businesscompanion
trading standards law explained

# Date and lot marking of prepacked food

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Although the United Kingdom left the European Union (EU) in 2021, certain pieces of legislation (known as 'assimilated law') continue to apply until such time as they are replaced by new UK legislation, revoked or permitted to expire. This means that our guidance still contains references to legislation that originated from the EU.

In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

**This guidance is for Scotland**

This guidance relates to prepacked food.

'Prepacked food' is defined in assimilated Regulation (EU) No 1169/2011 *on the provision of food information to consumers* as "... food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging ...". Detailed information on prepacked food can be found in 'Labelling of prepacked foods: general'.

The definition of prepacked does not cover food packed on the sales premises at the consumer's request; nor does it cover food that is sold from the premises on which it was packed, or from a mobile stall or vehicle being operated by the packer (referred to as 'prepacked for direct sale'). For more information, see 'Labelling of non-prepacked foods' and 'Labelling of prepacked-for-direct-sale foods'.

Most prepacked foods must be marked with either a use-by date or a minimum durability date (of which there are two types: 'best before' and 'best before end').

Food business operators (FBO, which means any business involved in the manufacture or supply of food for human consumption, including retailers)can change the durability indication (best-before and best-before-end dates, not use-by dates) if necessary. They then become responsible for the accuracy of any changes that they make. This enables, amongst other things, FBOs to freeze a product if it is appropriate to do so. An FBO that freezes a product needs to indicate the new durability date and give the appropriate conditions of use and storage instructions.

Altering durability dates can have potentially serious consequences and before doing so it is best practice to conduct any necessary research (microbiological testing etc) to ensure that the safety and quality of the food will be maintained until the new durability date.

Regardless of which type of date marking is used, you can replace the date with a statement of where the date may be found on the packaging - for example, 'Best before - see base of pack'.

Most prepacked foods must also carry a batch and/or lot number so a product can be traced if necessary.

## Use-by date

Food that is highly perishable and therefore likely to pose a danger to human health after only a short time must be marked with a use-by date.

The following are examples of products that will usually require a use-by date:

- fresh meat, fish and poultry
- cooked meat
- dairy products
- ready-made meals
- salads
- soft cheeses

However, not all types of the above products will require a use-by date - for example, butter is a dairy product, but only requires a best-before date (see 'Date of minimum durability' below). A best-before date may be used if an FBO has carried out a documented risk assessment and determined that there is no risk to health if the product is consumed after the best-before date has passed. Please contact your local Trading Standards service for advice on specific products.

The use-by date must be given in the format 'use by: day / month' - for example, 'Use by: 23 January'. You may add the year if you wish.

The date must be given in the order day, month, year, and be uncoded. To prevent confusion, write the month in words rather than numbers - for example, '05/06' could mean 5 June or 6 May but '05 June' can only mean 5 June.

If the product is made up of a number of individually prepacked products, the use-by date must appear on

each.

## Date of minimum durability

There are two types of minimum-durability date - 'best before' and 'best before end' - and which one to use will depend on the life of the product.

If there are certain storage conditions that have to be followed for the food to last until the given date, then this must be stated on the packaging.

Other date markings, such as 'display until', do not have any legal standing and are confusing to consumers; such date markings should not be used, except in the case of eggs (see below).

### Foods with a shelf life of three months or less

'Best before: day / month' - for example, 'Best before: 23 January'. You may add the year if you wish.

### Foods with a shelf life of between three and 18 months

These must be marked with either 'best before' or 'best before end', as follows (your choice):

- 'Best before: day / month / year' - for example, 'Best before: 23 January 2025'
- 'Best before end: month / year' - for example, 'Best before end: January 2025'

### Foods with a shelf life of greater than 18 months

- 'Best before end: Year' - for example, 'Best before end: 2025'

## Conditions of sale

Foods marked with a use-by date must not be sold or displayed for sale after their marked dates. It is an offence to sell or offer for sale food past its use-by date. For example, 'Use by 23 January' means use by midnight on 23 January. An offence has been committed if the product is still on display on 24 January.

Foods marked with best-before or best-before-end dates may be sold after their marked dates, provided that they remain of good quality and are fit for human consumption. In these circumstances it is advisable to ensure that customers know that the date has expired before they make the decision to buy. The manufacturer is responsible for the quality of the product until the stated best-before / best-before-end date. If the retailer chooses to amend the date, or sell the product after the stated date, they must then take responsibility for the quality of the product.

The only exception to the above is eggs. See ''Best before' and 'sell by' dates' in 'Retail sale and labelling of eggs' for more information.

The date marking on prepacked foods must be clearly legible, easily visible and indelible; it must not be obscured, or partly obscured, by price stickers or in any other manner.

### Good retail trading practice

- carry out date-marking checks on foods each morning before you open, or last thing at night after closing. Do not leave it to your suppliers to do this when they make their deliveries. Any offences committed for selling or offering to sell goods after the use-by date will be committed by the retailer, regardless of whether you rely on the supplier to conduct the checks
- remove foods marked with out of date use-by dates (place these in a container in a part of the premises not accessible to customers and clearly mark the container 'Not for sale')
- consider reducing the price of food for quick sale before it goes out of date

## Exemptions from date marking

- fresh fruit and vegetables (unless peeled or cut into pieces, or legume sprouts (beans, peas, etc))
- wine, liqueur wine, sparkling wine, aromatised wine and similar drink obtained from fruit other than grapes
- any fermented drink, mixture of fermented drink or mixtures of fermented and non-alcoholic drink made from grape or grape must
- any drink with an alcoholic strength by volume of 10% or more
- any flour confectionery (sweet pastries, cakes and similar baked goods) and bread that is normally consumed within 24 hours of its preparation
- vinegar
- cooking salt
- solid sugar and confectionery products consisting almost solely of flavoured or coloured sugars
- chewing gum and similar

## Lot marking

Most prepacked foods intended for human consumption must carry lot or batch marking (unless specifically exempted). This is to enable a product to be traced and/or recalled with the maximum efficiency, if necessary.

It is not necessary for the consumer to understand the lot / batch mark, provided the indication can be clearly identified. The mark may have to be prefixed by the letter 'L' if it is not clearly distinguishable from other information (such as the use-by date or minimum durability marking) and must be clearly visible, clearly legible and indelible.

Lot marking should be visible on the exterior packaging, such as where retail packs are sold wholesale in boxes or shrink-wrapped trays.

Where individual products sold at retail level are sold in additional packaging (for example, whisky in a presentation box), it is good practice to put the lot marking on the external retail packaging (the box) as well as the label of the bottle on the inside. This is so that the correct items can be identified for recall without opening all of the individual boxes.

Bearing in mind any possible need for a product recall, the manufacturer / packer will have to decide on the size of the batch to be given the specific lot mark. Large batches could result in more products having to be recalled than is perhaps necessary.

Where a product bears a use-by or best-before / best-before-end date that consists of at least the day and the month (in that order), this is sufficient batch identification to serve as the lot mark. If not, a separate lot mark must be given.

In order to minimise losses in the case of a withdrawal / recall, and dependent upon the volume of product and frequency of production, you may wish to add additional lot coding for ease of identification.

## Exemptions from lot marking

- foods sold to consumers, which are not prepacked (loose food sold without packaging - for example, loose vegetables) or are placed in packaging at the request of the consumer
- foods sold to consumers, which are prepacked on the premises and sold from the same premises, or from a mobile stall or vehicle used by the packer (known as prepacked-for-direct-sale)
- foods that are in a package or container of which the largest size has a surface of less than 10 $cm^2$
- individual portions intended as an accompaniment to another food provided at catering establishments for immediate consumption - for example, sachets of salt, sugar or sauces
- individual portions of ice cream and other edible ices
- units of food that are marked or labelled with a use-by or best-before / best-before end date that consists of at least the uncoded indication of the day and month in that order

## Date of freezing

Frozen meat, frozen meat preparations and frozen unprocessed fishery products require a declaration of the date of freezing (or the date of first freezing in cases where the product has been frozen more than once). It shall be preceded by the words 'frozen on' followed by an uncoded indication of the day, month and year in that order, or a reference to where on the label such a date can be found.

## Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

> In Scotland, food labelling laws are not generally enforced by Trading Standards services, but rather by Environmental Health. However, we have included In-depth Guides on food for Scotland in order to provide more comprehensive guidance.

## In this update

New guidance for Scotland.

Last reviewed / updated: September 2023

## Key legislation

- Food Safety Act 1990
- Food (Lot Marking) Regulations 1996
- General Food Regulations 2004

- assimilated Regulation (EU) No 1169/2011 *on the provision of food information to consumers*
- Food Information (Scotland) Regulations 2014

## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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