

HFMA UPDATE

Martin Last, Director General



Food Improvement Notices explained

This autumn will see the introduction of Food Improvement Notices (FINs) in the UK, which will help in producing an approach more consistent with the regulations for claims being made on the UK market. It should enable a more proportionate first step in the enforcement of the requirements needed for nutrition and health claims on food and drinks in England, including food supplements.

The move takes effect from October 1 under The Food and Health Claims (England) (amendment) Regulations 2024 no 165. The change is that before this, the existing regulation established in 2007, only allowed that non-compliance with claim's regulations would be an offence which in effect meant criminal prosecution was the main enforcement route.

This policy change will enable local authorities a more proportionate way to ensure compliance on claims through the introduction of improvement notices as an alternative to prosecution. It does not mean prosecution may not then apply if non-compliance is seen to continue but that on serving such notices, a food operator is given 14 days to correct any identified non-compliance. This measure provides enforcement officers a more viable and cost-effective means to tackle low level breaches without the need to adopt immediate prosecution.

Food Improvement Notices have been available



to enforcement authorities until now for other labelling issues, but this amendment allows this to be applied to nutrition and health claims. The process will mean that enforcement authorities will be able to act more swiftly where such breaches occur. It also is intended to focus businesses on compliance rather than simply defending their position, which is usually the case in a prosecution situation.

Trading Standards will be able to issue notices if they have reasonable grounds that there is a failing of specific provisions of claims regulation and the notice must specify the matters which constitute such failure. The notice would then indicate the measures needed to address these matters and require that the business has 14 days to take those measures.

There will be an appeal procedure, which needs to be applied within 28 days of receipt of a notice. This is reviewed by the General Regulatory Chamber of Trading Standards and requires evidence. The notice does not progress until the

appeal is concluded and, if the tribunal agrees with the appeal, it is cancelled. If not, the business is required to ensure compliance. If there is continued failure to comply then the authority can move to criminal prosecution.

Such notices are likely to apply when a business fails to engage with the authority or where discussion has failed to resolve any issue. In emergency situations where a safety issue is pertinent, the authority can still apply more immediate measures to ensure public safety. But overall, the issuing of notices will be to ensure that claims made on food and drinks are accurate so that consumers can make informed choices and are not misled.

The HFMA works closely with its Primary Authority and if notices are issued to member companies, it is recommended the company discuss this with the HFMA. The HFMA can advise and guide members on the appropriate action to take.

The HFMA actively promotes regulatory compliance and strongly encourages members to follow compliance through codes of

practice. As a result, the HFMA seeks a level playing field and whilst the HFMA is not an enforcement body, we do guide companies in helping ensure all brands seek compliance with regulations. Our CLEAR CHECK team provide valuable advice about how such claims can be made legitimately and within the boundaries of the legislation.

We have an advertising code of practice, which helps to clarify requirements for claims on promotional material or on pack and CLEAR CHECK help members and non-members in reaching these standards. There is also an internal procedure under the Regulatory Complaints Procedure (RCP) to identify and manage possible non-compliance. This and the forthcoming Food Improvement Notices will provide further tools to establish a more supportive approach to those brands playing by the rules.

Where non-compliance exists, the HFMA is equipped with the means to help non-compliant companies make positive change, via CLEAR CHECK, and through membership. The CLEAR CHECK service has evolved its services over many years, providing in-depth knowledge about how regulations exist and why, and with clear insights around what can, or cannot be said within regulatory requirements.

If you would like to know more about the benefits of membership, visit our website, www.hfma.co.uk, to learn more or contact me on 020 8481 7100.