

Enforcement Delivery

Enforcement@fss.scot

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FSS/ENF/22/007

Dear Lead Food Officers

LABELLING AND COMPOSITION CHANGES IN RESPONSE TO SUPPLY CHAIN DISRUPTION – UPDATE 2

FSS would like to update you following our previous correspondence of [22 March](#) and [14 April](#) concerning the reformulation of products due to supply chain issues linked to the current conflict in Ukraine.

This letter provides an update on relevant products. Please refer to the previous letters for supporting information. To note, having reviewed the previous two letters on this issue we have taken the decision to downgrade their classification from OFFICIAL SENSITIVE to OFFICIAL, making them more widely accessible. These have now been provided with 'ENF' reference numbers and published on the website.

Supply Chain Issues

Further to our initial correspondence concerning the substitution of sunflower oil with refined rapeseed oil, we are aware of a number of requests concerning the substitution of sunflower oil with vegetable oils other than rapeseed. In order to inform decision making, we have now assessed the risk to consumers in respect of the use of a number of other vegetable oils in reformulations, namely **fully refined palm oil, fully refined soybean oil and fully refined coconut oil**¹.

An overview of all the oils and other related products is provided in **Annex I**. These have been considered and risk assessed. Associated risk assessments have been published on food.gov.uk^{2 3}.

¹ Fully refined vegetable oils are described as edible neutralised (alkali refined) bleached and deodorised (N/RBD) oils.

² [Rapid risk assessment on the risk of allergic reactions in UK consumers if sunflower oil is substituted with refined rapeseed oil](#) | Food Standards Agency

³ [Rapid risk assessment on the risk of allergic reactions in UK consumers if sunflower oil is substituted with certain vegetable oils](#) | Food Standards Agency

It is important to emphasise that the ingredients associated with these substitutions are not included in the list of 14 allergens specified in Retained Regulation (EU) 1169/2011 on the Provision of Food Information to Consumers. In fact, fully refined soybean oil is specifically exempt from Annex II requirements. However, we cannot rule out the possibility that some hypersensitive consumers may experience a reaction when consuming food containing these ingredients.

Enforcement Considerations

It should be noted that substitution of an ingredient without it being accurately represented on the labelling is not in accordance with food law⁴, Whilst FSS can promote “best practice” concerning enforcement, local authorities are still responsible for enforcement on a case-by-case basis in accordance with Crown Office guidance. As you will be aware, The Crown Office guidance (second link below) sets out the appropriate approach as, “[i]n general the approach of most agencies will be to secure compliance with the law by educating and offering advice in the first instance and enforcement of provisions by direct action may be the next step. Reporting cases to the Procurator Fiscal will be seen as a last resort.” Also, “Procurators Fiscal assume that a responsible public body will not report a matter unless it is of some importance, but it is desirable to state the reasons for the reporting. A court will certainly require this information to be given in deciding how serious an offence is and what penalty is appropriate.” Overall, we would remind LAs that any proposed enforcement action in relation to food law should be proportionate, consistent, accountable, transparent, targeted, timely and in the public interest.

In considering whether to initiate enforcement action, Food Authorities should take account of the following:

- [The Food Law Code of Practice\(Scotland\)](#)
- [Reports to the Procurator Fiscal – A Guide For Non-Police Reporting Agencies](#),
- [The principles of Better Regulation set out in the FSS Regulatory Strategy – that regulation be proportionate, consistent, accountable, transparent, targeted and timely](#)
- [Scottish Regulators' Strategic Code of Practice](#).
- The Food Authority's Enforcement Policy.

Whilst FSS cannot condone or sanction the substitution of any oil without updated labelling (as this would be in contravention with Regulation 1169/2011), to support LAs in their discussions with businesses and to inform enforcement decisions, we have developed a checklist (**Annex II**) of considerations that should be explored in determining, on a case by case basis, how to apply a pragmatic and proportionate approach to enforcement in any given circumstance.

When considering these factors we ask LAs to ensure that the business has provided sufficient information on supporting mitigations and the necessary steps being taken, with timescales, for working towards compliance.

⁴ Regulation 1169/2011

It must be emphasised that this correspondence is only relevant in relation to substitutions involving the ingredients specified within Annex I of this letter. It is important that each request is considered on a case-by-case basis for each individual product where the FBO is considering a substitution. It is also important to stress that the UK has no control over how food labelling changes will be enforced outside the UK.

We continue to encourage LAs to consider the unforeseen circumstances which may lead to supply chain disruption, and recognise the vital role you play in supporting business compliance, whilst adopting an enforcement approach that is reasonable, proportionate, risk based and considered on a case-by-case basis.

FSS is monitoring the position in relation to ongoing supply chain disruptions and would like to, again, take this opportunity to express our gratitude for all the information and feedback being provided.

We will continue to monitor the position in relation to ongoing supply chain disruptions and notify you of any further developments.

Local Authority Next Steps

FSS is continuing to seek to gather information on instances where an LA becomes aware of any FBO product reformulations in response to supply chain disruption, which are not reflected on existing packaging, as part of our statutory function of obtaining and reviewing information on food safety and consumer interests. Therefore, we request that LAs notify us of these instances via email to enforcement@fss.scot , providing the following information:

- Details of the reformulation;
- Products/batches affected;
- Reason/s for and scope of the reformulation;
- Any associated mitigations (e.g. the provision of additional information through the use of a point of sale notice, overstickerering)
- Details of the intended end date for the reformulation;
- Intended market/s for the product/s concerned.

Please explain the reasons for collating this information to the food business operator, and confirm that the information will be submitted to Food Standards Scotland and may be published and made available to all UK local authorities.

A notification template has been developed for this purpose, a copy of which is attached to this email. Please ensure that all information requested in the template is provided where possible, including the intended date by which labelling is expected to be compliant, as this has been missing from some notifications already received.

Where information such as batch codes is not known at the time of notifying us please update us when you have obtained the information from the business.

Please contact enforcement@fss.scot if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read "A Morrison".

Andrew Morrison

Head of Enforcement Delivery Branch

Annex I

The table below specifies substitutions which have been subject to the risk assessment process.

Ingredient to be Substituted	Substituted with	FSA Risk Assessment Outcome			Other consumer interest considerations
		Frequency of allergic reactions	Severity of illness in relation to allergic reactions	Level of uncertainty	
Sunflower Oil	Refined Rapeseed Oil	Very Low	Negligible	Medium	The presence of GM refined rapeseed oil should be labelled in line with existing requirements.
Sunflower Oil	Fully Refined Soybean Oil	Negligible	Negligible	Low	Potential for sustainability concerns depending on source of soybean oil. The presence of GM refined soybean oil should be labelled in line with existing requirements.
Sunflower Oil	Fully Refined Palm Oil	Very Low	Negligible	Medium	Potential concerns around sustainability depending on source of palm oil and other ethical issues associated with the use/consumption of palm oil. Nutritional content and wider health profile of palm oil is inferior to that of sunflower oil which may affect the accuracy of nutrition labelling depending on quantities involved.
Sunflower Oil	Fully Refined Coconut Oil	Very Low	Negligible	Medium	Nutritional content and wider health profile of coconut oil is inferior to that of sunflower oil which may affect the accuracy of nutrition labelling depending on quantities involved.
Sunflower Lecithin	Alternative lecithins not derived from any of the 14 allergens	Not required due to existing flexibilities in legislation	Not required due to existing flexibilities in legislation	Not required due to existing flexibilities in legislation	The terms 'lecithin' and/or 'E322' may be used without any reference to the origin of the lecithin (with the exception of lecithins derived from allergens listed in Annex II of REUL 1169/2011). This relates to products where 'sunflower lecithin' is specifically stated in the ingredients list on a voluntary basis.

Annex II

Factors to explore when determining enforcement action on a case-by-case basis:

Factors to consider	Yes/No?	Comments
Can the business re-label immediately to reflect the change in ingredient?		
If they can't re-label, is the reformulation/substitution of the ingredient necessary as a result of exceptional circumstances, and does the need to ensure the supply of food justify the need to reformulate?		
Does the reformulation negatively impact the consumer's ability to make safe and informed food choices, taking into account the risk assessment provided?		
Can the traceability of the food be assured to enable products to be effectively removed from the market if a food safety issue is identified?		
Could the reformulation mislead the consumer as to the nature, substance or quality of the food, or be used to mask fraudulent activity or achieve unfair commercial gain by unscrupulous businesses?		
Is the ingredient being substituted likely to be a factor in a consumer's decision to purchase the food, for example a 'sunflower spread' that does not contain sunflower oil?		
Has the FBO taken sufficient steps to mitigate the potential risk to consumers as a result of the amendment to the product's composition?		
Has the business taken reasonable steps to ensure that the general requirements relating to the provision of food information to consumers are maintained as far as possible? This includes applying alternative compliant labelling information that reflects the substitution of ingredient(s) as soon as practicable, for example by over-stickering or ink jetting.		
Has the business put in place mechanisms to respond to individual customer enquiries about individual products and batches of these where substitution may have taken place, for example, by publishing these details on its website or putting a system in place to make it available through its customer services mechanisms?		
Is the FBO taking all reasonable steps to re-align labelling of the affected products with the legislative requirements in as short a period as possible?		