest some descriptors should be no longer used or alternatives presented. There may be costs to industry in changing labels on drinks to do this if this approach is taken. In this case, FSS will produce an impact assessment on the costs and benefits of the approach to be taken as part of its consultation response.

Comments on the consultation process itself

15. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by sending an email to [38\(1\)b @fss.scot](mailto:38(1)b@fss.scot) or return by post to the address given on page 1.