

Appendix 1 – Draft response



Consultation on amending allergen information provisions contained within domestic food information legislation for food prepacked for direct sale

Response form

January 2019

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WE WANT YOUR VIEWS

We are launching this consultation on proposed amendments to the domestic Food Information Regulations 2014 (FIR) (England) and parallel FIR regulations in Northern Ireland, Scotland and Wales relating to the mandatory information, form of expression and presentation of allergen labelling information for foods that are prepacked for direct sale (PPDS) to the consumer on the same premises from which they are sold.

Defra, the Food Standards Agency (FSA) in England, Wales and Northern Ireland, Food Standards Scotland (FSS), and the Department for Health and Social Care (DHSC) are working together in reviewing the current legal framework for allergen information for foods which are PPDS. Through this consultation we are seeking views on non-regulatory and regulatory policy options to improve the provision of allergen information to consumers for PPDS foods.

HOW TO RESPOND

We encourage respondents to provide not just their opinions but also the supporting facts and reasoning to inform the evidence base for the development of final proposals. Respondents do not have to answer all the questions and so can choose those of specific interest. Questions which you do not wish to respond to can be left blank.

If you cannot respond online, please submit your completed form by e-mailing it to allergenlabellingreview@defra.gsi.gov.uk or alternatively submit by post at the address below:

Allergen Labelling Review Team
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SECTION 1 - ABOUT YOU

1. Would you like your response to remain confidential?

Yes	
No	X

If you answered yes to this question please give your reason.

A summary of responses to this consultation will be published on the Government website at: www.gov.uk/defra. An annex to the consultation summary will list all organisations that responded **but will not include** personal names, addresses or other contact details.

Defra, FSA or FSS may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (e.g. home address, email address, etc).

If you tick ‘**Yes**’ in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

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If you tick ‘**No**’ in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won’t make your name and private contact details publicly available.

There may be occasions when Defra, FSA and FSS will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

This consultation is being conducted in line with the Cabinet Office “Consultation Principles” and be found at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process, please address them to:

Consultation Co-ordinator
Area 1C
1st Floor, Nobel House
17 Smith Square
London, SW1P 3JR

Or email: consultation.coordinator@defra.gsi.gov.uk

2. What is your name? Helen Morrissey
3. What is your email address? morrisseyh@belfastcity.gov.uk
4. Please tell us who you are responding as?

An individual – You are responding with your personal views, rather than as an official representative of a business / business association / other organisation.	
Non-governmental organisation – In an official capacity as the representative of a non-governmental organisation / trade union /academic institution / other organisation.	
Business – In an official capacity representing the views of an individual business.	
Public sector body – In an official capacity as a representative of a local government organisation / public service provider / other public sector body in the UK or elsewhere.	X

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If responding as an individual

5. What is your age?

0-15	
16-24	
25-34	
35-44	
45-54	
55-64	
65-74	
75-84	
85+	

6. What nation of the UK do you live in?

England	
Wales	
Scotland	
Northern Ireland	

7. Do you or someone in your family have any food allergies or intolerances?

Yes	
No	

If responding as an organisation, business, or public body

8. What is the name of your business/ organisation?

Belfast City Council

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9. Where does your business/organisation operate?

England	
Wales	
Scotland	
Northern Ireland	X

If Business

10. What is the size of your business?

Micro (9 employees or less)	
Small (10 – 49 employees)	
Medium (50 – 249 employees)	
Large (250+ employees)	

11. Do you sell products that are prepacked for direct sale (PPDS) as defined in FSA guidance¹?

Yes	
No	

If 'yes', please answer questions 12 to 14. If 'no' please skip to question 15.

¹ <https://www.food.gov.uk/sites/default/files/media/document/food-allergen-labelling-technical-guidance.pdf>

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12. Approximately how many individual stock keeping units (SKUs)² of PPDS products do you stock each day? (if you have seasonal products, please consider an average across the year)

1-10	
11-19	
20-29	
30-49	
More than 50	

13. What proportion of total units sold does this make up?

Less than 10%	
10-29%	
30-49%	
50-69%	
70-89%	
90% or more	

14. What methods of allergen information provision do you currently provide on PPDS products?

Provision of verbal information with visible prompts in store	
Written information available to consumers upon request	
Visible written allergen information somewhere in the store	

² A stock keeping unit (SKU) is a distinct type of item for sale and all attributes associated with the item type that distinguish it from other item types.

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Allergen information on, or near, products	
Full ingredient labelling	
Other, please specify	

Please provide additional details

SECTION 2 – PREPACKED FOR DIRECT SALE (PPDS) DEFINITION

15. FIC defines prepacked food, and what is not prepacked, but it doesn't provide a specific definition of prepacked for direct sale (PPDS). For the purpose of this consultation, we are using the FSA interpretation of PPDS below.

“Prepacked foods for direct sale (PPDS): This applies to foods that have been packed on the same premises from which they are being sold. Foods prepacked for direct sale are treated in the same way as non-prepacked foods in EU FIC’s labelling provisions. For a product to be considered ‘prepacked for direct sale’ one or more of the following can apply:

- It is expected that the customer is able to speak with the person who made or packed the product to ask about ingredients.*
- Foods that could fall under this category could include meat pies made on site and sandwiches made and sold from the premises in which they are made.”*

Do you agree with this interpretation?

Yes	X
No	

Please provide a justification for your response. If you answered ‘no’ to question 15, please indicate any other factors that you think should be taken into account when considering whether a product is PPDS.

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We currently use this definition of PPDS. It is an accepted term that EHOs use when communicating with food businesses.

16. This consultation is focussed on the provision of allergen information for PPDS foods. Do you think government should consider reviewing in future the way that allergen information is presented to consumers for other types of non-prepacked food?

Yes	X
No	

If yes, please answer questions 17. If 'no' please skip to question 18.

17. What other types of food should Government review?

Food packed on the sales premises at the consumer's request	X
Food not packed, such as loose items sold to the consumer without packing and meals served in a restaurant or café	X
non-prepacked food ordered via distance selling, for example a takeaway pizza ordered over the phone or via the internet	X
Other	X

Please provide a justification for your response.

UK legislation currently allows for allergen information to be provided orally. There is no requirement to provide written documentation to support the oral information. We support option 3 believing there should be a mandate to provide written information to support oral requests and that this will add to consumer protection. If option 3 is progressed, we feel strongly that it will be essential to ensure similar requirements for written information for the foods listed above. Other types of food that should be considered are sandwich platters and buffets.

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SECTION 3 - POLICY OPTIONS

18. What is your preferred policy option and why?

Option 1	
Option 2	
Option 3	X
Option 4	
A combination of options	
I do not have a preference	
I don't agree with any policy option	
I do not have enough information to make a choice	

Please provide a justification for your response.

Option 1 - No different to current situation. However, best practice advice is essential to assist businesses to comply with any new requirements.

Option 2 – Will the consumer actually ask? Risk that repeat customers will not ask every time they purchase the same food item. If they leave and have forgotten to ask - will they go back to ask? If they take the food away for someone else who has an allergy that person will have no information.

Option 3 – Advantages for both the consumer and the business. Consumer - provides clear allergen information that is easy to access. Less cluttered label than option 4 so easier for regular customer to spot changes. Business - easier to keep up to date / change these labels than option 4 and will allow for slight ingredient changes that do not involve allergens. It is anticipated that any one business will not have a huge volume of PPDS foods. The example label for option 3 contains the statement 'Due to the way we prepare this food additional allergens may be present'. We believe this statement is essential as it communicates the risk of cross contamination.

Option 4 – Extremely time consuming and costly for the business. Will require significant input from EHOS and TOs to assist businesses in understanding the new requirements and to subsequently verify compliance. Could lead to less choice for consumers.

If you stated that your preferred policy option is 'a combination of options'

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19. You stated that your preferred policy option is a combination. What combination would you prefer?

2 and 3 based on business size	
2 and 4 based on business size	
3 and 4 based on business size	
Other, please specify	

If you stated a preference to question 19 based on business size

20. You stated that you preferred a two tiered approach based on business size, do you think the lower tier option should apply to only micro businesses, or small and micro businesses?

Micro	
Micro and Small	

21. Policy option 1 outlines additional activity to promote best practice within the current framework to encourage businesses and to review their knowledge, skills and actions to ensure a safer environment for consumers. These options may include:

- Best practice guidance for the catering sector to be produced by FSA and made available to all local authorities;
- Cross stakeholder conference with businesses hosted by Defra and FSA to discuss best practice and encourage change without amendments to legislation;
- Public information campaign to highlight allergen knowledge and awareness for food businesses and the general public.

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Do you have any other suggestions for what might be included to promote best practice and how Government can support businesses in reaching this? Please include examples that may currently be used by businesses.

Yes, please specify	X
No	

- 1) Promote the availability of online training to businesses
- 2) Review Safe Catering Pack / Safer Food Better Business Pack to assist businesses in identifying and controlling allergens in their business. Allergens must be integrated into Food Safety Management Systems.
- 3) Consider language barriers – develop tools to support businesses where English is not their first language

22. Do you think promoting best practice should be combined with the other policy options?

Yes	X
No	
Other, please specify	

The sharing of best practice is always a valuable, practical tool to assist businesses to comply with any new legal requirements.

23. Option 2 mandates “ask the staff” labels on packages of food prepared for direct sale with a requirement for supporting information for consumers to be made available in writing. Do you think the written information should only include allergen information, or a full list of ingredients?

Allergen information only	X
Full list of ingredients	
I am indifferent	
Don't know	

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Please provide justification for your response.

Provision of the full list of ingredients is too onerous for businesses (especially small businesses) given the small proportion of the population that are allergen sufferers.

Current best practice – allergen matrix / chef cards – only records the allergens.

The food safety risk is the allergens and that is the only information consumer wants.

24. For full ingredient labelling (option 4) do you think allergens should be emphasised (e.g. in bold text) as per FIC regulations for prepacked food?

Yes	X
No	

25. We have proposed a number of policy options to improve the provision of allergen information for PPDS foods. Are there alternative options not proposed that we should be considering? An example of this could be mandating written information setting out which of the 14 allergens may be present in products on the premises.

Yes	X
No	

If yes

Please provide details of what alternative option you would like to see to improve the provision of allergen information for PPDS foods.

It is important that consumers are aware that the Food Information Regulations only relate to deliberately added allergens. The example label for Option 3 contains the statement 'Due to the way we prepare this food, additional allergens may be present' and this will help to increase awareness of the risks of cross contamination. However, the inclusion of 'Ask the staff' would be a useful addition.

It might also be helpful to make customers aware of all the allergens handled on the premises. This could be done using a signpost notice at the point of sale.

SECTION 4 – BUSINESS SIZE DEFINITION, EXEMPTIONS AND IMPLEMENTATION

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26. For the purpose of this consultation, we define business size based on the number of employees in accordance with the categories below. Do you agree with this definition?

- Micro (0-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

Yes	X
No	

If no

27. What criteria would you suggest we define business size by?

Number of outlets/branches	
Turnover	
Number of units sold	
Other, please specify	

Please give details about your proposed thresholds for micro, small, medium and large businesses.

28. Are there any policy options you think small and micro businesses should be exempt from?

No, I think all businesses should be included in all policy options	X
I think micro businesses should be exempt from all policy options	
I think small and micro businesses should be exempt from all policy options	

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I think small and micro businesses should be exempt from some policy options	
I think micro businesses should be exempt from some policy options	

If you think that small or micro businesses should be exempt from some policy options

29. Which policy options do you think small and micro businesses should be exempt from?

Please provide a justification for your response

30. How long do you think businesses should be given to implement the new policy?

	Less than 6 months	6 Months to a year	A year to two years	Up to three years	Up to five years
Option 1	X				
Option 2	X				
Option 3		X			
Option 4			X		

Please provide a justification for your response

Options 1 does not require businesses to do anything new and can easily be achieved in less than 6 months.

Options 2 requires a small amount of work on the part of the food business and should be achievable within 6 months.

Option 3 will require a bit more work on the part of the food business but should still be achievable within 6 months to a year.

Option 4 will require a substantial amount of work and would realistically take a year to two years to complete.

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SECTION 5 - IMPACT ASSESSMENT

31. We have estimated that there are 7,785 businesses in the UK that primarily sell PPDS foods, however we have limited data outlining the PPDS sector, and as such there is a difficulty in establishing which businesses will be affected by any changes to regulations regarding PPDS foods. Do you agree with this estimation?

Yes, I agree	X
No	

If you answered 'no', please provide supporting evidence relating to the size, or composition of the PPDS market.

32. Option 2 requires written allergen information to be provided to consumers upon request. This is currently a non-monetised cost as it is unclear the extent to which businesses already provide this information on their premises. Do you have any supporting evidence to help us quantify these costs?

Yes	X
No, I do not have any supporting evidence	

If yes, please include any evidence as to how many businesses are currently doing this, and if you're a business, whether you are currently doing this, and the costs of doing so?

We estimate that 80% of our food businesses currently have written information that could be provided to consumers on request.

33. We have based our calculation of the labelling costs on previous research, which outlines that minor labelling changes cost in the range of £10 - £1,800 per stock keeping unit (SKU). Uprating these to 2018 prices, we assume that the cost of re-labelling to be £10.99 per SKU for small and micro businesses, and £1978.59 per SKU for medium and large businesses. Do you agree with these costs?

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Yes, I agree with these cost estimations	X
No (please provide supporting evidence)	

Would have preferred a don't know option as we have no evidence regarding these costs.

34. We have assumed that, on average, a business selling PPDS foods will have 20 different products, however this is not currently based on evidence. Do you agree with this assumption? Please provide any supporting evidence if possible.

Yes	X
No	

35. We currently do not have sufficient evidence to accurately calculate the labelling costs of Option 4: Name and full ingredient labelling. Anecdotal evidence, however, suggests that these costs would be higher than the other options. Do you have any supporting evidence relating to the costs of full ingredient labelling?

Yes, please provide further details	
No	X

36. Are there any other cost assumptions or calculations that are incorrect, or you wish to submit additional evidence for?

Yes, please provide further details	X
No	

It has been estimated that the additional time required during an inspection of each outlet would be 15 minutes for options 2, 3 and 4. This is not a realistic timeframe to advise

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business on the new changes for options 3 and 4 and to verify compliance. At least 30 minutes would be required for option 3 and an hour for option 4.

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	X
Option 3	X
Option 4	X
All options	

37. Are there any costs which we have not considered?

Yes, please provide details	
No	

Even if allergen compliance checks could be linked to the existing inspection programme it would take roughly two years to visit all food businesses. It is likely that additional standalone visits would be required for businesses that the legislation will have the most impact on.

Enforcement officers usually provide training for local businesses when new legislation has been introduced, so there will be a resource implication for this.

Local authorities will have to review the materials they currently provide to food businesses and ensure they are amended and up to date with the new requirements. This will take time and there may be publication costs too.

The committee asked the FSA to note that if option 3 is considered to be the appropriate regional option to afford the best level of protection to customers, that the Food Standard Agency is asked to consider identifying additional resources to support business to implement this option and in particular for those that are small, medium enterprises.

This may also have an impact on the resources needed within BCC to Support business and therefore Council ask that the FSA also consider how they will support Councils' to achieve this work as this cannot be absorbed with current resources.

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If yes

Are you referring to a specific policy option?

Option 1	
Option 2	X
Option 3	X
Option 4	X
All options	

38. Will cost of implementing any of the policy options lead to changes in how businesses operate (for example, how PPDS products are sold, or prepared or packed)?

Yes, please provide details	X
No	

We anticipate that some businesses may decide not to offer PPDS food or may provide a more limited selection of foods.

Innovation could also be stifled.

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	X
All options	

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39. Are there any impacts to consumers, businesses, or Government that have not been considered?

Yes, please provide details	X
No	

Local Authorities may be required to carry out additional advisory visits to premises. This would be in situations where a business is not due their next routine inspection for some time and cannot wait until then for advice and assistance regarding the new legislation.

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	
All options	X

40. Do you have any further evidence or data you wish to submit for us to consider for our final impact assessment or any specific comments on the methodology or assumptions made?

Yes, please provide further evidence which could be used to improve our estimates	
No	X

If yes

Are you referring to a specific policy option?

Option 1	
----------	--

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Option 2	
Option 3	
Option 4	
All options	

SECTION 6 - REPORTING NON-FATAL ANAPHYLACTIC SHOCK INCIDENTS (“NEAR MISSES”)

If someone with a food allergy eats that food allergen in a catering establishment without knowing it, they could have an allergic reaction that becomes an anaphylactic shock. If they receive medical help and it proves to be non-fatal, this is a near miss. Incidents of suspected food allergy reactions are not currently automatically communicated to the relevant Local Authority nor to the FSA. Consequently, non-compliant food businesses may not be reported to enforcement bodies and continue to operate, posing a potential health risk to those with a food hypersensitivity.

The FSA have been working with local authorities in Yorkshire, on a pilot scheme to improve the notification of incidents between businesses, Local Authorities and the NHS. The reported near misses would trigger a priority inspection of the food business through the relevant Local Authority ensuring that non-compliances are identified and solved. Such a system would also allow Local Authorities to work with specific FBOs to help them better understand their obligations and requirements and understand the significance of the potential health and financial consequences of non-compliance.

41. Serious, non-fatal incidents of anaphylactic shock relating to consumption of a food allergen in a catering establishment are not currently automatically communicated to the relevant authorities. We invite your views on how the relevant authorities (e.g. NHS, Local Authority and FSA) can work more cooperatively together and with the public to increase local awareness and share data on the quality of food allergen management from local businesses so that rapid inspection action can be taken.

Please use this space to provide your views on the above.

There would need to be a decision as to whether this would be a formal process i.e. NHS notifies FSA and FSA then notifies LA or an informal process where NHS advises individual to contact LA.

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Where an urgent issue has been brought to the attention of a LA, there is a need for effective enforcement options to deal with imminent risk / emergency situation e.g. extend the scope of RANs.

I do not wish to provide views on the above

Thank you for giving your views