

PRIMARY AUTHORITY ASSURED ADVICE

CCC/860039/I

Glazed Seafood Weight Indication

If you require further information and the full version of this advice and guidance, please contact the Primary Authority via the Primary Authority Register. Alternatively email deniserion@bfff.co.uk

Notes:

1. This document includes best practice advice and a brief summary of the requirements of the [Primary Authority Statutory Guidance](#). It should be read alongside the Primary Authority Statutory Guidance.
2. Primary Authority Advice is assured. This means that when a business is following the advice the primary authority can direct against any proposed enforcement action which is inconsistent with the advice

Introduction

This Primary Authority Advice has been produced by Cambridgeshire County Council in partnership with British Frozen Food Federation for use by members of British Frozen Food Federation to help your business comply with the law. If you follow this advice correctly your local trading standards officer should respect this and not ask you to comply with the law in a different way.

The Cambridgeshire County Council contact:
Primary Authority partnership Administration
primaryauthoritypartnerships@peterborough.gov.uk

Primary Authority Advice

Relevant Legislation:	Assimilated REGULATION (EU) No 1169/2011 on the provision of food information to consumers (FIC) Note: European Regulation on the provision of food information to consumers (EU) No. 1169/2011 (FIC) applies in the GB as “assimilated EU law”. The Food Information Regulations 2014 (FIR) as amended, and equivalent regulations in Wales, Northern Ireland and Scotland provide for the execution and enforcement of the EU FIC in the UK. The Price Marking Order 2004 The Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, Meat and Poultry) Order 1984 (legislation.gov.uk)
Geographic Applicability:	This has the status of Primary Authority Advice in England.
Scope:	This advice is addressed to businesses in the regulated group which are food business operators.
Details of request:	Under what circumstances can a ‘gross’ (inclusive of glaze) weight be presented without such information being potentially misleading, ambiguous or confusing to the final consumer or mass caterer?
Advice provided:	Legislation Food Information to Consumers Regulation (FIC) The FIC covers food intended for supply to the final consumer or to the mass caterer. Although both prepacked and foods sold loose are included in the scope of the regulation, Article 44 exempts non prepacked foods from needing to provide information which is not needed for food safety purposes. Below are some relevant definitions and extracts from the FIC. - ‘Mass caterer’ as ‘any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer’.



- **‘Prepacked food’** means ‘any single item for presentation as such to the final consumer and to mass caterers, consisting of a 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;

‘Prepacked food’ does not cover foods packed on the sales premises at the consumer’s request or prepacked for direct sale’.

- **‘Means of distance communication’** as ‘any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those ‘parties’.

Article 9.1(e) of the FIC requires the net quantity of the food to be provided.

Article 23 provides more detail and Annex IX provides technical rules for applying the net quantity requirements. Annex IX, part 5 includes the following; ‘Where the food has been glazed, the declared net weight of the food shall be exclusive of the glaze’.

The relevant provisions on additional voluntary information included in **article 37**, ‘*Voluntary food information shall not be displayed to the detriment of the space available for mandatory food information*’ and in **Article 36** that food information provided on a voluntary basis ‘*shall not mislead the consumer*’ and ‘*shall not be ambiguous or confusing for the consumer*’.

In interpreting these provisions in respect of food presented in an ice glaze, it has been agreed that there are few if any circumstances where a ‘gross’ (inclusive of glaze) weight can be presented without such information being potentially misleading, ambiguous or confusing to the final consumer or mass-caterer.

The Price Marking Order 2004 (PMO)

The Price Marking Order 2004 (PMO) has a different scope to that of the FIC. It applies to retail point of sale information and advertisements where the selling price of the product is indicated. It includes mail order catalogues and print or electronic price lists. The PMO is limited to ‘sales by traders to consumers’ and not business to business transactions. Therefore, sales material intended for other businesses such as mass caterers would be outside the scope of the PMO.

Some relevant definitions from the PMO:

- **Advertisement**, ‘means any form of advertisement which is made in order to promote the sale of a product but does not include any advertisement by means of which the trader intends to encourage a consumer to enter into a distance contract, a catalogue, a price list, a container, or a label.

- **Consumer**, ‘means any individual who buys a product for purposes that do not fall within the sphere of his commercial or professional activity’.



1.0 Supplying to a wholesale business.

1.1 What regulations / rules apply when supplying a wholesale business?

If you are supplying to a wholesale business, this is outside the scope of the PMO, but does fall within the scope of the FIC. The labelling requirements of the FIC do not apply to transactions between wholesale businesses, but there are requirements to provide accurate information to ensure the correct provision of food information to the final consumer and to mass caterers further along the supply chain.

Article 8(7) of FIC sets out the information requirements for prepacked food either intended for sale to final consumers but marketed at a stage prior to that, or intended for sale to mass caterers for preparation, processing, splitting, or cutting up. These require the name of the food, the date of minimum durability / use-by date, any special storage conditions (for example 'keep frozen') and the name and address of the food business to appear on the external packaging, though all the mandatory information (which will include net weight) must be provided, either on the packaging or on documents sent prior to or at the same time as delivery.

1.2 I am supplying bulk cartons of product to a wholesale business. It is prepacked for the final consumer or mass caterer. Does FIC apply?

The FIC applies in full and therefore you may only declare a net weight.

1.3 I am supplying to a wholesale business with bulk cartons containing multiple packages (prepacked food intended for sale to the final consumer or mass caterer). Does the FIC apply?

All mandatory information must appear on the packaging of the inner package, intended for sale or on a label attached to it, or on documents that either accompany the food or can be guaranteed to be sent either before or with the delivery. Four pieces of mandatory information must additionally be on the outer packaging. These are the name of the food, the date of minimum durability / use-by date, any special storage conditions (for example 'keep frozen') and the name and address of the food business.

The inner packages intended for sale to the final consumer or mass caterer, if labelled at this stage, must be labelled in compliance with the FIC and may only declare a net weight. The outer cartons can have a total weight if needed (e.g., for manual handling) but the outer cartons must be removed before sale to final consumer or mass caterer.

Additionally, the way this information is presented must not mislead. For example, the product description, number of packs and net weight must be prominent, but a clearly distinguished handling weight can be given.



1.4 I supply bulk packs of product to wholesale business and processors. The bulk pack contains smaller internal packages to maintain quality during use. These are not for individual resale. Does the FIC apply?

In this case the labelling can be on the outer packing when sold to wholesaler , processor or re-packer in accordance with article 8 business to business supplies, as in Q 1.2 the inner packs should not be sold separately to mass caterer or the final consumer without full labelling.

If the inner packs are later sold individually to the final consumer or mass caterer, then it is the responsibility of the person selling these inner packs to the final consumer or mass caterer to ensure the product is correctly labelled.

A 'Total Package Weight' or 'Total Handling Weight' is allowed to be displayed on these outer cases if required. To avoid possibility of confusion this additional information must not appear on any face that does not also include the net weight and must not be more prominent than the net weight and must also be quite clear as to what it is e.g.'Gross handling weight'.

1.5 I supply product packed in bulk for repacking or reprocessing before sale to the final consumer or mass caterer, what regulations apply?

The FIC mandatory labelling requirements do not apply. Article 8(6) of the FIC requires 'food business operators, within the businesses under their control, shall ensure that information relating to non-prepacked food intended for the final consumer or for supply to mass caterers shall be transmitted to the food business operator receiving the food in order to enable, when required, the provision of mandatory food information to the final consumer'.

A 'Gross Package Weight' or 'Total Handling Weight' is allowed to be displayed on these outer cases if required. This additional information must not appear on any face that does not also include the net weight/must not be more prominent than the net weight and must also be quite clear as to what it is.

1.6 What weight / glaze information might a re-packer or processor need?

Processors may add ingredients still frozen including glaze. They will therefore need to know how much glaze is on the product to be able to declare the water added to the new product, as well as the amount of the ingredient. Therefore, they will need a gross and net weight.

Re-packers will need to be able to measure the correct pack weight without thawing but will need to label with net weight. Therefore, they will need a gross and net weight.

Where the product is to be sold loose, the wholesaler will need accurate information to pass on to the final consumer or mass caterer. Therefore, they will need a net and a gross weight.

A 'Gross Package Weight' or 'Total Handling Weight' is allowed to be displayed on these outer cases if required. This additional information must not appear



on any face that does not also include the net weight/must not be more prominent than the net weight and must also be quite clear as to what it is.

2.0 Supplying to the final consumer or mass caterer.

2.1 I buy bulk packed product and sell loose by weight to the final consumer or mass caterer; how should I declare the weight?

If the product is being sold loose to the final consumer or mass caterer, then the FIC specific requirements for weight indications do not apply; article 7 *Fair information practices* does apply. Additionally, fish sold loose (other than shellfish in shell) must be sold in line with requirements of the Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 ("the 1984 Order"). This requires that unless an exemption applies, fish sold loose must be sold by weight, or by gross weight where the tare weight is within a specific tolerance. There is also a general requirement for the information provided to be accurate and not mislead. In this case, the description should include the amount of glaze on the product or state the net weight. The PMO will also apply to sales to the consumer and clear information on how much 'net' product there is per unit of weight. This will include products packed to order through distance communications.

2.2 I sell prepacked consumer sized packs to the final consumer or mass caterer; how should I declare the weight?

If the product is prepacked the FIC requires the net weight only to be indicated.

2.3 I sell prepacked product to the final consumer or mass caterer and grade products by number per weight, or weight per individual item, how should this be calculated?

Traditionally some product is graded using various industry standards. This is to give an indication of size of product and the actual pack weight will be given additionally. Whichever grading scheme is used it should be based on net weight without glaze. For example, a cooked and peeled product could be graded 175-275 meaning between 175 and 275 items per lb. This should be based on the number per lb, net of glaze. Using the glazed weight would give fewer items per lb which can make the items appear larger and therefore of higher value. This is considered to be misleading.

The actual pack weight must be given in metric and net of glaze.

3.0 Instore labelling

3.1 How should prices be given in a retail store?



The Price Marking Order 2004 requires the selling price and, where appropriate, the unit price to be clearly displayed. The unit for seafood is price per kg, except for “cooked or ready-to-eat fish seafoods and crustacea” where it is per 100g. The weight of the product must be based on the net weight without glaze. All prices must be inclusive of VAT and all other taxes. Prices must also be displayed in an ‘unambiguous, easily identifiable and clearly legible’ manner. The Order applies to business that sells to consumers, but not business to business.

3.2 How should prices be given in a wholesale store?

If the public has no access to the store and only business to business sales are conducted the PMO does not apply. However, if the public can buy from the store, then the PMO will apply.

3.3 I buy in bulk and repack in store in set weights e.g., 1kg, 2kg. What regulations apply?

The product is exempt from the giving a weight under FIC. However, if you are selling by retail, you must label your packages with the net weight in line with the requirements under the 1984 Order. If selling to the consumer the PMO will apply and the unit price per kg/100g net must be given.

3.4 I sell prepacked for direct sale to business only including mass caterers. What regulations apply?

If a seller is packing on site, the product is exempt from the giving a weight under FIC. As no product is sold to the consumer then the PMO will not apply. Labelling must be accurate and not mislead and can be net and gross weight.

3.5 I sell prepacked for direct sale to business, but the public have access also?

If a seller is packing on site, the product is exempt from the giving a pack weight under FIC. If selling to the public, the 1984 Order and the PMO 2004 apply so the weight and price per net weight would need to be given at the point of sale or in sales material.

4.0 Distance selling

Distance selling is any sale where the parties to the sale are not simultaneously present. Most commonly internet, telephone, or mail order.

Article 14 of the FIC includes sales by distance communication in its scope in the same way as for sales in person. The determining factor on whether the FIC applies is who the product is being supplied to and if it is prepacked. For distance sales of prepacked product to the final consumer or mass caterer, sell by net weight following the advice given above for sales in person; food information including quantity to be available for the consumer before purchase.



For distance sales of food sold loose and packed by weight at the request of the customer the PMO will apply. These products will be sold by net weight in accordance with article 8.

5.0 QUID labelling

As the glaze is not considered part of the food it is not permitted to include glaze as an ingredient of the food. This would be a weight indication other than net weight and so is not permitted.

The total unglazed weight indication, and water and / or fish content must be indicated as a percentage of the unglazed product in the ingredients list or next to the name of the food.

Supplying to	Pre – packed food	Loose or packed on site
Wholesale businesses or processors. Product may be: - Prepacked for the final consumer units but packed in bulk cartons. - Bulk packed to be repacked or relabelled before selling. - Used in another product.	- If prepacked for the consumer – net only on consumer pack. Outer cartons can give a handling weight for the carton. - If bulk packs intended for repacking or processing - FIC requires necessary information to be supplied with product. - PMO does not apply	- FIC requires necessary information to be supplied with product. - PMO does not apply. - 1984 Order does not apply.
Final consumer Product may be: - Prepacked; or - Loose.	FIC applies – net only. - PMO applies at point of sale – net only.	FIC does not require labelling. - The 1984 Order applies - net weight to be used or gross weight can be used where the tare weight is within a specific tolerance. Shellfish in shell exempt from marking weight. - Must be accurately described. - PMO applies – price per net weight must be displayed at point of sale, drained net weight where applicable.
Mass Caterer Product may be: - Prepacked; or - Loose.	- FIC Applies – net only. - PMO does not apply.	FIC does not require labelling. - The 1984 Order only applies to retail sales. - Must be accurately



			described.
Document references:			
Communication with businesses	This advice will be published in electronic format and located in the Technical Guidance area of the BFFF website: http://bfff.co.uk/technical/guidance/ .		
Communication with enforcing authorities:	An enforcing authority, proposing to take enforcement action against a business, is only required to notify the primary authority, where they are aware that the business is a member of a regulated group. While guidance states that the enforcing authority should ask you whether you are relying on Primary Authority advice, we recommend that you ensure you communicate this as soon as possible, and do not wait to be asked. (para 21.5 of the Statutory Guidance refers). The scheme does not allow for a business to make a notification to the primary authority where an enforcing authority has already taken action in respect of which it [the enforcing authority] failed to make the required notification to the primary authority (para 21.20 of the Statutory Guidance refers). Additionally, the rules allow for you (or the Co-ordinator) to notify the primary authority (para 21.19 of the Statutory Guidance refers). Once a primary authority receives notification, statutory time limits apply (usually 5 days) in which time they must respond to the notification. (Paras 21.9 & 21.10 of the Statutory Guidance refer).		
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