

Glazed Seafood Weight Indication Guidance

Disclaimer: This document is not a definitive interpretation of the law, which only the courts can provide. It is the responsibility of the individual business to ensure compliance with the law.

Summary

Frozen seafood or fishery products which are presented for sale to the final consumer or to mass caterers with a protective ice-glaze should only have their 'net' weight indicated. This should be the weight of the product itself, i.e. product without the glaze.

Indications of the size of the individual food products, for example the size of prawns within the package, should also be given net of glaze, referring to only the drained product.

Products traded between businesses (other than caterers) are subject to different rules. Businesses should be aware that the products, once they are placed on the market to caterers or the final consumer, will require this information.

There are also requirements for the price marking of goods offered for sale to consumers. Price marking must also be based on the net drained weight of the product.

Introduction

Frozen fishery products often have a glaze of frozen water to protect the product from loss of quality during frozen storage. The glaze is not intended to be consumed with the product and is considered to be part of the packaging not the food. The optimum level of glaze is around 10% of the weight, although there is no legal maximum for amount of glaze that can be used. The deglazed weight or 'net weight' is the true amount of product once the glaze is removed. When all similar products only show the net weight it allows the consumer to easily compare products before purchasing.

Higher levels of glaze can confuse or mislead consumers into believing they are getting more product in the pack. It is a requirement of businesses that they ensure consumers are not misled by the labelling, or presentation, of a product. The EU Regulation

1169/2011 on the provision of Food Information to Consumers (EU No 1169/2011) (FIC), as interpreted by the EU Commission and agreed among Member States, sets out the legal requirements for the presentation of this information.

This guidance also makes reference to the Price Marking Order 2004 (PMO) as this requires the price of the product to be given as net weight in some circumstances where the FIC does not apply.

A quick reference table is included at the end of this guidance.

Legislation

The 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 include 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 does not apply to advertising but does apply to sales material that replaces the information given at the point of sale in retail premises. 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'.

Advice for Business

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 some requirements to provide accurate information to ensure consumer protection 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 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 handling weight can be given in a less prominent location.

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 the final consumer or mass caterer, as in Q 1.2 the inner packs should not be sold separately 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.

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'.

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.

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 requirements for weight indications do not apply. However, 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. 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 product could be graded 16/20 meaning between 16 and 20 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 (e.g. 1kg, 100/10g etc) to be clearly displayed. 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 price per 100g/kg 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 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 present. Most commonly telephone, mail order or internet sales.

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.

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 glazed weight but the amount of glaze and equivalent price without glaze should be given before the transaction takes place.

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 require the total weight to be given and water and / or fish as a percentage in the ingredients list. This would be a weight indication other than net weight and so is not permitted.

Quick Reference Table

Supplying to	Prepacked food	Loose or packed on site
Wholesale businesses or processors. Product may be: <ul style="list-style-type: none"> • Prepacked for the final consumer units to but packed in bulk cartons. • Bulk packed to be repacked or relabelled before selling. • Used in another product. 	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • FIC requires necessary information to be supplied with product. • PMO does not apply. • 1984 Order does not apply.
Final consumer Product may be: <ul style="list-style-type: none"> • Prepacked; or • Loose. 	<ul style="list-style-type: none"> • FIC applies – net only. • PMO applies at point of sale – net only. 	<ul style="list-style-type: none"> • 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.

Mass caterer Product may be: <ul style="list-style-type: none"> • Prepacked; or • Loose. 	<ul style="list-style-type: none"> • FIC applies – net only. • PMO does not apply. 	<ul style="list-style-type: none"> • FIC does not require labelling. • The 1984 Order only applies to retail sales. • Must be accurately described. • PMO does not apply.
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Seafish

Origin Way, Europarc, Grimsby
T: Fiona Wright 01742 252333
E: f_wright@seafish.co.uk
W: www.seafish.org