

Consultation on improved enforcement of the Protected Food Name Scheme

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Introduction

1. Protected Food Names are a subset of Geographical Indications which relate to intellectual property protection as well as being part of the Common Agricultural Policy. EU regulation 1151/2012 provides the basis for the protection of these products across the EU. The UK currently has 76 agricultural products which are classed as a Protected Food Name.
2. Producers can apply to protect the names of regionally distinct or traditional products. Once registered, these products enjoy protection throughout the EU against imitation or misuse of their names. A GI label on a product assures buyers that the product has been produced according to a registered specification, in a certain place and/or to a certain recipe.
3. Defra is responsible for forwarding suitable UK applications to the EU, verifying UK producers who are using Protected Food Name, and enforcing against misuse of protected names for all EU registered products.
4. Producers of GI products value the scheme for the collective protection it brings from imitation. The scheme and the labelling of Protected Food Names also gives consumers information about the product they are buying and helps prevent consumers being misled as to the characteristics of the product. Products including Scottish Farmed Salmon, Scotch beef and lamb, Welsh lamb and beef, and Stilton cheese are collectively worth more than £800m a year in exports.

Why are we consulting?

5. Responsibility for enforcing the use of EU Protected Food Names on products produced and/or sold in the UK is given to Local Authorities. Local authorities currently enforce using powers under the UK-wide Food Safety Act 1990, the Fraud Act 2006 and the Consumer Protection from Unfair Trading Regulations 2008.
6. To ensure the scheme delivers robust protection and its rules are clear, the government is introducing bespoke enforcement legislation for the Protected Food Name Scheme. This will create a new civil sanctions regime which will address the misuse of a Protected Food Name. The civil sanctions regime consists of a compliance notice supported by a non-compliance penalty notice, and the option for the Local Authority to seek costs in the event that a non-compliance penalty notice has to be issued. Unlike the current enforcement regime which carries fines and/or custodial sentences, the sanctions under this proposal will extend only to monetary penalties and will clarify the enforcement options open to enforcing authorities.
7. While criminal prosecutions can carry substantial penalties, they are used relatively infrequently, in part because they can be resource-intensive and costly to pursue.

Some may feel, therefore, that there is little risk or little to lose from not complying. Furthermore, the government's policy is to avoid the creation of unnecessary or disproportionate criminal sanctions when implementing EU or international obligations.

8. This proposal also establishes a right of appeal against decisions made by the Secretary of State about applications.
9. We are consulting on our proposal to ensure the powers and sanctions it establishes for the scheme are proportionate to the impact of the misuse of Protected Food Names.
10. These rules will apply UK-wide.
11. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Responsibilities of Control Bodies undertaking producer verification

12. Producers wishing to legitimately use a registered Protected Food Name are required to have a verification inspection carried out on their product. These inspections are carried out by Control Bodies, which are either local Trading Standards or a commercial control body. Any persons carrying out inspections on Protected Food Name producers should be competent to perform their duties. The proposal also sets out the requirement for Control Bodies undertaking verification inspections to notify Defra immediately if producers are not following the regulations, and to notify Defra of any other results (i.e. satisfactory inspection) within 28 days. The notification of inspection results will mean that it will be easier to identify if a producer is legitimately using a Protected Food Name. It will also benefit producers by ensuring that Defra is able to communicate any changes to the scheme or proposed changes to the specification of the products they make.

Question 1 – Is the reporting of verification inspection results appropriate for the protected food name scheme?

Question 2 – When a producer is not meeting the regulations, is it appropriate for this inspection result to be immediately notified to Defra?

Question 3 – When a producer is meeting the regulations, is 28 days an appropriate timeframe for notifying Defra of these inspection results?

Responsibilities of Enforcement Bodies

13. To ensure that we are able to monitor the use of these new powers, this proposal puts in place a requirement for enforcement authorities to notify Defra within 28 days of an enforcement action relating to the misuse of a Protected Food Name taking place. The notification should refer to the outcome and should be made when an enforcement body:

- Exercises a power of entry
- Issues a compliance notice
- Issues a non-compliance penalty notice
- Issues a costs recovery notice

Question 4 – Is this reporting requirement appropriate for the protected food name scheme?

Question 5 – Is 28 days an appropriate timeframe in which to communicate enforcement actions to Defra?

Powers of entry and powers of Authorised Officers on entry

14. In order to enforce this scheme effectively, authorised officers appointed by the enforcement bodies must be able to assure themselves that products and processes meet the requirements of the product registered under the scheme. This proposal therefore gives authorised officers powers of entry and powers to search and seize items where they have reason to believe that the individual or business is in contravention of the EU Regulations. These powers are equivalent to those available to enforcement officers under the Food Safety Act 1990, the Fraud Act 2006, and the Consumer Protection from Unfair Trading Regulations 2008.

Question 6 – Is the power of entry necessary for effective enforcement of the Protected Food Names Scheme?

Powers to issue Compliance Notices

15. To ensure that enforcement is proportionate and allows every opportunity for compliance, this proposal introduces a civil sanction. This will be used by authorised enforcement officers to tackle the misuse of a Protected Food Name under EU regulation 1151/2012. A compliance notice would be issued for one or more of the following reasons:
- a. Person has marketed, or is marketing or intending to market, a product under a registered PDO, PGI or TSG which has not been labelled in a way described in Article 12(3) ;
 - b. Person has made, or is making or intending to make, commercial use of a registered PDO or PGI in a way described in Article 13(1)(a);
 - c. Person has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered PDO or PGI in a way described in Article 13(1)(b);
 - d. Person has used, or is using or intending to use, any other false or misleading indication as to the provenance, origin, nature or essential qualities of a product in a way described in Article 13(1)(c);
 - e. Person has used, or is using or intending to use, any other practice that is liable to mislead the consumer as to the true origin of a product in a way described in Article 13(1)(d);
 - f. Person has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered TSG, or using any other practice liable to mislead the consumer in a way described in Article 24(1);
 - g. Person has used, or is using or intending to use, a sales description that causes confusion with a registered TSG in a way described in Article 24(2);
 - h. Person has marketed, or is marketing or intending to market, a product as an optional quality term in contravention of Article 33(1);
 - i. Person has used, or is using or intending to use an indication, abbreviation or symbol in contravention of Article 44(1);
 - j. Person has marketed, or is marketing or intending to market, a product under a registered PDO, PGI or TSG which has not been labelled in a way described in Article 13(1) or (3) of Regulation 668/2014.

Question 7 – Are these appropriate reasons for the issue of a compliance notice?

Powers to issue Non-Compliance Penalty Notices

16. Under the proposed regulations an individual or business can be issued with a non-compliance penalty notice should they fail to comply with an issued compliance notice.
17. Under the proposed regulations, a non-compliance penalty notice can also be issued if an individual obstructs or fails to comply with a requirement of an authorised officer who is exercising their powers in respect of entry.
18. The enforcement authority issuing the non-compliance penalty notice may determine the amount but this not must exceed £40,000.
19. The enforcement authority may offer a discount in relation to early payment, but this would be at the discretion of the enforcement authority.
20. The enforcement authority may also issue a cost recovery notice, in addition to a non-compliance penalty notice. This notice would require the individual to pay the costs incurred by the authority in relation to issuing the non-compliance penalty.
21. In cases where the non-compliance penalty is not paid the enforcement authority may recover the penalty and any enforcement costs either as a civil debt or by order of the court.

Question 8 - Is the use of a non-compliance penalty an appropriate enforcement mechanism for the protected food name scheme?

Question 9 - Is £40,000 an appropriate level of penalty for the scheme?

Questions 10 - Is the option of offering a discount in relation to early payment of a non-compliance penalty appropriate for the scheme?

Question 11 - Is this option of a cost recover notice appropriate for the scheme?

Information which must be included in a notice

22. A notice must state the reasons for its issue, the measures required to ensure compliance, the expected timescales for action and the right of appeal against the compliance notice. The notice must be complied with at the recipient's expense. Failure to comply with the notice would result in further sanctions.

Right of Appeal of Compliance Notices, Non-Compliance Penalty Notices and cost recovery notices

23. Where a compliance notice, a non-compliance penalty notice and/or a costs recovery notice has been issued in England or Wales, the person on whom it has been served may appeal to the First-tier Tribunal (FTT). The FTT may suspend the notice while it considers the appeal, but it does not have to do so. The FTT may cancel or uphold the decision to issue the notice, made by the enforcement officer.
24. Where a compliance notice, a non-compliance penalty notice and/or a costs has been issued in Scotland, the person on whom it has been served may appeal to the sheriff. The sheriff may suspend the notice while the appeal is considered but does not have to do so. The sheriff may cancel or uphold the decision to issue the notice, or may make modifications to it.
25. Where a compliance notice, a non-compliance penalty notice and/or a costs has been issued in Northern Ireland, the person on whom it has been served may appeal to the Magistrate Court. The Magistrate may suspend the notice while the appeal is considered but does not have to do so. The sheriff may cancel or uphold the decision to issue the notice, or may make modifications to it.

Right of appeal in connection with a Protected Food Name Scheme application

26. As required under the EU regulations this proposal sets out the process for the right of appeal under the scheme. This right will apply to those with a legitimate interest who wish to appeal a decision by the Secretary of State to forward a UK application to the EU, and to those who wish to appeal against a decision by the Secretary of State not to forward an application to the EU. An appeal must be made within two months of the decision, in writing, to the person responsible for hearing such appeals. The person responsible will be a person appointed by the Secretary of

State. A recommended course of action should be reported to the Secretary of State within 2 months of the appeal, either upholding or reversing the decision. This outcome will be notified to the appellant and will be made public, and appropriate action on the application will be taken if required.

Question 12 – Is this an appropriate appeals process for the scheme?

Statutory review and amendments to other legislation

27. This proposal sets out the Secretary of State's obligation to carry out and publish a statutory review of the operation of the enforcement of the Protected Food Name Scheme as defined by this proposal. The statutory review should set out the objectives intended by the enforcement regime and determine the extent to which they have been achieved. The statutory review should also consider ways to make the enforcement regime less burdensome. The statutory review should be carried out every five years.

28. In order to enable this proposal it is anticipated that amendments will be made to existing legislation in England, Wales, Scotland and Northern Ireland.

How to respond

Responses should be received by **2 November 2018**.

We prefer to receive answers online using on our consultation website:

<http://consult.defra.gov.uk/food/improving-uk-protected-food-name-enforcement/>

If you are unable to do so, you can email your responses to:

protectedfoodnames@defra.gsi.gov.uk

Alternatively, postal responses should be addressed to:

The PFN team,
Defra,
2nd Floor,
Horizon House,
Deanery Road,
Bristol.
BS1 5TL



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