



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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Room 202, Zone 2
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York
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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.

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?

Mary Feeney on behalf of the Food Allergy Specialist Group of the British Dietetic Association.

3. What is your email address?

mary.feeney@kcl.ac.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.	
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Non-governmental organisation – In an official capacity as the representative of a non-governmental organisation / trade union /academic institution / other organisation.	X
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.	

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	
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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?

9. Where does your business/organisation operate?

England	x
Wales	x
Scotland	x
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	X

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

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%	

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

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.

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	
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.

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	

Please provide a justification for your response.

Information about allergen ingredients in non-prepacked foods can currently be provided either orally or in written form. We believe it would be helpful for the allergic consumer if this information is always available in written form and that the option to communicate allergen information verbally should be in addition to the written form.

This could help to avoid miscommunication or errors by food business staff. Sometimes it can be difficult for allergic consumers to communicate their individual requirements, to be sure that food business staff have understood their needs and are that service staff are communicating the risk adequately to food preparation staff. Availability of full ingredient information in written format would provide another means for the allergic consumer to risk assess prior to buying and consuming a food product.

As dietitians, we will continue to advise allergic patients and their families about accurately communicating their needs to food business staff as well as how to interpret the allergen and food preparation information provided by food businesses.

SECTION 3 - POLICY OPTIONS

18. What is your preferred policy option and why?

Option 1	X
Option 2	

Option 3	X
Option 4	
A combination of options	X
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.

We agree that a public awareness/ best practice campaign is essential, whatever the outcome of this review and the British Dietetic Association would support a repeat of the #EasytoAsk campaign. We as dietitians have a role to play in this both, in the clinic advising allergic patients individually but also at an organisational level e.g. provision of consumer-friendly allergen labelling information; training of health care professionals, child care workers etc. There is currently increased media attention on the issue of food allergy and the tragic consequences which can occur as a result of an allergic reaction. This has increased attention from the general public, food businesses, and health care professionals and as a result there is an opportunity to further increase awareness and support for the allergic consumer.

Similarly, whatever the outcome of this review, we also support cross-stakeholder collaboration to discuss best practice alongside any policy changes that come about as a result of this review. However, we would encourage inclusion of additional stakeholders including: health care professionals, allergy charities and allergic consumers in order to support and promote best practice in food allergen safety and optimal communication with allergic consumers.

Having considered the options included and current allergen information regulations for business we believe that option 3 improves on current provision of allergen information and supports allergic consumers to make informed decisions about purchasing and consuming products which are PPDS. Availability of information about the 14 allergens on the product label supports the allergic consumer in situations where errors occur such as: where a food outlet is busy and noisy making it difficult to access allergen information from a staff member, for consumers who lack confidence to ask for allergen information, provides an additional source of information to inform consumer decision-making where allergen awareness training of staff may be inadequate or errors are made by staff when advising on product suitability.

As dietitians, we will continue to educate and empower our patients to always inform staff in a food business about their allergies and encourage them to find out full ingredient information for any food products they are purchasing and consuming. Any changes in labelling policy do not change the consumer's responsibility to tell the food business about their allergy.

Given that food businesses are already required to provide information regarding the presence of the 14 allergens as ingredients in products which are PPDS, either verbally or in writing it is anticipated that it would be relatively easy for food businesses to implement this policy change.

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

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	X

Option 1 and 3.

There should not be differences in policy based on business size.

A consistent policy which is standardised across micro, small, medium and large-scale businesses will best support the allergic consumer to know how they can access information about allergen ingredients in a food product. A consistent policy across all food businesses will be easier to deliver as a clear message to the general public, food business owners and their employees.

We are concerned that a lack of consistency would make it difficult for the allergic consumer to feel confident and become competent in accessing allergen ingredient information across different food businesses. The use of different formats to provide allergen information by food businesses may lead to errors, the risk of serious allergic reactions and loss of consumer confidence.

As dietitians supporting allergic patients and their families with managing their allergies, a consistent policy will be easier for us to communicate and for us to support them to integrate the management of their allergies into their lifestyle.

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	
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Micro and Small	
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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.

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	

An 'allergy awareness rating' for food businesses could be a useful way to improve allergy awareness and promote best practice by recognising those business who demonstrate it.

The concept of PPDS is difficult to communicate to consumers who don't think about their food shopping in this way e.g. they may be purchasing one item from a deli counter which is considered a non-prepacked food and another which is a PPDS food. A public information campaign to highlight how to access allergen information is important.

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

Yes	X
No	
Other, please specify	

We fully agree that sharing best practice between retailers and providers is critical to the roll-out and ongoing improvement of this policy. We recognise the important role that dietitians can play in

supporting this work and acting as contact point for people with allergies to report or highlight good practice.

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

Please provide justification for your response.

If policy option 2 was selected and ‘ask the staff’ labels are included in the food packaging then the additional information available in writing should be full ingredient information. This allows the allergic consumer to more fully assess whether an ingredient they are allergic to is present as an ingredient in the food product; provides a second opportunity for them to risk assess (in case there has been an error in any allergen information already provided by staff on the product label or other information sources about the product).

This also supports allergic consumers who have allergies to ingredients that are not included in the 14 allergens.

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.

Written information setting out which of the 14 allergens are present as ingredients in individual products or which of the 14 allergens are used as ingredients on the premises would be helpful if there is legislation to ensure that this is not provided as a defensive statement for food products which do not actually contain that ingredient e.g. labelling a cake as containing all 14 allergens when it does not contain crustaceans, fish, soybeans, celery, mustard, sesame, sulphur dioxide/sulphites, lupin or mollusc ingredients and for ingredients which are not in fact used on the premises i.e. it should reflect a real risk.

SECTION 4 – BUSINESS SIZE DEFINITION, EXEMPTIONS AND IMPLEMENTATION

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.

While we support the use of employee numbers in the definition of business size, if any decision is made to exempt smaller businesses (which the BDA does not support), it is vital that no loophole for franchises or similar is used by major companies to classify their individual shops as “micro” or “small” businesses for the purposes of ignoring these regulations.

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	
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					
Option 3		X			
Option 4					

Please provide a justification for your response

Awareness of allergy and necessity for changes to prevent severe health outcomes or fatalities is high following recent tragic cases. Implementation of the changes in a shorter time-frame means that a public awareness campaign can capitalise on this awareness and desire for change. Implementing the changes are an opportunity for food businesses to demonstrate that they are making changes to support allergic consumers.

Since the policy option we are advocating for (option 3) should not require significant changes to current practices by food businesses who are selling foods prepacked for direct sale (since they are already required to be able to provide information about the 14 allergens if used as an ingredient in their products), a shorter timeframe is likely feasible to implement.

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	
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	
No, I do not have any supporting evidence	X

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?

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?

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

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	
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

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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	
No	X

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If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	
All options	

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

Yes, please provide details	
No	

--

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	
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	
No	

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If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	
All options	

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

Yes, please provide details	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

There is a risk of defensive statements indicating that allergic consumers cannot be catered for, labels indicating that products contain all 14 allergens (when they do not). It will be important how DEFRA/FSA/FSS support businesses to minimise the challenges of implementing policy changes and to avoid use of knowingly inaccurate or defensive labelling. How would the policy changes be enforced and what are the consequences for non-compliance?

Use of different terminology or size/font/other format of labelling may mean that it is still difficult for the allergic consumer to know how to interpret or where to find the information they need across different food businesses. Guidance from DEFRA/FSA/FSS on format would help to mitigate this.

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	<input checked="" type="checkbox"/>
Option 4	
All options	

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	
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.

Prevention is always better than cure, and near misses provide vital information in order to prevent further occurrences. We agree that near misses should be communicated to local authorities and the FSA in order to take swift action to prevent further instances. Healthcare professionals, including dietitians, should be given simple and clear reporting mechanisms to report instances that they see or are informed of in healthcare settings or as part of regular reviews with patients.

It should also be communicated to the public and in particular those with allergies that there is a reporting mechanism. Dietitians can play a role in communicating this to their patients.

I do not wish to provide views on the above

Thank you for giving your views