



Consultation Response

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

March 2019

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 8,000 members working in the public, private and non-profit sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved. Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

This response covers all four nations of the UK and we are happy for it to be made public

For more information visit www.cieh.org and follow CIEH on Twitter @The_CIEH.

Any enquiries about this response should be directed to:

Kate Thompson
CIEH Director (Wales)
Chartered Institute of Environmental Health
Chadwick Court, 15 Hatfields, London SE1 8DJ
Phone: 07919 212664
Email: k.thompson@cieh.org

Key points made in this consultation response:

- We believe that a combination of options 2 and 3, regardless of business size would be the best option to improve protection for the public whilst managing the cost to business. It could be implemented without too much delay.
- We believe that more could be done to set up robust processes for the reporting of 'Near Misses'. This includes reporting serious allergic reaction incidents to RIDDOR and/or to the FSA.
- In terms of enforcement, the scope of Remedial Action Notices (RANs) could be extended in England to assist Local Authorities in dealing with imminent risk posed by allergens.

SECTION 2 – PREPACKED FOR DIRECT SALE (PPDS) DEFINITION

12. 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 in to account when considering whether a product is PPDS.

This definition is already in use, understood and accepted by Environmental Health Professionals

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.

To afford sufficient protection to consumers with food allergies, the CIEH is of the view that the provision of allergen information on all other types of non-prepacked food should be reviewed. Whilst we believe effective oral communication between consumers with food allergies and food businesses is vital, this should be supported with written information which is not currently required. Foods such as sandwich platters and buffets pose particular risks - allergen information should be clear and accessible to consumers. High staff turnover, part time and casual staff together with language barriers present additional risks which reinforces the need for written information.

SECTION 3 - POLICY OPTIONS

18. What is your preferred policy option and why?

Option 1	
Option 2	X
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.

CIEH members work in the public, private and third sectors. They work in a variety of settings and roles, towards the common goal of protecting and improving public health. When asked their preferred policy options, there were differences of opinion with options 2 (add 'ask the staff' stickers) and 3 (label food with the name of the food and list allergens) featuring most frequently in their responses. Robust reasoning was provided in support of both options 2 and 3 together with a clear rationale for not favouring options 1 (promote best practice, no change in law) and 4 (label food with the name of the food, full ingredient list with allergens emphasised). Our view therefore is that a combination of options 2 and 3 is the best way forward (regardless of business size) with the EU 14 allergens being indicated on the label together with a precautionary message so that those with allergies to foods other than the EU 14 and those with serious allergies, where cross contamination could prove fatal are prompted to ask the staff. We believe that this would provide the greatest level of protection to members of the public without being overly expensive or burdensome on business.

The views of our members are reflected below:

Option 1 – This option is generally regarded as maintaining the status quo and not sufficient to provide adequate protection to consumers.

Option 2 – Whatever option is selected, effective communication must take place between food service staff and consumers who suffer food allergies. This option, in addition to option 3, was selected by a significant proportion of our members in recognition of the dual responsibility of both allergy sufferers and food businesses. The benefits were highlighted in support of this option, include that it:

- Can be implemented quickly;
- Is a proactive way of encouraging consumers to ask, increasing the likelihood of effective dialogue;
- Enables recipes to be quickly adapted in response to consumer feedback and preference;
- Should not result in product withdrawal or reduction in product range when there are changes to information provided by suppliers;
- Removes risk of human error, fixing incorrect label to product;
- Is future proof -changes to list of 14 allergens may occur post Brexit

Our members who work in industry point to the complexity of food chains and regular substitution of products which is common in food service and would make it difficult to ensure all labels are kept up to date at all times with options 3 and 4. In terms of the cost to business, a generic 'ask the staff' label would be more cost effective than options 3 and 4 where product specific labels would be required.

However, there are some disadvantages with this option. A significant proportion of food prepacked for direct sale is consumed off the premises. Under these circumstances consumers whose food may have been purchased by another person will not have the opportunity to speak to staff and therefore will have no information about the food. There is also the risk that consumers who make repeat purchases will become complacent, take on more risk and rely on product or brand experience rather than ask every time. A simple change to a recipe may have occurred which goes unnoticed by the consumer until they become ill.

Option 3 – A significant proportion of our members favoured option 3 as consumers would be provided with clear information about the presence of any of the 14 EU allergens. It is acknowledged that there are other foods in addition to the 14 EU allergens that can cause allergic reactions and that allergens may be present in food not as an intended ingredient but as a result of cross contamination. For these reasons, if a decision was made to implement option 3, further precautionary information would need to be included on the label for the benefit of consumers such as '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. This option would cost more to implement than options 1 and 2 but would not cost as much as option 4 which requires a full list of ingredients to be provided with the allergens highlighted. From a business perspective, option 3 would i) require simpler labels than option 4 making it easier for regular customers to spot changes and ii) make it easier for businesses to keep labels up to date as ingredient changes not involving allergens would not necessitate a

change in the label. Food service staff would require training to ensure they understand the importance of fixing the correct label to food and the potential risks if errors occur.

Option 4 – This was regarded as the ‘gold standard’ amongst our members and acknowledged as almost certainly the most expensive option for businesses to implement. From a consumer point of view, this option would enable those allergic to foods that extend beyond the EU 14 to select food with the benefit of a full ingredients list. However, businesses would potentially require a significant amount of support to implement this option from technical advisers/ enforcement officers. Ultimately, this option could result in less choice for consumers if businesses decide not to provide prepacked food for direct sale as a consequence of what they may consider to be over onerous requirements

20. 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	

- 1) Promote the availability of allergen training for food businesses and encourage them to train their staff.
- 2) Emphasise the importance of refresher training for staff
- 3) Consider language barriers – develop tools to support businesses where English is not their first language
- 4) Review the sufficiency of allergen information in *Safer Food Better Business* and *Safe Catering* packs

5) Promote use of internal reporting mechanisms to businesses to enable them to identify clear trends

21. 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.

22. 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	

Please provide justification for your response.

Allergen information only.

Providing full list of ingredients for every product would be difficult for consumers and staff to navigate.

Full lists of ingredients would be expensive to produce particularly where it would need reprinting every time a supplier changed or there was a change to the recipe.

It would also take a long time for a consumer to read an ingredient deck on every occasion to identify what they can and can't eat.

An allergen matrix enables a consumer to scan a column looking for the allergens they need to avoid quickly.

23. 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 to give consumers confidence in the business approach.

Consumers need to be aware that the allergen requirements in the Food Information Regulations only relate to allergens intentionally added to food and of the risks of cross contamination. Advising consumers of all the allergens handled on the premises and the potential risks is important and could be achieved using a signpost notice at the point of sale stating for example 'Due to the way we prepare this food, additional allergens may be present'

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.

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

No, we 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	

29. 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 more work on the part of food businesses 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.

SECTION 5 - IMPACT ASSESSMENT

30. 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.

We do not have access to this information

31. 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?

32. 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	
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No (please provide supporting evidence)	
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We don't have access to this information.

33. 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	

The CIEH does not have any supporting evidence so can neither agree nor disagree with this assumption.

34. 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

35. 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 is likely that enforcement officer costs have been underestimated at £22.72

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. Our members working in food enforcement have told us that this would be insufficient to properly advise businesses on the new requirements and to verify compliance. They advise that at least 30 minutes would be required for option 3 and an hour for option 4. This will almost certainly be the case where English is not the first language.

If yes

Are you referring to a specific policy option?

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

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

Yes, please provide details	X
No	

Our members working in food enforcement have advised that there will be additional costs if there is an expectation for them to carry out interventions (outside their programmed interventions) to assist businesses/verify compliance at those businesses likely to be most impacted by legislative changes.

Other potential additional costs include enforcement officer time to review and revise materials they currently provide to food businesses to ensure they are consistent with new legislative requirements and the publication costs of these materials.

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	X

Option 3	X
Option 4	X
All options	

37. 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	

It is anticipated that some businesses who currently provide prepacked food for direct sale may cease to do so or they may provide a more limited selection of food if they think any new legislative requirement is too onerous or expensive to implement. This is most likely to be the case with option 4. 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	

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

Yes, please provide details	X
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No	
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Food enforcement officers may be required to carry out additional advisory visits to food businesses. This would be the case if they received more complaints from consumers who will become better informed through awareness campaigns.

The provision of allergen information on labels may lead to reduced oral communication about allergens between consumers and food service staff. If a consumer declares they suffer from a food allergy there may be the opportunity to be provided with a specially prepared product where cross contamination risks can be effectively controlled.

Considering the number of recalls from major manufacturers as a result of incorrect labelling, the risk of fixing an incorrect label to a product (low skilled, minimum wage workers) may outweigh the benefits of options 3 and 4

If yes

Are you referring to a specific policy option?

Option 1	
Option 2	
Option 3	
Option 4	
All options	X

39. 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

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.

A notification system could be put in place with the facility for notifications to be made centrally for example via the FSA website. This would be accessible to NHS staff, consumers and local authorities. Notifications could be automatically re-directed to the relevant local authority for investigation and/or action.

Near misses could also be made reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), along with clear guidance and quick communication to local authorities for investigation.

Furthermore,

Allergen management could be considered under the Food Hygiene Rating Scheme (FHRS).

Allergy Awareness Schemes could be promoted with strict criteria against which businesses are assessed. Those achieving the required standard could be recognised and consumers made aware by the use of stickers at the entrance to the premises, as with FHRS.

Where the need for urgent action to protect public health, is identified by local authorities, it is imperative they have effective enforcement powers and tools to deal with the situation effectively. The scope of Remedial Action Notices (RANs) could be extended beyond use in establishments approved under EC Regulation 853/2004 in England to assist them in dealing with imminent risk posed by allergens. The ability to serve RANs in establishments not requiring approval is already available in Wales and Northern Ireland.